

Amnesty of capital 2.0

The second stage of the amnesty of capital

16 March 2018

on June 8, 2015 the Federal Law №140 “On voluntary declaring by individuals of assets and accounts (deposits) in banks and on making amendments in certain legal acts of the Russian Federation”, so called the law on “capital amnesty” entered into force (hereinafter referred to as “the Law”).

The Law refers to the creation of the legal mechanism of the voluntary declaration of assets and accounts (deposits) in banks, providing legal guaranties for the preservation of individuals’ capital and property, protecting their property interests as of abroad, reducing the risks, connected with possible restrictions on the use of Russian assets, which are situated in foreign countries, as well as the accession of the Russian Federation to the automatic exchange of tax information with foreign states.

The Law establishes the procedure, period and grounds for the voluntary declaration by individuals of:

- the property (land, real estate, vehicles, securities, etc.), if declarants are owners or beneficiaries;
- controlled foreign companies, if declarants are controlling persons;
- accounts (deposits) with banks, including those located abroad.

The first stage of the amnesty was held from June 1, 2015 to June 30, 2016. It should be noted, that more than 7,000 people used the opportunity to disclose their foreign assets having avoided tax claims.

On February 19, 2018, the President of the Russian Federation Vladimir Putin signed a package of documents on the second stage of capital amnesty in 2018-2019.

According to the Federal Law №33-FZ “On making amendments to the Federal Law “On voluntary declaring by individuals of assets and accounts (deposits) in banks and on making amendments in certain legal acts of the Russian Federation”, the second stage of capital amnesty will be held **from March 1, 2018 to February 28, 2019**. For those who submit the declaration in the second stage, the Law provides the same amount of guaranties, which was provided at the first stage.

Please note that the tax amnesty is applicable to tax liabilities, which arose before January 1, 2018. However, the adopted guaranties do not apply to the obligation to pay income taxes and (or) property taxes of controlled foreign companies. The changes and additions, referred to the second stage of the amnesty, are as follow:

1. Russian citizens will be able to indicate in the declaration accounts with foreign banks that were not only opened as of January 1, 2018, but also closed on the date of submission of the declaration, provided that such closed accounts were opened before January 1, 2018.

2. Individuals who submitted the declaration during the first stage of the capital amnesty will be able to re-submit it during the second stage to any tax authority or the central office of the Federal Tax Service.
3. Currency transactions and (or) the transfer of funds made before the date of submission of the declaration on the accounts (deposits) specified in the declaration and opened with banks located outside the Russian Federation **shall be recognized as committed without violating the Federal Law** 173-FZ of December 10, 2003 “On Currency Regulation and Currency Control”.

Regarding the filing of declarations on **controlled foreign companies**, special attention should be paid to the grounds for **recognizing persons as controlling ones**: besides persons directly or indirectly participating in the authorized capital of foreign companies, those who take control of the company for their own benefit or for the benefit of the spouse and minor children are also recognized as controlling persons.

Circumstances that indicate the control of a foreign company (in the absence of participation) may be:

- **the trust declaration** containing the obligation of nominal shareholders to hold the company shares in favor of and on behalf of the beneficiary;
- the participation in a contract (agreement), the subject of which is **the management of a foreign company**;
- the execution by a person of the functions of **the sole executive body of a foreign company (director / managing partner)**;
- management of the business of a foreign company on the basis of **a general power of attorney**;
- data on the bank account^[1] of a foreign company managed by the beneficiary who is also a signatory of the account;
- Other relationships between a person and a foreign company.

Thus, the obligation to submit to tax authorities declarations and notifications on controlled foreign companies also applies to persons taking control of foreign companies on the above criteria.

Please note that the changes have also affected controlled foreign companies. The Federal Law No. 34-FZ of February 19, 2018, makes amendments into the Tax Code of the Russian Federation (hereinafter referred to as the “Tax Code”) regarding the taxation of the profits of controlled foreign companies (hereinafter referred to as “the CFC”) and the income of foreign organizations.

Previously, the following procedure for a “cure” transition period was in effect: in the event of the liquidation of the CFC before December 31, 2017, its owner in Russia was exempted from personal income tax at a rate of 13% on property received from the liquidated controlled foreign company. Such exemption applied to any assets of the controlled foreign company received after the liquidation in the form of property and property rights, **with the exception of funds**.

Changes and amendments, reflected in the adopted Federal Law, are as follows:

1. With the adoption of the amendments to the Tax Code, the deadline for the liquidation of the CFC is extended until March 1, 2019. In the meantime, the decision on the liquidation of the CFC should be made before July 1, 2018.

2. Taxes are also exempted from any income in money and in kind that an individual receives when liquidating a controlled foreign company provided that it is liquidated before the mentioned date. Thus, the amnesty is applicable to funds as well.

[1] On May 12, 2016, the Federal Tax Service of the Russian Federation at the OECD Forum in Beijing signed the Multilateral Agreement on the automatic exchange of information on financial accounts. The first such exchange is planned for September 2018 - information on the accounts will be provided to the Russian tax authorities by the relevant competent authorities of other countries participating in the agreement.

If questions arise, we are ready to give detailed consultations, assist you processing documents on the amnesty of capital.

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