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Russia's Counter Actions and New Developments

Overview of Major Economical and Political Counter-Sanctions

- Ban on import of certain foods and products from European countries, US, Canada, Australia, Kingdom of Norway (*Decree of the RF President as of 06.08.2014 N 560*);**
- Imposition of export duty for export of grain (*Ruling of the RF Government as of 25.12.2014 № 1495*);**
- Ban of travelling to Russia for certain US officials;**
- Announcement at the top political level on strengthening economical ties with Russia's eastern neighbors: China, India, Iran, etc.;**
- Slowing down new investment projects and certain capital sensitive projects;**
- Promotion by the RF Government of Local Production to replace Import.**

Reactions of Private Clients on Changes of Business and Political Climate

**Increased fears
for protection of
Non-Russian
assets**

**Potentially
increased need in
qualified financial
intermediaries**

**Change of Fiscal
residency:
reaction to CFC
rules and
political climate**

**Creation of
substance for
CFC vs. costs for
maintenance of
such substance**

New Legal and Tax Challenges for Private Clients in Russia in 2015

- **Can new CFC legislation be a threat to Russian private clients?**
- **New reporting rules on disclosure of foreign structures: main areas of discomfort;**
- **Can Russian tax authorities inquire and review tax periods of CFC prior to 2015?**
- **Can Russian tax authorities inquire as to origin of funds of CFC?**
- **Whether audits of CFCs can result in cross-audits of Russian businesses?**
- **Can CFCs be used for purchase of personal items?**
- **Is it safe to trade with undisclosed CFC after 2015?**

Major New Regulatory Developments

- Tougher Rules on Tax crimes;**
- Tax disclosure of foreign owners of Real Estate (CFC Rules);**
- Disclosure of dual citizenship;**
- Implementation of FATCA in Russia, “Russian” FATCA;**
- Banking law: introduction of Escrow accounts;**
- Amendments to RF Company Law: public and non-public legal entities, possibility of having several co-directors;**
- Increasing CEO’s liability in Russian companies;**
- Amendments to Land legislation;**
- Obligation of foreign service providers to keep the data in Russia;**
- Development of National Payment System in the RF;**
- Amendments to Law on Mass Media;**
- New Rules on Bankruptcy of Individuals.**

Tougher Rules on Tax Crimes (1)

Federal Law as of 22.10.2014 N 308-FZ “On introducing amendments into the RF Criminal Procedural Code” :

- ❖ Empowers investigators to initiate criminal cases for tax offences regardless of whether a particular tax violation has been the subject of tax audit, whether a tax assessment has been made, and whether there is a tax dispute, including in court;
- ❖ Reinstates the full powers of investigators to identify and prosecute tax offences committed during the previous 10-year period;
- ❖ Investigators are not bound by the results of previous tax audits and are not required to involve tax authorities in the investigation;
- ❖ Came into force from October 22, 2014.

Tougher Rules on Tax Crimes (2)

The draft law 599584-6 on proposed criminal liability for the use of offshore companies and other anti-offshore measures:

- ✓ Introduction of special criminal liability for tax and duties evasion by the companies along with the "*concealment or distortion of information*" on controlled foreign companies and transfer pricing.
- ✓ **Penalty:** a fine ranging from 200 to 500 thousand RUB, a fine in the amount of income received by the convicted person for a period up to three years, as well as up to six years of imprisonment with deprivation of the right to occupy certain positions or to engage in certain activities for a term up to three years.

Tax Disclosure of Foreign Owners of Real Estate

Federal Law No. 376 as of November 24, 2014 (CFC Rules):

- ❖ End of confidentiality for real estate owners;
- ❖ Foreign Companies/Structures directly owning real estates in RF shall disclose information on their founders, beneficiaries and trustees up to UBO or public company details;
- ❖ Potential change of rules for sale of real estate: need to notify on new UBO of the acquirer;

New Rules Regulating 2nd Citizenship (1)

Federal Law No.142-FZ as of June 4, 2014, Federal Law No.507-FZ as of December 31, 2014:

- ❖ RF citizen having foreign citizenship, or residence permit, or other valid document confirming the right to his/her permanent residence in a foreign country shall submit to Federal Migration Service a written notice on having a foreign citizenship or a document confirming the right of permanent residence in a foreign country.

Important:

- 1) RF citizens permanently residing outside the RF are not covered by Law (*para a) p. 1 art. 1 of Federal Law No. 142*)**
- 2) Legal representative of a minor (under 18) acts on his behalf (*para b) p. 1 art. 1 of Federal Law No. 142*).**

New Rules Regulating 2nd Citizenship (2)

Criminal liability

for failure to notify FMS
on having other citizenship
or a Document

*(art. 330.2 of the RF
Criminal Code)*

- Fine up to 200 000 RUB or in the amount of the salary or other income of the accused within 1 year; or
- Compulsory service within 400 hours

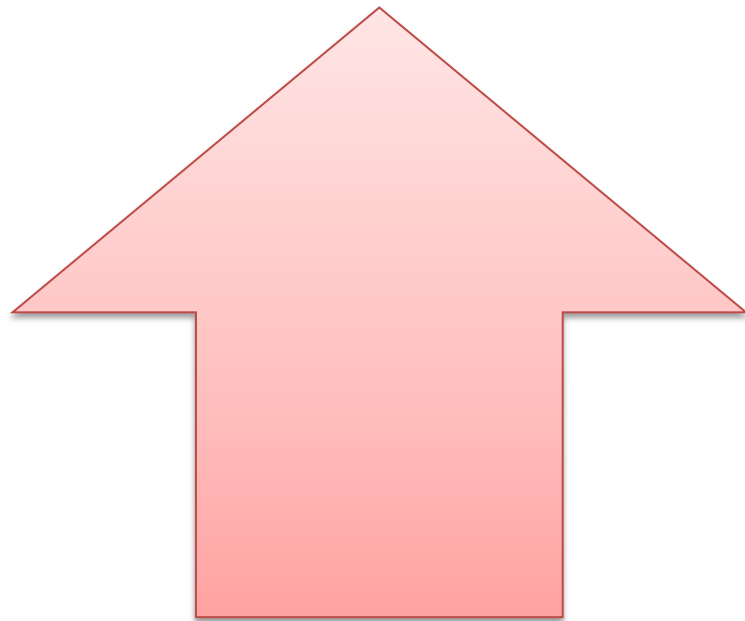
Administrative liability

for late notifying or
providing incomplete or
false information

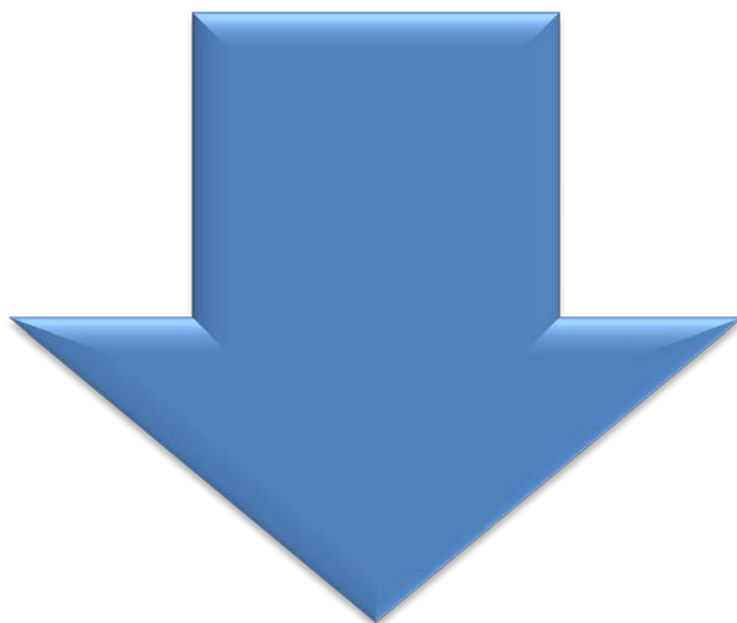
*(art. 19.8.3 of the RF
Administrative Code)*

- Fine from 500 to 1000 RUB;

Implementation of FATCA in Russia



Russia and US did not enter into IGA mainly because of the current political climate



Provision of information by Russian Financial Market Institutions (FMI) to foreign tax authority is regulated by RF Law No. 173 (came into force on the 30th of June, 2014);

NEW: “Russian” FATCA in relation to Foreign FMI

Foreign FMI acting outside RF shall provide details of accounts (deposits)

- Opened by Russian nationals and legal entities controlled (directly/indirectly) by them;
- Time term for providing information – before the 30th of September of the year following the year, in which such an account (deposit) was opened;
- Authority to notify - Tax authority of Russia;
- Notification documents – drafts are being developed by RF Tax Service;

Foreign FMI failing to provide information to Tax authority of Russia shall be liable according to the RF legislation (penalty provisions under development) (*art. 6 of the Law*).

Escrow Accounts (RF Civil Code provision)

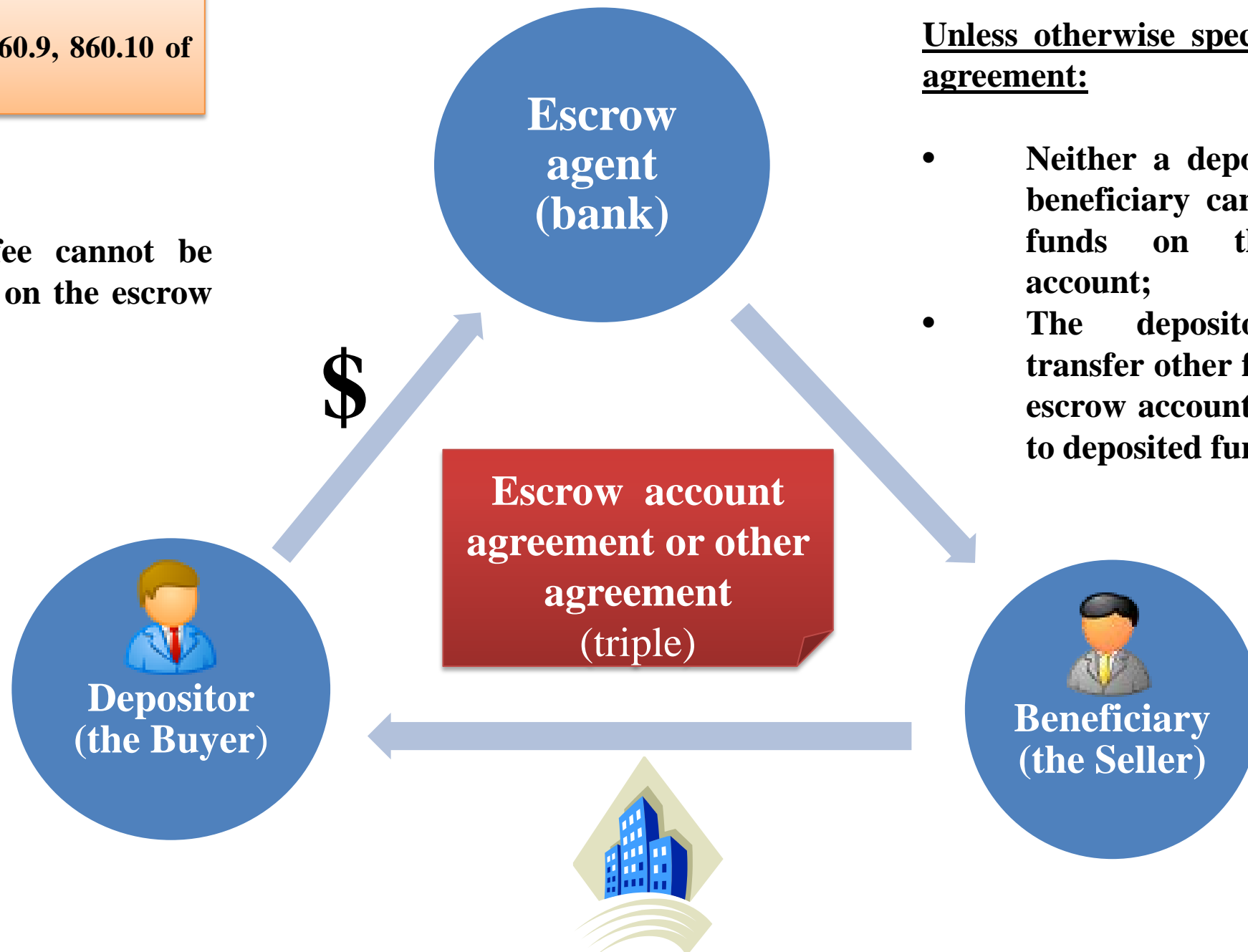
Regulation:

Art. 860.7, 860.8, 860.9, 860.10 of the RF CC;

Escrow agent's fee cannot be paid out of funds on the escrow account.

Unless otherwise specified in the agreement:

- Neither a depositor nor a beneficiary can dispose of funds on the escrow account;
- The depositor cannot transfer other funds on the escrow account in addition to deposited funds.



Amendments to Company Law (1)

Companies are divided into 2 categories (art. 66.3 of the RF CC):

- **Public companies** are defined as joint stock companies whose shares or other securities convertible into shares are placed through public offering or traded on a stock exchange;
- **Private companies** are joint stock companies not meeting the above mentioned criteria and limited liability companies.

Companies are allowed to have more than one CEO who will act jointly or solely subject to provisions in the company charter (p. 1 art. 53 of the RF CC).

Company Law: CEO's Increased Liability

Federal Law No. 99-FZ as of May 5, 2014, art. 53.1 of the RF CC:

- ❖ CEOs, members of corporate bodies (supervisory board, committee, etc.) may be obliged to pay damages caused by their fault to the legal entity;
- ❖ **Exclusion of liability** for members of corporate bodies if they voted against a decision which entailed damages for the legal entity or *acting consciously* did not participate in voting;
- ❖ **Persons having factual influence on determining actions of a legal entity may be obliged to pay damages;**
- ❖ Elimination or limitation of liability is possible for CEOs and members of corporate bodies, and impossible for Persons having factual influence.

Amendments to Land Legislation

- ❖ Since April 1, 2015 a new procedure of land plots seizure for state and municipal needs enters into force: if the land owner does not sign the agreement on transfer of property to the state **within 90 days** (now this time term is 1 year) since its receiving, the authorities may apply to the court for compulsory seizure of land (*Federal Law dated 31.12.2014 №499-FZ*);
- ❖ Procedure of selling land plots owned by the state shall change since March 1, 2015: selling of land plots without auction procedure shall be possible only in certain cases stipulated by law (*Federal Law dated 23.06.2014 N 171-FZ*).

Obligation of Foreign Service Providers to Keep Data in Russia.

Federal Law as of 21.07.2014 N 242-FZ (introduces amendments to the Federal Law on personal data and Federal Law on information protection):

- ❖ Requires all companies that collect and process personal data of Russian nationals to use databases located in Russia;
- ❖ Non-compliance may result in a company's website being blocked for Russian users;
- ❖ Creates Infringers List;
- ❖ Comes into force from September 1, 2015.

Development of Russian Payment System (1)

- **Federal Law as of 27.06.2011 N 161 “On national payment system”.**
- **In 2014 it was supplemented by provisions tightening regulation of foreign payment systems operation in the RF (*Federal Law as of 05.05.2014 N 112-FZ*):**
 - Operators of infrastructure services (operational, payment clearing and settlement centers) are prohibited to transfer abroad information on Russian domestic transactions or give access to such information from abroad;
 - Exceptions are made for cross-border transfer of funds and cardholder claims on payment cards use without their consent;
 - Effective as of July 1, 2016.

Development of Russian Payment System (2)



ADVANTAGES:

- ✓ **Carrying out all internal payment transactions in the RF;**
- ✓ **Protection of information on financial transactions of the RF nationals against foreign persons and companies;**
- ✓ **Steady rendering of payment services notwithstanding challenges from the outside world.**

Amendments to RF Law on Mass Media

Federal Law as of 14.10.2014 N 305-FZ:

- ❖ Foreign nationals/legal entities/organizations are prohibited to control Russian Mass Media;
- ❖ In particular, they are prohibited:
 - to be founders of a Russian mass media;
 - to have more than 20% shares in the legal entity participating in the charter capital of the founder of the respective Russian mass media;
- ❖ Comes into force since January 1, 2016

New Rules on Bankruptcy of Individuals

Federal Law as of 29.12.2014 N 476-FZ :

- ❑ An individual can be considered to be a bankrupt if:
 - his debt amounts to not less than 500 000 rubles, and;
 - the debt is not paid off within 3 months since due date.

- ❑ Cases on bankruptcy of individuals are heard by courts of general jurisdiction in place of individuals' residence.

- ❑ Comes into force since July 1, 2015



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Thank You For Attention!