

RUSSIAN CURRENCY CONTROL: SIGNIFICANT CHANGES IN FOREIGN ACCOUNTS RULES

Russia lifts restrictions for crediting individual accounts with foreign banks in OECD / FATF member states which conduct information exchanges under the OECD's Common Reporting Standard ("**CRS**") while imposing more currency reporting obligations on both Russian individuals and companies in respect of their other (non-bank) financial accounts abroad

BACKGROUND

Russia has adopted a restrictive approach to crediting accounts of its currency residents (i.e., companies organised under Russian law, individuals holding Russian passports or foreign nationals living in Russia under residency permits¹). Russian currency control legislation maintains an exhaustive list of payments which may be directly credited to foreign bank accounts of Russian currency residents (i.e. without the funds initially being credited to their Russian bank accounts). Any payment that is not on that exhaustive list has to be received by a Russian currency control resident in its Russian bank account. Failure to comply with this regime may lead to a fine for the Russian currency control resident of up to 100% of the value of that payment.

While there has been some progress in terms of broadening the list over the past few years, the legislation remains very restrictive.

Below we provide a summary of two major changes to the regime of foreign bank accounts under Russian currency control rules effective from January 2020.

WHAT IS CHANGING?

Crediting foreign bank accounts of Russian individuals

Starting in 2020, all restrictions on crediting bank accounts of Russian individual currency residents are lifted when:

- the funds are received from a currency non-resident² company or individual; and
- the account is opened with a foreign bank located in a jurisdiction that:

¹ There are no restrictions on crediting accounts of individual Russian currency residents who are outside Russia for more than 183 days in a calendar year. These individuals, however, are still regarded as Russian currency residents and their currency residency is not linked to the tax residency status of individuals.

² Most of the transactions between currency residents that involve foreign currency remain prohibited.

Key issues

- Restrictions for crediting individual accounts with foreign banks in OECD / FATF member states exchanging information under the CRS are lifted
- In addition to accounts in foreign banks, investment accounts in non-banking financial institutions abroad will fall within the scope of Russian currency control rules

- is an OECD or a FATF member-state; and
- exchanges information with Russia under the CRS³ or any other international agreement for the automatic exchange of financial information.

Lifting the restrictions on crediting accounts in foreign banks is a positive change to the existing rigid regime and will allow a wider range of products and investment opportunities to be offered Russian high net worth individuals without the fear of draconian sanctions being applied to such individuals.

It will also help in promoting corporate share option schemes, under which proceeds from sales of securities, dividends, or other payments to Russian employees are credited to accounts abroad.

While increasing flexibility for Russian currency residents and foreign banks, this new "liberal" regime should be applied with care. This is, firstly, because some of the popular jurisdictions – such as Cyprus, Malta, Monaco, or Jersey – may not be members of OECD or the FATF, and bank accounts in such jurisdictions would remain subject to the old regime (i.e., only payments from the exhaustive list may be credited to such accounts).

On the other hand, some major OECD/FATF member states may not have automatic exchange of financial information with Russia. The U.S., which does not participate in the CRS and has no FATCA IGA with Russia, is a good example. Concerns have also been expressed that the United Kingdom may be treated as a non-exchanging jurisdiction, as the UK tax authorities excluded Russia from the list of CRS reportable jurisdictions for the year 2019.

The list of jurisdictions that automatically exchange financial information with Russia is to be maintained by the Russian Federal Tax Service and published on its official website. It is unclear, however, as to when this list would be published and what would be the procedure for its continual updating.

On the assumption that the list will be published before the start of each calendar year and renewed annually, Russian individual currency residents and foreign banks would need to review their arrangements, as some of the credits that may be allowed in one year may become unlawful for such residents in the succeeding year due to changes in the list of jurisdictions exchanging information.

The currency control regime for other individual or corporate foreign bank accounts remains the same in major aspects.

Accounts with non-banking financial institutions will become subject to controls and reporting

Accounts with other *[non-banking] foreign financial market organisations* will become subject to controls under Russian currency legislation. The scope of such controls, and any applicable restrictions are, however, unclear.

"Other financial market organisations" are defined in the law as organisations that ... *under their personal law have the right to provide services connected with acceptance from residents and placement of funds or other financial assets for keeping, managing, investment and (or) conducting other transactions in the interests of a resident or directly or indirectly at the*

³ According to the 2014 Multilateral Competent Authority Agreement in accordance with the Automatic Exchange of Financial Information in Tax Matters.



expense of a resident. This definition is quite vague and may include many different types of regulated or unregulated institutions. It is also unclear as to how this definition correlates with the definition of a "Financial Institution" under the CRS.

The Central Bank of Russia ("**CBR**") has to issue a list of permitted debits and credits of monetary funds to/from such accounts (i.e., only payments that are on that list will be allowed). It remains to be seen which specific types of organisations or accounts would fall within the scope of Russian currency control rules. More clarity is expected once the CBR approves the list of permitted payments to/from such accounts.

Such accounts (and transactions on them) in other financial market organisations will also be subject to reporting to Russian tax authorities. While the reporting obligations are with Russian individual or corporate currency residents, foreign financial market organisations may expect new requests from their Russian clients for producing account statements or similar types of documents for reporting purposes.

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Moscow, Russia

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