

**DRAFT OF FEDERAL LAW OF RUSSIAN FEDERATION**

**“ON AMENDMENTS TO PARTS ONE AND TWO OF THE TAX CODE OF THE RUSSIAN  
FEDERATION (TAXATION OF THE INCOME OF CONTROLLED FOREIGN COMPANIES AND  
PROFITS OF THE FOREIGN COMPANIES)”**

**OF 26/08/2014**

**Article 1**

*To add to the First Part of the Tax Code of the Russian Federation the following changes:*

(Collection of Laws of the Russian Federation, 1998, № 31, art. 3824, 1999, № 28, art. 3487, 2000, № 2, p. 134; № 32, art. 3341 and 2001, № 53, p. 5016, 5026, 2002, № 1, p. 2, 2003, № 23, art. 2174; № 27, art. 2700; № 28, art. 2873; № 52, art. 5037, 2004 №27, p. 2711; № 31, art. 3231; № 45, art. 4377, 2005, № 27, art. 2717; № 45, art. 4585, 2006, № 6, Art. 636; № 31, art. 3436, 2007, № 1, p. 28, 31; № 18, art. 2118; № 22, art. 2563, 2564, 2008, № 26, art. 3022; № 27, art. 3126; № 30, Article . 3616, № 48, art. 5500, 5519, 2009 № 29, art. 3632; № 30, art. 3739; № 48, art. 5711, 5731, 5733; № 51, art. 6155, № 52, art. 6450, 2010, № 1, p. 4; № 11, art. 1169; № 31, art. 4198; № 32, art. 4298; № 40, art. 4969; № 45, art. 5752; № 48, Article . 6247; № 49, p. 6420, 2011, № 1, Article 16; № 24, art. 3357; № 27, art. 3873; № 29, art. 4291; № 30, art. 4575, 4593; № 47, Art. 6611; № 48, art. 6730; № 49, p. 7014, 7070, 2012, № 14, art. 1545; № 26, art. 3447; № 27, art. 3588; № 31, art. 4333; № 50, Art. 6954; 2013, № 9, art. 872; № 19, art. 2321, 2331; № 23, Art. 2866; № 26, p. 3207; № 27, art. 3445; № 30, Art. 4049, 4081; № 40, Art. 5037, 5038; № 44, Art. 5640, 5645, 5646, № 52, art. 6985; 2014, № 14, art. 1544; № 23, Art. 2924; № 26, p. 3372, 3404)

**1) Article 7**

Shall be amended as follows:

**"Article 7. International tax treaties**

1. If the international treaties of the Russian Federation in the field of taxation and fees, establish other rules and provisions than those provided for by this Code and other legal acts on taxes and (or) fees, adopted in accordance with this Code, the rules and norms of international treaties of Russian Federation shall prevail.

2. The actual recipient (beneficial owner) of income is a person who, by virtue of participation (direct and (or) indirect) in the company, or control over the company, or by virtue of other circumstances, has the right independently to use and (or) dispose of the income, or it is a person in whose interests the other person is authorized to dispose of such income. The functions performed by this person, as well as the risks taken by him shall be taken into account.

If an international tax treaty of the Russian Federation provide the reduced tax rates (tax exemption) in respect of income from sources in the Russian Federation for foreign persons

who are the beneficial owners of such income, then for the purposes of the application of this international treaty, the foreign person shall not be recognized as the beneficial owner of such an income if he has limited authority over the disposition of these revenues, exercise in respect of such income only the intermediary functions without performing any other functions and not taking any risks, either directly or indirectly pays such an income (fully or partially) to another person, who by direct receipt of such income from a source in the Russian Federation would not be entitled to benefit from the provisions of the international tax treaty of the Russian Federation, specified in this paragraph.”;

## 2) **Article 11**

To add subparagraphs seventh - ninth to paragraph 2 as follows:

"Foreign entities without forming legal entity – is an organizational form, established in accordance with the laws of a foreign country (territory) without forming a legal entity (eg, fund, partnership, association, trust, another form of the collective investment and (or) the fiduciary management), which, in accordance with its personal law has the right to exercise activities, aimed at gaining of income for the benefit of its members (shareholders, trustees or other persons) or other beneficiaries;

foreign financial intermediaries - foreign exchange and foreign depository and clearing companies included in the list, approved by the Central Bank of the Russian Federation in coordination with the Ministry of Finance of the Russian Federation

public companies - Russian and foreign companies that are issuers of securities (including depository receipts), which were listed and (or) were admitted to trading on one or more of the Russian stock exchanges, which have the appropriate license or were admitted to trading on the stock exchanges, included in the list of foreign financial intermediaries. ";

## 3) **Article 19**

To add third subparagraph as follows: "In the cases provided by this Code, foreign structures without legal personality shall be considered as taxpayers.";

## 4) **Article 23**

a) To amend subparagraph 2 of paragraph 2 as follows:

"2) to notice of his participation in the Russian companies (except of participation in economic partnerships and limited liability companies), if the share of the direct participation is more than 10 percent - not later than one month from the date of the beginning of such participation;"

b) to add paragraphs 3 - 3<sub>1</sub> as follows:

"3. Taxpayers in addition to their duties stipulated in paragraphs 1 - 2 of this Article shall notify the tax authority of:

1) his participation in foreign companies (in case if his share of participation is more than 10 per cent);

2) his participation in foreign structures without legal personality (including cases where the taxpayer is the founder of such a structure, or is the beneficial owner of the income (profit) of such a structure in the event of distribution);

3) the controlled foreign companies in respect of which he is the controlling person. Notification shall be submitted to the tax authority, respectively, at the place of the location of the company, at the place of residence of the individual, in the manner and within the timeframe provided for in Article 25<sub>14</sub> of this Code.

31. Foreign companies and foreign structures without forming legal entity, having the property which is subject to taxation according to Article 374 of this Code, in addition to the duties provided for in this Article shall report to the tax authority at the place of location of the immovable property the information about the participants of the foreign company (company) (for foreign structure without forming a legal entity - information about its founders, beneficiaries and managers) in the cases and in the manner prescribed by this Code. When a foreign entity (foreign structure without legal entity) has several objects of the property referred to in this paragraph, the information shall be submitted to the tax authority at the location of one of the objects of the property at the option of that person. ";

5) to add **Chapter 34** to **Section II** as follows:

**"Chapter 34. Controlled foreign companies and controlling persons**

**Article 25<sup>13</sup>. Controlled foreign companies and controlling persons**

1. For the purposes of this Code, a controlled foreign company, unless otherwise provided in paragraph 5 of this Article, is a foreign company satisfying simultaneously all of the following conditions:

- 1) The company isn't considered as a tax resident of the Russian Federation;
- 2) Controlling persons of the company are the companies and (or) individuals recognized as tax residents of the Russian Federation.

2. For the purposes of this Code as controlled foreign company is also recognized foreign structures without forming a legal entity, whose controlling persons are companies or individuals -tax residents of the Russian Federation

3. For purposes of this Code, the controlling person of the company (including foreign entities without legal personality referred to in paragraph 2 of this article) is a person who alone or together with related persons, determined in accordance with Articles 105<sup>1</sup> and 105<sup>2</sup> of the Code, exercise control over this company in his own interests or in the interests of interdependent with that person persons.

Exercise control over the company for purposes of this Code is to exercise the influence or the ability to exercise a decisive influence on the decisions made by an company in relation to the distribution of the earned income of the company after taxes, by virtue of direct or indirect participation in such an company, being a party to the contract (agreement), which subject is the management of the company, or by virtue of other features of the relationship between the individual and the company and (or) other persons.

Exercise control over a foreign structure without legal personality, referred to in paragraph 2 of this article, for the purposes of this Code, is to exercise the influence or the ability to exercise a decisive influence on the decisions made by the person performing the asset management of such a structure, in relation to the distribution of the profit after tax between its members (shareholders, trustees or other persons) or other beneficiaries under the legislation of a foreign state or an agreement.

4. Controlling persons of the company (company), in particular, are considered to be:

- 1) a person, the share of direct and (or) indirect participation in the company of which, together with his spouse and (or) the minor children, as well as other persons, which are interdependent with him according to the paragraph 2 of Article 105<sup>1</sup> of this Code, is more than 25 percent;
- 2) a person, the share of direct and (or) indirect participation in the company of which, together with his spouse and (or) the minor children, as well as other persons (taking into account features of the relationship of that person or other persons), represents more than 10 percent, if the share of direct and (or) indirect participation of all persons recognized as tax residents of the Russian Federation in this company, together with their spouses and (or) the

minor children, as well as other persons who are interdependent according to paragraph 2 of Article 105<sub>1</sub> of the present Code, is more than 50 percent.

5. A person who is a tax resident of the Russian Federation, can independently recognize himself as a controlling person of the company (of the foreign structures without legal personality, referred to in paragraph 2 of this article) on the grounds, not provided for in this paragraph, by sending a notification in the manner prescribed by this Code.

6. Foreign company, which meets the criteria established by this Article shall not be considered as controlled foreign company, if in respect of such a company at least one of the following conditions are fulfilled:

1) it is a public company;

2) it is a non-profit company, which, in accordance with its personal law does not distribute profits (income) between the shareholders (participants, founders) or other persons;

3) it is formed in accordance with the legislation of the Member State of the Eurasian Economic Union;

4) its permanent location is the state (territory), included in the list of countries (territories) which exchange information for tax purposes with the Russian Federation, and where the effective tax rate on corporate income (profit) for this foreign company, which is defined at the end of the tax period, and according to the personal law of this foreign company, exceeds 75 percent of the tax rate on corporate income, established by paragraph 1 of Article 284 of this Code.

List of States (Territories) which exchange the information for tax purposes with the Russian Federation, shall be approved by the federal executive body authorized to control and supervise in the field of taxation and fees;

5) It is a foreign structure without forming a legal entity (without legal personality) in respect of which all of the following conditions are met:

founder (founder) of such a structure after its creation (constitution) in accordance with the personal law of the structure and its constituent documents, isn't entitled to receive the assets of this structure in his property;

rights of the founder (participant) of such a structure related to his personal status in this structure (including the right to dispose of property, to identify beneficiaries and other rights) in accordance with the personal law of this structure and its constituent documents after its creation cannot be transferred to any other person in except for the cases of transfer of rights of inheritance or universal succession;

founder (participant) of such a structure is not entitled to receive, directly or indirectly, any profit (income) of a structure in a case of distribution of it among all its members (shareholders, trustees or other persons) or beneficiaries.

For the purposes of this subparagraph, to receive indirectly the profit (income) of the foreign structure without legal entity by a person is recognized to receive such an income by related party in the interests of that person.

The provisions of this subparagraph shall apply as long as the foreign structure without forming a legal entity in accordance with its personal law and the constituent documents has no possibility to distribute the profits among the participants (shareholders, trustees or other persons) or beneficiaries of such a structure.

6) it is a bank or an insurance company which operates in accordance with its personal law and on the basis of a license or is otherwise authorized to be engaged in banking or insurance activities, the state (territory) of residence of which is included in the list of countries (territories) which exchange the information with the Russian Federation for the purposes of taxation;

7) it is the issuer of traded bonds, or company authorized to receive interest on income payable on outstanding bonds, or an company to which had been ceded the rights and obligations of the issued outstanding bonds by the other foreign companies, under the condition of compliance of such foreign companies and negotiable bonds with the provisions established by subparagraph 8 paragraph 2 and paragraph 2<sub>1</sub> of Article 310 of this Code. In this case, for the purpose of this subparagraph, the share of these revenues for the period, for which in accordance with the personal law of the foreign company the financial statements are usually submitted, is not less than 90 percent of all income of such an company for this specified period;

8) it is involved in projects in accordance with the production sharing agreements, concession agreements or other agreements with the government of the country (territory) or other institutions (public authorities, state-owned companies) authorized by a government.

7. For the purposes of subparagraph 4 of paragraph 6 of this article, the effective rate of the income tax (profit) of a foreign company is defined as the ratio of an amount of the income tax, paid by a foreign company (foreign structure without legal entity) in accordance with its personal law for the relevant tax period, to the sum of income (profit) before tax.

If at the end of the tax period a foreign company (foreign structure without legal entity) is at a loss, the effective tax rate on income (profit) of such an company is calculated by dividing the total amount of the income tax (profit) to be paid in accordance with the personal law of that company in respect of income referred to in paragraphs 1 - 11, paragraph 2 of Article 309<sub>1</sub> of the Code, to the tax base for such income, calculated in accordance with Article 309<sub>1</sub> of this Code.

If at the end of the tax period a foreign company (foreign structure without legal form) has no income, the calculation of the effective rate won't be performed. In this case, such a foreign company is considered to be a controlled foreign company.

8. The provisions of subparagraphs 2, 5-7 of paragraph 6 of this Article shall apply, if a taxpayer, exercising control over a foreign company, provides the tax authority with the documents, confirming the compliance with the conditions set by this subparagraph. These documents shall be submitted within the period, prescribed by the second subparagraph of paragraph 3 of Article 25<sub>14</sub> of this Code.

9. In order to recognize a foreign company (foreign structure without forming a legal entity) as controlled foreign company and determine the share of indirect participation of controlling person in a foreign structure (foreign structure without legal entity), the participation, exercised through direct and (or) indirect participation of the person in the company referred to in sub-paragraph 1 of paragraph 6 of this Article, shall not be taken into account.

10. Recognition of the company (the individual), which is the management company (managing partner or other person exercising the functions of the management of the fund) of investment fund (mutual fund or any other form of the collective investment) – a foreign company (foreign structure without legal personality) as the tax resident of the Russian Federation, does not in itself constitute grounds for the recognition of this investment fund (mutual fund or any other form of the collective investments) as a controlled foreign company for which the controlling person is a company (individual), defined in this paragraph.

**Article 25<sub>14</sub>. Notification of participation in foreign companies and notification of controlled foreign companies**

1. Taxpayers, which are recognized as tax residents of the Russian Federation, in the cases provided for in this Code, shall submit to the tax authority a notice of the participation in the foreign company and in foreign structure without legal personality (hereinafter - the notification of participation in foreign companies) and notification of controlled foreign companies in the manner prescribed by this article.

2. Notice of controlled foreign companies is to be submitted by taxpayers, recognized as tax residents of the Russian Federation in respect of controlled foreign companies, recognized as such in accordance with Article 25<sub>13</sub> of this Code.

3. Notification of participation in foreign companies shall be submitted not later than one month from the date of occurrence of (changes) the grounds for the submission of such notice in accordance with this Code.

Notice of controlled foreign companies shall be submitted no later than on 20 March of the year following the tax period, established in accordance with Chapters 23 and 25 of this Code. If after the submission of the notification of participation in foreign company, the grounds for submission of notification didn't change, a new notification isn't necessary.

In the event of termination of participation in foreign companies, a taxpayer shall inform the tax authority no later than one month from the date of termination of participation.

4. Taxpayers shall submit a notification of participation in the foreign companies and notification of controlled foreign companies to the tax authority at the place of their location (residence).

Taxpayers, which are in accordance with Article 83 of this Code are referred to the category of the largest, shall submit the notification of participation in the foreign companies and notification of controlled foreign companies to the tax authority at the place of its registration as the largest taxpayers.

Notification of foreign companies and notification of controlled foreign companies shall be submitted to the tax authority by taxpayers in prescribed forms and (formats) in electronic form.

Taxpayers - individuals have the right to submit the notification in paper form. Forms (formats) of a notification of participation in the foreign companies and notification of controlled foreign companies, as well as the procedure of fulfilling of forms and procedure for submission of a notice of participation in foreign companies and the controlled foreign companies in electronic form shall be approved by the federal executive body, authorized to control and supervise in the field of taxes and duties and in accordance with the Ministry of Finance of the Russian Federation.

5. Notification of participation in foreign companies must contain the following information:

- 1) the date of occurrence of the grounds for the notification;
- 2) the name of a foreign entity (foreign structure without legal personality), notification of participation in which is represented by the taxpayer;
- 3) the registration number (s) assigned to a foreign company in the country (territory) of its registration (incorporation), code (s) of a foreign company as a taxpayer in the country (territory) of its registration (incorporation) (or equivalent), if available;
- 4) the share of the taxpayer's participation in a foreign company, the disclosure of the form of the participation of the taxpayer in a foreign company in a case of indirect participation;
- 5) the date of the termination of participation in a foreign company (foreign structure without legal personality) in accordance with the fourth subparagraph of paragraph 3 of this Article.

6. Notice of controlled foreign companies, must contain the following information:

- 1) the period for which notification is submitted;
- 2) the name of a foreign company (foreign structure without forming a legal entity);
- 3) the registration number (s) assigned to a foreign company in the country (territory) of its registration (incorporation), code (s) of a foreign company as a taxpayer in the country (territory) of its registration (incorporation) (or equivalent), if available;

- 4) the date which is the last day of the period for which financial statements are submitted by companies (foreign structures without legal personality) in accordance with its personal law;
  - 5) the date of the financial statements of a foreign company in accordance with its personal law;
  - 6) The date of the auditor's report on financial statements of a foreign company (in the case of mandatory audit in accordance with the personal law of the company);
  - 7) The expected date of the shareholders' meeting at which the decision must be made on the payment of dividends;
  - 8) The taxpayer's share in the foreign company, the disclosure of the method of participation of the taxpayer in a foreign entity in the presence of indirect participation;
  - 9) Description of the grounds for the recognition the taxpayer as a controlling person (entity) of the controlled foreign companies.
7. In the case of incomplete information, inaccuracies or errors in fulfilling of the submitted notification of participation in foreign companies or of notification of controlled foreign companies, taxpayer may submit a refined notification.

In the case of submission of refined notification before the moment when the taxpayer gets to know about establishing by a tax authority of the fact that the notification contains the false information, the taxpayer is exempt from liability under Article 129<sub>6</sub> of this Code.

8. When submitting a notification of participation in foreign company, participation of the taxpayer in the foreign companies exercised through direct or indirect participation in a public company shall not be taken into account.

**Article 25<sub>15</sub>. The method of accounting of profits of controlled foreign company for the purposes of taxation**

1. Profits of controlled foreign company for purposes of this Code are the company's profits, calculated in accordance with Chapter 25 of the second Part of this Code.
2. Profits of controlled foreign company, as determined in accordance with this Code, is equivalent to the profits of the company (personal income of individual) (hereinafter in this chapter - income and profits respectively) received by the taxpayer, which is recognized as the controlling person of the controlled foreign company and which is taken into account by determining of tax base of taxpayers recognized as controlling persons of the controlled foreign company in accordance with the chapters of the second part of this Code and the specifications set out in this Article.
3. Profit of controlled foreign company is taken into account by determining the tax base of the taxpayer - the controlling company, in proportion to the share of such person in a controlled foreign company at the date of the decision on the distribution of profits, and if such a decision is not made on 31 December of the year, at the end of the period for which in accordance with the personal law of such companies financial statements are normally submitted.

At impossibility to determine the share of profits of controlled foreign company by any of the methods listed in this paragraph, the profits of controlled foreign company shall be accounted by determining the tax base of the taxpayer on the basis of the amount of profit, for which a taxpayer has (will have) the right in the case of distribution between persons which have an effective right to such income (profit).

4. If a taxpayer - the controlling person participates indirectly in the controlled foreign company and such participation is exercised through companies which are controlling persons of the controlled foreign company and which recognized as tax residents of the Russian Federation, the profits of the controlled foreign companies included in the tax base of this

taxpayer shall be reduced by the amount of profits recorded for taxation in other controlling persons through which the indirect participation of such controlling person in a controlled foreign company is exercised, in proportion to the share of participation of the controlling person in the company through which the indirect participation in a controlled foreign company is exercised.

5. The taxpayer - the controlling person submits to the tax authority the tax declaration, according to which the tax base on the income of by him controlled foreign companies is accounted, which shall be filed with the following documents:

1) The financial statements of controlled foreign companies and other documents, required by this Code;

2) the auditor's report on financial statements of the controlled foreign company, referred to in subparagraph 1 of this paragraph, if in accordance with the personal law of the controlled foreign company such financial statements are subject to the mandatory audit.

6. Documents (copies), numerated in paragraph 5 of this Article, which are in a foreign language, shall be legalized in the established order and translated into Russian.

If it isn't possible to submit the financial statements together with the submission of the tax declaration according to paragraph 5 of this article, such audit report shall be submitted not later than one month from the date, reflected in the notice of controlled foreign companies as the date of the auditor's report on financial statements .

7. Profits of controlled foreign company are taken into account by determining the tax base for the tax period under the relevant tax in accordance with paragraph 1 of this Article, if its value, calculated in accordance with this Code, amounted to more than 10 million rubles. "

#### 6) **Article 31**

To add a new fourth paragraph as follows:

"Taxpayer - a foreign company (except for foreign companies, diplomatic representations), which does not operate on the territory of the Russian Federation through a separate division – in order to submit the documents shall address itself to tax authorities, indicated in the Unified State Register of taxpayers;"

#### 7) **Article 84**

To add paragraph 11 as follows:

"11. The provisions of this Article shall be applied to the registration, deregistration with the tax authority of a foreign company, which has recognized itself as a tax resident of the Russian Federation or foreign company which was recognized as a tax resident of the Russian Federation on the results of tax control measures, taking into account the features provided by this paragraph and according to the order, established by the Ministry of Finance of the Russian Federation according to paragraph 1 of this Article.

Registration and cancellation of registration with the tax authorities of a foreign company, which declared itself as a tax resident of the Russian Federation, is made by the tax authority on the basis of the application made by a foreign company and after a verification of compliance with the requirements of this Code, in the manner and within the timeframe set by the Ministry of Finance of the Russian Federation in accordance with paragraph 1 of this Article";

#### 8) **Article 88**

To add second and third subparagraphs to paragraph 2 as follows:

"If the tax declaration is not submitted by the taxpayer - controlling person of company, recognized as such in accordance with Chapter 3<sub>4</sub> of this Code, to the tax authority within the prescribed period, the authorized officials of the tax authority has the right to conduct the desk audit on the basis of the existing documents (information) of the taxpayer, as well as using the data on other similar taxpayers within three months from the date of the deadline for submission of such a tax declaration, established by the legislation on taxes and fees.

In the case when before the end of the desk audit of the available to the tax authority documents, a taxpayer submits a declaration, tax desk audit shall be terminated and a new tax audit on the basis of the new tax declaration begins. Termination of the desk audit means the termination of all acts of the tax authority in respect of existing tax documents (information). In this case, the documents (information) received by the tax authority in the framework of discontinued desk tax audit can be used during the tax control measures in respect of the taxpayer. ";

#### 9) Article 100

To make in paragraph 5 the following changes:

a) In the first paragraph after the words "(his representative)" to add the words "unless otherwise provided in this paragraph";

b) to add the following paragraph:

"Act of tax audit shall be sent to a foreign company (except for foreign companies, diplomatic representation), which does not operate on the territory of the Russian Federation through a separate division, by the registered mail to the address, contained in the Unified State Register of taxpayers. The date of delivery of this act is considered to be the sixth day after the date of sending a registered letter. ";

#### 10) Article 105<sub>1</sub>

Paragraph 3 shall be read as follows:

"3. For the purposes of this article the share of participation of an individual in the companies is the cumulative share of that person and his related parties, referred to in subparagraph 11 of paragraph 2 of this Article, in this company.

In order to determine the share of participation shall be as well taken into account the participation of an individual or of the company in a foreign structure without legal personality, which according to its personal law has the right to participate in the capital of other companies or other similar structures. ";

#### 11) Article 105<sub>2</sub>

To add subparagraph 3<sub>1</sub>. 3<sub>2</sub> as follows:

"3<sub>1</sub>. In order to identify the share of participation of one company in another company shall not be taken into account the participation, realized through the ownership of securities, purchased under the REPO agreements, and concluded in compliance with the Federal Law "On the Securities Market", or transactions, recognized as REPO transactions in accordance with the laws of a foreign country. In this case, in order to determine the proportion of direct and (or) indirect participation of such securities, they shall be recorded on a person who is a seller of such securities under the first part of REPO, except for the cases where the securities, sold by the seller under the first part of REPO, were received by him under the other REPO transaction or through the other securities lending transaction.

In the case of non-performance or performance not in full of the second part of REPO agreement, the definition of the share of participation of one company in the capital of the other company is carried out without taking into account the features specified in this clause.

3<sub>2</sub>. In order to identify the share of participation of one company in another company shall be not taken into account the participation, realized through the ownership of securities received under securities lending agreement entered into in accordance with the legislation of the Russian Federation or the laws of a foreign state. In this case, in order to identify the share of direct and (or) indirect participation, such securities are recorded on a person who is a creditor (representing securities for a loan), except for the cases when the securities transferred under securities lending agreement, were obtained by the creditor through the other lending of securities or through other REPO transaction.

In the case of non-performance or performance not in full of the duties concerning the transaction of return of the securities in securities lending transactions, the share of participation of one company in another company shall be determined without taking into account the features set forth in this paragraph. ";

#### 12) **Article 122**

The first subparagraph of paragraph 1 shall be read as follows:

"1. Non-payment or partial payment of amounts of tax (fee) as a result of the understatement of tax base, a wrong calculation of tax (fees), or other unlawful actions (inaction), if such act does not contain evidence of tax offenses provided for in Articles 129<sub>3</sub> and 129<sub>3</sub> of this Code";

#### 13) **Article 126**

a) The first paragraph of paragraph 1 shall be read as follows:

"1. Failure to submit in due time by the taxpayer (payer collection, a tax agent) to the tax authorities documents and (or) any other information prescribed by this Code and other legislative acts on taxes and fees, if such act does not contain evidence of tax offenses provided for in Articles 119, 129<sub>4</sub> and 129<sub>6</sub> of the Code, as well as paragraph 11 of this article";

b) To add paragraph 1<sub>1</sub> to be read as follows:

"1<sub>1</sub>. Failure to submit to the tax authority information required by paragraph 5 of Article 25<sub>15</sub> of this Code, the refusal to submit by the controlling person of available documents, as well as other avoidance to provide such documents or submission of documents with deliberately false information, shall entail a fine to be paid by the controlling person in the amount of 100.000 rubles.

#### 14) **Article 129<sub>1</sub>**

To add subparagraph 4 as follows:

"4. Wrongful failure (late submission) by the taxpayer - a foreign entity (foreign structure without legal personality), to submit to tax authority of the reports, provided for in paragraph 31 of Article 23 of this Code, shall entail a fine in the amount of 100 percent of the tax from the tax base calculated in respect of the immovable property belonging to this foreign company (foreign entities without legal personality) and which has not provided (late submitted) a report under paragraph 3<sub>1</sub> of Article 23 of this Code. In this case, the amount of penalty shall be calculated in proportion to share of participation in the company, details of which are not presented (or late submission), or, in the case of failure to determine the share

of the person in the company (the foreign structure of without legal personality), in proportion to the number of participants. ";

15) To add the **Articles 129<sub>5</sub> and 129<sub>6</sub>** as follows:

**"Section 129<sub>5</sub>. Non-payment or partial payment of amounts of tax as a result of the non-inclusion in the tax base of the share of the profits of controlled foreign companies.**

Non-payment or incomplete payment by the controlling person who is a taxpayer - individual or company of the amount of tax as a result of the non-inclusion in the tax base of share of the profits of controlled foreign companies shall entail a fine in the amount of 20 percent of the amount of unpaid tax on the profits of controlled foreign company, and which are to include in the tax base for personal income for controlling persons who are taxpayers - individuals, the tax base for corporate income tax for controlling persons, taxpayers , which are companies, but not less than 100 000 rubles.

**Article 129<sub>6</sub>. Wrongful failure of notification of controlled foreign companies, notification of participation in foreign companies, the presentation of false information in the notification of controlled foreign companies, in the notice of participation in foreign companies.**

Wrongful failure to submit by controlling person to the tax authority within the prescribed time a notice of controlled foreign companies for the relevant calendar year or submission by controlling person to the tax authority of notice of controlled foreign companies containing false information shall entail a fine of 100 000 rubles for each controlled foreign company, information about which is not represented, either in respect of which is presented a false information.

Wrongful failure to submit by the due date by the taxpayer to the tax authority of a notification of participation in foreign companies or submission of a notification of participation in foreign companies, containing inaccurate information, shall entail a fine of 50 000 in respect of each foreign company, details of which are not represented either in respect of which presents false information. "

**Article 2**

*To add to the Second Part of the Tax Code of the Russian Federation the following changes:*

(Collection of Laws of the Russian Federation, 2000, № 32, art. 3340, 2001, № 1, p. 18; № 23, art. 2289; № 33, art. 3413, 2002, № 22 Art. 2026; № 30, art. 3021, 2003, № 1, p. 2, 6; № 19, art. 1749; № 21, art. 1958; № 28, art. 2886; № 52, art. 5030 , 2004, № 27, art. 2711 2715; № 34, art. 3518, 3520; № 41, art. 3994, 2005, № 1, p. 30, 38; № 24, art. 2312; № 27, art . 2710, 2717; № 30, art. 3104; № 52. art. 5581, 2006, № 31, art. 3436, 3443, 3452; № 45, art. 4627; № 50, art. 5279, 5286, 2007 № 1, Art. 20, 31, 39; № 13, art. 1465; № 21, art. 2462; № 22, art. 2563; № 31, art. 3991, 4013; № 45, art. 5614; № 49 Art. 6045, 6071; № 50, art. 6237, 6245, 2008, № 18, art. 1942; № 27, art. 3126; № 30, art. 3614; № 48, art. 5519; № 49, p . 5723; № 52, art. 6237, 2009, № 1, p. 21, 31; № 11, art. 1265; № 18, art. 2147; № 23, art. 2772; № 29, art. 3598, 3639 ; № 30, art. 3739; № 39, art. 4534; № 45, art. 5271; N 48, art. 5726, 5731; № 51, art. 6153, 6155; № 52, art. 6444, 6455; 2010. № 15, art. 1737; № 19, art. 2291; № 31, Art. 4176, 4198; № 32, p. 4298; № 47, Art. 6034; № 49, p. 6409; 2011, № 1, p. 7, 9, 21; №23, Art. 3262; №r 24, Art. 3357; № 26, p. 3652; № 27, art. 3881; № 29, Art. 4291; № 30, Art. 4583, 4587, 4597; № 45, Art. 6335; № 47, Art. 6610, 6611; № 48, Art. 6729, 6731; № 49, p. 7016, 7037; 2012, № 10, art. 1164; № 19, art. 2281; № 25, p. 3268; №26, p. 3447; № 27, art. 3588; № 41, art. 5526, 5527; № 49, p. 6750; № 53, Art. 7596, 7604, 7607; 2013, № 23, art. 2866; № 27, art. 3444; № 30, Art. 4048, 4081; № 40, Art. 5038; №44, Art.

5645; № 48, Art. 6165; № 51, art. 6699; № 52, Art. 6985; 2014, № 8, art. 737; № 16, art. 1835; № 19, art. 2313; № 2014, № 26, art. 3373)

#### 1) **Article 208**

To add a subparagraph 8<sub>1</sub> to paragraph 3 as follows:

“8<sub>1</sub>) the amount of profit of a controlled foreign company, shall be calculated in accordance with this Code - for individuals, recognized in accordance with this Code as controlling persons of the company;”

#### 2) **Article 210**

To add to Paragraph 3 the following subparagraph:

"The tax base in accordance with this paragraph shall not be reduced by the amount of tax deductions provided for in Articles 218 - 221 of this Code, the income of controlling person as the sum of profit foreign company, controlled by this person.";

#### 3) **Article 217**

To add subparagraph 58 as follows:

“In the form of dividends of which the taxpayer is recognized as the beneficial owner and from which the tax is withheld in accordance with the provisions of Article 312 of this Code. The taxpayers have to provide the documents confirming the withholding of the tax by a tax agent. ”;

#### 4) **Article 223**

To add subparagraph 5 as follows:

"5. For the purposes of determining an income in the form of sums of profits of controlled foreign company, the date of actual receipt of the income is the last day of the tax period of the corporate tax following the tax period, which is the end of date of the period for which, in accordance with the personal law of a company the financial statements are made.»

#### 5) **Article 246**

To add subparagraph 5 as follows:

"5. For the purpose of this chapter, the foreign companies, recognized as tax residents of the Russian Federation in accordance with the procedure, established by Article 246<sub>2</sub> of this Code, are equated to the Russian companies. ”;

6) to add **Article 246<sub>2</sub>** as follows:

**"Article 246<sub>2</sub>. Organisations, recognized as tax residents of the Russian Federation:**

1. Companies - tax residents of the Russian Federation for the purposes of this Code, are recognized the following companies:

1) Russian companies;

2) Foreign companies recognized as tax residents of the Russian Federation in accordance with the foreign tax treaties;

3) Foreign companies, the place of effective management of which is the Russian Federation, unless otherwise stipulated by an international tax treaty.

2. For the purposes of subparagraph 3 of paragraph 1 of this article, the place of effective management of the foreign company is determined by taking into account the following conditions in respect to such foreign companies and its activities:

1) Board of Directors (other governing body of the company) predominantly (more than half of the meetings in a calendar year) are carried out on the territory of the Russian Federation;

2) Guiding management of the company is carried out mainly from the Russian Federation.

Under the governing control of company, for the purposes of this paragraph, is understood the decision-making and other actions, relating to the current activities of the company, which are the competence of the executive authorities of the management.

In particular, as the foreign company is considered a company, management of which is carried out outside of the Russian Federation and if its commercial activities are conducted through its own qualified personnel and assets in the country (territory) of its permanent location, with which the Russian Federation has an international tax treaty. In this case, the foreign company has the right to submit evidence of the above-mentioned conditions.

The implementation of the preparatory activities in the Russian Federation and (or) decision-making on issues related to the competence of the general meeting of shareholders (participants) cannot be considered as a main management of a foreign company;

3) the principal (senior) officials of the company (persons authorized and having the responsibility for planning, directing and controlling the activities of the enterprise) the most part of the time exercise their activities in respect of the foreign company in the Russian Federation.

3. If the conditions laid down in subparagraphs 1 - 3 of paragraph 2 of this Article are carried out in several States, the additional features for determining the place of effective management of a foreign company shall be applied, which are the following:

1) Maintenance of accounting or management accounting of company is carried out in the Russian Federation;

2) Record keeping of company is carried out in the Russian Federation;

3) issuance of orders and other company and administrative documents in respect of the company (with the exception of standards, methods and (or) policies that apply to all or to a substantial portion of related parties of such an company, as well as issues that are strategically important for the shareholders of such an company ) is carried out within the Russian Federation;

4) the operational management of the staff is exercised from the Russian Federation.

4. Regardless of the conditions provided for in paragraphs 2 and 3 of this Article, a foreign company may be considered as tax resident of the Russian Federation, solely in accordance with paragraph 5 of this Article, if in respect of that company at least one of the following conditions is met:

1) a foreign company has a permanent location in the state with which the Russian Federation concluded an international tax treaty and is considered as a tax resident of that foreign state under this foreign treaty;

2) a foreign company's core business activity is involvement in projects in the state (territory) of its registration (incorporation) in accordance with the production sharing agreements, concession agreements, license agreements or service agreements (contracts) under the condition of taking the subsequent risks, in accordance with other agreements with the government of the country (territory) or with authorized by such government institutions (public authorities, state-owned companies).

5. Unless otherwise stipulated by an international tax treaty of the Russian Federation, as well as by this article, foreign company, carrying out activities in the Russian Federation through its separate division, has a right to recognize itself independently as a tax resident of the Russian Federation, as well as (if a foreign company previously independently recognized itself as tax resident of the Russian Federation) to cancel a tax residency of the Russian Federation.

If a foreign entity independently recognizes itself as tax resident of the Russian Federation, in the compliance with provisions of this Code and other legal acts of the Russian Federation in relation to tax residents of the Russian Federation, this foreign company shall not be recognized as the controlled foreign company pursuant to Article 25<sup>13</sup> of this Code.

6. Recognition of the company (the individual), which is the management company (managing partner or other person exercising the functions of the management of the fund) of investment fund (mutual fund or any other form of the collective investment) - a foreign entity (foreign structure unincorporated), which is a tax resident of the Russian Federation, does not in itself constitute grounds for the recognition of this investment fund (mutual fund or any other form of the collective investment) as tax resident of the Russian Federation. ";

**7) Article 250**

To add subparagraph 24 as follows:

"24) in the form of a controlled foreign company's profits, as determined in accordance with this Code, - for the companies recognized as controlling persons of the foreign company in accordance with this Code.";

**8) Article 251**

a) subparagraph 11 of paragraph 1 is not valid;

b) to add paragraph 50 to be read as follows:

"In the form of dividends, for which the Russian company was recognized as the beneficial owner and from which the tax was withhold in accordance to the provisions of Article 312 of this Code. The taxpayers have to provide documents confirming the payment of the withholding tax by a tax agent. ";

**9) Article 269**

Paragraph 2 - 4 shall be read as follows:

"2. For the purposes of this article the following outstanding debt of the taxpayer – which is the Russian company, shall be recognized as controlled debt:

1) a debt obligation before a foreign company, the share of participation of which in the Russian company, as defined in accordance with Article 105<sup>2</sup> of the Code, exceeds 20 per cent;

2) a debt obligation before a Russian company recognized, in accordance with the legislation of the Russian Federation, as an affiliate of the specified foreign company;

3) a debt obligation in respect of which a foreign company referred to in subparagraph 1 of this paragraph, and (or) an affiliated person referred to in subparagraph 2 of this paragraph, directly acts as a guarantor, the guarantor or otherwise undertakes to enforce the debt obligations of the Russian company.

3. If the size of the controlled debt is 3 times (for banks, as well as companies dealing exclusively in leasing activity, - more than 12.5 times) greater than the difference between the

sum of the value of assets and liabilities of the taxpayer - the Russian company (further for the purposes of this paragraph - equity) on the last day of the tax period, while determining the maximum amount of interest to be included in the costs according to the provisions of paragraph 1 of this Article, the rules established by paragraphs 4-6 of this Article shall be applied.

4. The taxpayer is obliged on the last day of each of the reporting (tax) period to calculate the maximum amount of an expense, as an interest on controlled debt, by dividing the amount of interest accrued by the taxpayer in each accounting (tax) period for controlled debt to capitalization ratio, which is calculated on the last reporting date of the relevant reporting (tax) period. In this case, the capitalization rate is determined by dividing the respective outstanding controlled debt by the amount of equity capital, corresponding to the appropriate proportion of direct or indirect participation of the foreign entity in the authorized (share) capital (fund) of a Russian company, and dividing the result by three (for banks and institutions engaged in leasing activities - twelve and a half).

For the purposes of this paragraph, in order to determine the amount of equity capital shall not be taken into account the amount of debt in the form of debt of taxes and levies, including the current debt in the payment of taxes and fees, the amount of deferral of installments and the investment tax credit.

5. The structure of expenses include interest on controlled debt, calculated in accordance with paragraph 4 of this Article, but not more than actually accrued interest.

The rules established by paragraph 4 of this Article shall not apply in respect of interest on borrowed funds, if the outstanding amount is not controlled.

6. The positive difference between the accrued interest and the marginal interest, calculated in accordance with the procedure set forth in paragraph 4 of this Article, shall be treated for tax purposes as dividends paid to a foreign company in respect of which there is a controlled debt, and shall be taxed at the tax rates set forth in paragraph 3 of Article 284 of this Code. ";

#### 10) **Article 271**

To add subparagraph 12 to paragraph 4 as follows:

"12) the date of receipt of income in the form of profit of controlled foreign company is the 31 December of the calendar year following the tax period, which is the end date of the period for which, in accordance with the personal law of such companies financial statements are usually made , and in case of absence in accordance with the personal law of a duty of submission and presentation of financial statements – the 31 December of the calendar year following the tax period, which is the end date of the financial period. ";

#### 11) **Article 273**

Paragraph 1 after the words "microfinance institutions" add with the words ", the companies recognized in accordance with this Code as controlling persons of controlled foreign companies";

#### 12) **Article 274**

To add paragraph 21 as follows:

"21. The tax base of the controlling persons for profit of by them controlled foreign companies, shall be determined in accordance with the provisions, established by Article 309<sub>1</sub> of this Code, and cannot be reduced by the amount of the costs of other activities, as well as losses resulting from other activities of such persons. ";

**13) Article 277**

To add paragraphs second-sixth to paragraph 2 as follows:

"If the liquidated company is a foreign company, the income of the taxpayer-shareholder (participant), recognized as the controlling person of the foreign company in accordance with Chapter 3<sub>4</sub> of this Code, received in the form of value of property (property rights) shall not be included in the tax base.

In this case, the value of such property (except for cash) for the purpose of this chapter is accounted on the basis of the documented cost of the property according to the account of liquidated foreign company, but not higher than the market value of such property, determined by taking into account the provisions of Article 105<sub>3</sub> of this Code, and no more than the price, actually paid, (regardless of the form of payment) and on the basis of the documented value of shares of the relevant shareholders (participants, shareholders) of the company, net of cash and foreign currency received by the distribution of assets of the liquidated company.

The distribution of the total cost of certain types of distributed property (property rights) shall be determined in accordance with the rules of this article in the following order:

objects of property (property rights), which are subject to amortization, as well as the rights to the debt shall be accounted for according to the documented value (residual value), determined according to the account of liquidated foreign company;

the remaining total cost is distributed on other types of property (property rights) on the basis of their documented cost according to the account of the liquidated company. ";

**14) Article 278<sub>1</sub>**

To add the second subparagraph of paragraph 1 of with the words ", as well as members of the consolidated group, the income of taxpayers who are controlling persons of controlled foreign companies in the form of profits of foreign companies controlled by them";

**15) Article 283**

Paragraph 1, after word "268<sub>1</sub>," add with the word "274";

**16) Article 284:**

a) The seventh subparagraph of paragraph 1 shall be read as follows:

"The provisions of this paragraph shall not be applied to: taxpayers referred to in paragraph 1 of Article 275<sub>2</sub> of this Code, by calculating the tax base for the implementation of activities, related to the production of hydrocarbons on a new sea zone source of hydrocarbons; when calculating the tax base of taxpayers - controlling persons, for profit of by them controlled foreign companies.";

b) To add paragraph 1<sub>6</sub> to be read as follows:

"1<sub>6</sub>. by determining of the tax base on income of the taxpayer - controlling persons, in the form of profit of by them controlled foreign companies, the tax rate is set at 20 percent ";

**17) Article 284<sub>1</sub>**

In paragraph 2 "paragraphs 3 and 4" shall be replaced by the words "paragraphs 1<sub>6</sub>, 3 and 4."

18) **Article 284<sub>2</sub>**

To add subparagraph 4 to paragraph 2 as follows:

"4) if the shares of the authorized capital of Russian companies is composed of no more than 50 percent of the assets, which consist directly or indirectly from immovable property, situated on the territory of the Russian Federation, with the exception of shares which comply with the conditions specified in subparagraph 2 of this paragraph.";

19) **Article 309:**

a) The first subparagraph of paragraph 1 shall be read as follows:

"1. The following types of income received by a foreign company that is not related to its business activities in the Russian Federation, is considered as an income of a foreign company from sources in the Russian Federation and is subject to taxation: ";

b) Subparagraph 5 of paragraph 1 shall be read as follows:

"5) income from the sale of shares (stakes) in companies, which assets consist more than 50 percent directly or indirectly from immovable property situated on the territory of the Russian Federation, as well as of financial instruments, derived from such shares (shares), with the exception of shares, traded on the organized securities market in accordance with paragraph 9 of Article 280 of this Code. Accordingly, the following income is not recognized as an income from sources in the Russian Federation:

from sales in foreign markets (in foreign trade organizers) of the securities or derivatives of these financial instruments; or

received from the sale of securities (equity interests) in foreign companies or structures without legal personality with the number of shareholders (participants, shareholders) of at least 50 people, if each person does not has more than 5%; or

received from the sale of securities (equity interests), provided that at the date of sale or other disposal (including redemption), these shares (stakes) are continuously owned by the taxpayer on the right of ownership or other proprietary interest of more than 5 years; "

c) add paragraph 11 to be read as follows:

"1<sub>1</sub>. Income referred to in sub-paragraphs 1 - 4 and 6 - 10 of paragraph 1 of this Article shall be subject to the withholding tax on the income. ";

20) To add **Article 309<sub>1</sub>** as follows:

**"Article 309<sub>1</sub>. The particularities of the taxation of the profit of the controlled foreign companies**

1. For the purposes of this Code, as a profit of controlled foreign companies is recognized the value of the company's profits, calculated with the specifications provided in this Article, less the amount of dividends paid by this foreign company during the period for which in accordance with the personal law such companies such financial statements are usually prepared, and during the period which follows this period, dividends in respect of one relevant period.

Profits of controlled foreign company, denominated in a foreign currency, shall be recalculated into rubles using the average foreign currency exchange rates to the Russian ruble, determined by the Central Bank of the Russian Federation, for the relevant period, and when is in accordance with the personal law, such companies prepare financial statements.

The amount of profit of each controlled foreign company must be documented with tax declaration (reports) of a controlled foreign company, prepared in accordance with the

personal law of a company for the relevant period (s), together with the financial and tax reporting of such a company.

When in accordance with the personal law of such company there are no duties for the preparation and submission of financial statements in accordance with the laws of a foreign country (territory) location (registration) of a foreign company, the amount of profits of a controlled foreign company must be confirmed by other documents, allowing to determine the amount of profits. These documents, in particular, may be the statements of the current accounts of foreign controlled company, primary documents, confirming the operation.

2. By determining the profits of controlled foreign companies, shall be accounted the following income of the company:

- 1) dividends received by this foreign company;
- 2) income earned as a result of the distribution of profits or assets of companies or other persons or their associations, including at their liquidation;
- 3) interest income from debt obligations of any kind, including bonds with the right to participate in profits and convertible bonds;
- 4) income from the use of intellectual property.

Such income, in particular, payments of any kind, received as a consideration for the use or the right to use of any copyright of literary, artistic or scientific work, including cinematograph films and films or tapes for television or radio broadcasting, the use of (granting the right to use) of any patent, trademark, design or model, plan, secret formula or process, or the use (right to use) information concerning industrial, commercial or scientific experience;

- 5) income from the sale of shares (shares) and (or) the assignment of rights in a foreign company that has no legal entity under foreign law;
- 6) income from the sale of real estate;
- 7) income from the lease or sublease of the property, including income from leasing operations, the proceeds from the lease or sublease of ships and aircraft, and (or) means of transport and containers, used in foreign traffic. In this case, income from leasing transactions related to the purchase and use of the leased asset by the lessee, is calculated on the base of the entire amount of the lease payment, net of reimbursement of the leased property (for leasing) to the landlord;
- 8) income from sales (including redemption) of investment units of investment funds;
- 9) income from consulting, legal, accounting, auditing, engineering, advertising, marketing services, information processing services, as well as from research and development activities;
- 10) income from services for the provision of personnel;
- 11) other income comparable to income referred to in subparagraphs 1 - 10 of this paragraph;
- 12) other income.

3. The tax base of a controlled foreign company is determined separately for each controlled foreign companies:

- 1) The income referred to in sub-paragraphs 1 - 11 of paragraph 2 of this Article (hereinafter referred to for the purpose of this chapter - income from passive activities);
- 2) The income referred to in subparagraph 12 of paragraph 2 of this Article (hereinafter referred to for the purpose of this chapter - income from an active business), except for the cases where the taxpayer is not exercising a right, provided for in paragraph 5 of this article (assuming no loss of business activity).

The income referred to in subparagraph 3 of paragraph 2 of this article, can be attributed to income from active work, if the profit from such income is earned under a special permit (license) for the main purpose of the foreign company, which is a bank in accordance with laws of a foreign state.

4. In order to determine the profits of controlled foreign company, a taxpayer is entitled to reduce the income from passive activities, to the expenses of the company, associated with obtaining such proceeds, as well as costs associated with the payment of such income to others.

5. In order to determine the profits of controlled foreign company, a taxpayer is entitled to reduce the income from active business to the costs associated with obtaining of such proceeds in accordance with the laws of a foreign country (territory) location (registration) of controlled foreign company, except for the expenses taken into account in determining the tax base for income from passive activities, with the specifications set forth in this paragraph.

If the law of a foreign country (territory) location (registration) of controlled foreign company does not provide a full deduction of investment expenses of the revenue for tax purposes, in order to determine the tax base of a foreign company controlled, a taxpayer is entitled to reduce the income from active business, carried out, by the amount of investment expenses for the relevant tax period, that are not taken into account by determining the tax base in a foreign country (territory) location (registration) of a controlled foreign company.

For the purposes of this Article, investment costs are recognized as the actual cost of financing of capital investments in manufacturing facilities and intellectual property, interest paid in terms of bank loans, obtained and used for this purpose, the construction of infrastructure.

6. In the event that the amount of expenses recorded during the formation of the tax base for income from passive activities of controlled foreign company exceeds the amount of the profits of the company's business activity, the corresponding loss can be carried forward to future periods without restriction and taken into account in determining the tax base for income from passive activities of this company.

If the amount of expenses taken into account while determining the tax base for income from business activity of a controlled foreign company exceeds the amount of income from the business activity of the company, the corresponding loss can be carried forward to future periods without restriction and taken into account by determining the tax base for income from the business activity of this company.

7. In order to determine the profits of controlled foreign company, the income and expenses from active business of the taxpayer is entitled to be taken into account, in accordance with the personal law of the company.

8. Profits of controlled foreign company from a passive activity is not reduced by the loss of business activity.

9. If the income of controlled foreign company is, while determining the tax base, obtained as a result of a controlled transaction with the taxpayer in respect of which has been made the audit of the completeness of the calculation in respect of payment of taxes in connection to the transactions between related parties and in accordance with the entered into force decision, which is based on the results of the audit, it turns out, that the transaction's price was adjusted to additional taxation, in order to determine the appropriate tax base of income of controlled foreign company such adjustment shall be taken into consideration.

10. The amount of tax calculated in respect of the profits of controlled foreign company for the relevant period shall be reduced by the amount of tax, paid in respect of that income in

accordance with the laws of foreign countries, and (or) legislation of the Russian Federation, as well as corporate tax paid by a permanent establishment of controlled foreign companies in the Russian Federation.

The due tax shall be documented and certified by the competent authority of a foreign state, authorized to control and supervise in the area of taxes. By determining the profits of controlled foreign companies shall not be applied the definitions of revenues, expenses, and the tax base, established by this Code, except as provided in this Article. ";

## 21) **Article 310**

a) in subparagraph 4 of paragraph 2, after the words "foreign company" add the words "having an actual right to receive an income";

b) in sub-paragraph 1 of paragraph 21 the words "the list approved by the Central Bank of the Russian Federation in coordination with the Ministry of Finance of the Russian Federation" shall be replaced with the words "list of foreign financial intermediaries";

## 22) **Article 312**

a) The first paragraph of paragraph 1 shall be read as follows:

"1. For the purposes of application of the provisions of the international treaties of the Russian Federation, a foreign company with the actual right to receive income, shall provide the tax agent, paying such an income, with the confirmation that the foreign company has a permanent residence in a country with which the Russian Federation has an international tax treaty (agreement), which must be certified by a competent authority of the foreign state. If such evidence (confirmation) is in a foreign language, the tax agent shall be also provided with a translation into Russian. In addition to this, tax agent who pays such an income while applying the provisions of international of the Russian Federation shall have the right to request from a foreign company a confirmation that the company has an actual right to receive an income.

If the foreign company which has the actual right to receive an income, submit confirmation, referred to in paragraph 1 of this Article, to the tax agent, paying such an income, before date of the payment of such an income in respect of which an international treaty of the Russian Federation provides for preferential tax treatment in the Russian Federation, as a consequence such an income shall be exempted from withholding tax at the source of payment or credited at a reduced rate.

1.1. If in respect of an income received in the form of dividends, foreign company recognizes no actual right to receive such an income (does not intend to apply the provisions of international treaties of the Russian Federation), the provisions of international treaties of the Russian Federation can be applied to any other person, who directly and (or) indirectly participates in the Russian company and pays an income in the form of dividends, under the condition of the presentation to tax agent, paying such income, of the documents referred to in this article.

In this case, the right to apply the provisions of the international treaties of the Russian Federation shall have the following person who is directly involved in a company, which recognized the absence of the actual right to receive an income in the form of dividends. In the event when that person followed by person hasn't actual right to receive an income in the form of dividends paid by a Russian company, the right to apply the provisions of the foreign treaties of the Russian Federation shall have the other persons in the corresponding sequence of participation.

If the beneficial owner of the income, received in the form of dividends, is indirectly involved in the company, which pays such an income in the form of dividends, is a tax resident of the

Russian Federation, then the tax base, determined by the income received in the form of dividends, shall be taxed at the tax rates, set forth in subparagraphs 1 and 2 of paragraph 3 of Article 284 of this Code, and under the condition of submission to tax agent, paying such an income, of information (documents) referred to in this article.

Moreover, for the purposes of this article and of subparagraph 1 of paragraph 3 of Article 284 of this Code, the indirect participation of each subsequent person having the actual right to receive income from the Russian company, paying the dividend, is equal to direct participation in the Russian company, which income is distributed in the form of dividends.

Application of rate established by subparagraph 1 of paragraph 3 of Article 284 of this Code, subject to the following additional conditions:

1) the proportion of direct (indirect) participation of the Russian person, who is the beneficial owner of the dividends, in the authorized (share) capital (fund) of the Russian person, paying the dividends, as well as of foreign companies through which they have participation in the capital of the Russian person is not less than 50% for the period from the date of payment of dividends to the end of the tax period for which the dividends are paid. By calculation of the direct (indirect) participation is not considered participation, exercised through the company referred to in paragraph 6 of Article 25<sub>13</sub> of the present Code;

2) the amount of dividends, the beneficial owner of which is Russian resident, is not less than 50 percent of the total amount of distributed dividends.

1.2. The tax agent paying income in the form of the dividends, according to the provisions of foreign treaties of the Russian Federation and (or) tax rates established by this Code, in addition to the documents referred to in paragraph 1 of this Article shall be entitled to request from a foreign company, which has received income in the form of dividends, and from the beneficial owner of the dividends, the following information (documents):

1) confirmation that such foreign company recognizes no actual right to receive such income (it doesn't apply the provisions of the international treaties of the Russian Federation);

2) information about the person who is a foreign company, which is the beneficial owner of income (with indication of the share of participation and documentary evidence about the direct involvement in the foreign company and indirect participation in the Russian company, distributed dividend, as well as the state (territory) of a person's tax residency).

1.3. The particularities of calculation and payment of tax on dividend income, that are to be withheld by tax agent, as set out in this Article, shall be applied to the calculation and payment of tax by Russian companies who pay income in the form of dividends if the beneficial owner of the income is a natural person - tax resident of the Russian Federation. In this case shall be applied the tax rate, established by paragraph 4 of Article 224 of this Code.

The provisions of paragraphs 1-1.3 shall not be applied to the procedure of application by the tax agents of the provisions of international tax treaties, governing the taxation issues in the cases provided for in Article 310.1 of this Code. ";

b) The first paragraph of subparagraph 2, after the words "regulatory tax issues," add with the words "or in this Article";

c) the eleventh paragraph of paragraph 2, after the word "foreign" words "(actual)";

d) to add subparagraphs 3 - 4 as follows:

"3. For purposes of this Code, the person is considered to be the beneficial owner of income, if that person is a direct beneficiary of such income, who is, the person who actually benefits from paid income and determines its further economic destiny. By determining the actual right to income are taken into account the functions performed, the existing powers and the risks assumed by the person claiming for the application of the provisions of the international treaty of the Russian Federation in respect of paid income.

4. If the tax agent paying income did not apply the provisions of the international treaty of the Russian Federation and totally withhold tax on the income of a foreign company, the beneficial owner of this income has the right to apply for a refund of tax by the submission of the documents, specified in this article to the tax authority at the location of a tax agent. ";

**23) Article 346<sub>1</sub>**

a) in paragraph 3, the words "in paragraphs 3 and 4 of Article 284 of this Code" shall be replaced with the words "paragraphs 1<sub>6</sub>, 3 and 4 of Article 284 of this Code";

b) in paragraph 4, after the words "tax agents" add the words "and the duties of controlling entities of controlled foreign companies";

2) in subparagraph six of paragraph 1 of Article 346<sub>15</sub> "paragraphs 3 and 4 of Article 284 of this Code" shall be replaced with the words "paragraphs 1<sub>6</sub>, 3 and 4 of Article 284 of this Code."

**24) Article 346<sub>11</sub>**

a) in paragraph 2, the words "in paragraphs 3 and 4 of Article 284 of this Code" shall be replaced with the words "paragraphs 1<sub>6</sub>, 3 and 4 of Article 284 of this Code";

b) in paragraph 5, after the words "tax agents" add the words "and the duties of controlling persons of controlled foreign companies."

2) in paragraph 2 of Article 11, Article 346<sub>15</sub>, the words "in paragraphs 3 and 4 of Article 284 of this Code" shall be replaced with the words "in paragraphs 1<sub>6</sub>, 3 and 4 of Article 284 of this Code."

**25) Article 386**

To add the second subparagraph to paragraph 3 as follows:

"Foreign companies (foreign structures without legal personality) having the property, which is subject to taxation in accordance with Article 374 of this Code, together with the submission of tax declarations, shall represent information about the participants of this foreign company (structure without legal personality) on December 31, for the relevant tax period, including disclosure about the indirect participation (if any) of a natural person or a public company, if the share of their direct and (or) indirect participation in a foreign company (structure unincorporated) exceeds 5 percent. "

**Article 3**

1. The present Federal Law shall enter into force on 1 January 2015 and not earlier than the 1st day of the next tax period for the relevant tax and the specifications set out in this Article shall be applied.

2. The provisions of Chapter 34 of the Tax Code of the Russian Federation (as amended by this Federal Law) shall be applied to taxpayers, who are recognized as controlling persons of the controlled foreign company, in order to determine the tax base in accordance with the provisions of the Tax Code of the Russian Federation (as amended by this Federal Law) in respect of the profits of foreign companies, beginning from 2015.

3. Prior to January 1, 2017, recognition of controlling person in accordance with paragraph 4 of Article 25<sub>13</sub> of the Tax Code of the Russian Federation (as amended by this Federal Law) is carried out in cases where the proportion of direct and (or) indirect participation of the person in the company, together with his spouse and (or) the minor children, as well as other persons

(taking into account features of the relationship of that person or other persons), is more than 50 percent;

4. The provisions of Article 25<sup>14</sup> of the Tax Code of the Russian Federation (as amended by this Federal Law) for submission of a notification of participation in foreign companies to the tax authority until January 1, 2017, shall be applied in cases, when the share of direct and (or) indirect participation of the taxpayer in foreign companies is not less than 25 percent.

5. For the purposes of application of the provisions of paragraph 7 of Article 25<sup>15</sup> of the Tax Code of the Russian Federation (as amended by this Federal Law) in 2015 and 2016, profits of controlled foreign company is taken into account by determining of the tax base for the tax period under the relevant tax in accordance with paragraph 1 of Article 25<sup>15</sup> of the Tax Code of the Russian Federation (as amended by this Federal Law), provided that its value, calculated in accordance with the Tax Code of the Russian Federation (as amended by this Federal Law) shall be:

in 2015 - 50 million. rubles;

in 2016 - 30 million. rubles.

6. Bringing to justice for tax offenses under Article 129.5 of the Tax Code of the Russian Federation (as amended by this Federal Law), shall be carried out in the following order:

the imposition of tax liability for the tax years 2015 – 2017 under article 129.5 of the Tax Code of the Russian Federation (as amended by this Federal Law) shall not be applied;

Imposition of tax liability for tax years beginning in 2018, shall be applied according to the provisions of Article 129.5 of the Tax Code of the Russian Federation (as amended by this Federal Law).

#### **Article 4**

Subparagraphs second - sixth of paragraph 2 of Article 277 of the Tax Code of the Russian Federation (as amended by this Federal Law) will be replaced beginning from the 1 January 2019.