



Amnesty of capital 2018

February 2018

Introduction

In the end of 2017 Russian President Vladimir Putin made a statement on the necessity of amnesty of capital in Russia within March – December 2018.

Russian President announced the creation of a new business-friendly mechanism for the repatriation of capital to Russia - **federal loan bonds** in foreign currency for Russian investors [1], which would allow investors to avoid currency risks. It is reported that this issue has already been worked out by the Ministry of Economic Development of Russia, the Ministry of Finance of Russia and the Bank of Russia.

Minister of Economic Development Mr. Anton Siluanov confirmed that for those wishing to return capital to Russia, in 2018 the Ministry of Finance of Russia will issue ordinary eurobonds worth up to \$ 3 billion [2].

[1] <https://www.business-gazeta.ru/news/367867>

[2] https://www.vedomosti.ru/economics/articles/2017/12/21/746130-spetsobligatsii?utm_source=browser&utm_medium=push&utm_campaign=push_notification

New (still unforgettable old) opportunities (1/3)

It bears reminding that the Law on Amnesty Capital [1] has already entered into force in 2015 and operated in Russia until June 2016.

The extension of the benefit will enable non-citizens of the Russian Federation, foreign citizens and stateless persons [hereinafter - "individuals"] to voluntarily declare their assets and accounts in foreign jurisdictions in exchange for release from criminal [2], tax [3] and administrative [4] liability, as well as exemption from payment of taxes associated with these assets, for previous periods.

[1] Federal Law No. 140-FZ of 08.06.2015 "On the voluntary declaration by individuals of assets and accounts (deposits) with banks and on amending certain legislative acts of the Russian Federation" [hereinafter - "Amnesty Law"]

[2] Acts containing the characteristics of the offenses set forth in article 193, parts one and two of article 194, articles 198, 199, 199.1, 199.2 of the Criminal Code of the Russian Federation

[3] Article 123 of the Russian Tax Code

[4] Article 14.1 Russian Federation Administrative Offence Code

New (still unforgettable old) opportunities (2/3)

Amnesty Law 2015-2016 applied to:

- ❖ foreign real estate, vehicles, securities, stakes in Russian and foreign organizations, which the declarants actually owned;
- ❖ controlled foreign corporation [hereinafter – “CFC”], the controlling person of which was the declarant;
- ❖ foreign bank accounts.

Undeclared foreign accounts became "legalized" and their owners were released from liability, in the event of declaring an account. In the same way, all previous currency transactions on such foreign accounts became "legalized" automatically.

The law guaranteed the "immunity" of declared property from prosecution by the Russian authorities and did not require its repatriation (return) to the Russian Federation. And the transfer of property from the nominal owner to the actual owner was exempt from taxation in the Russian Federation

New (still unforgettable old) opportunities (3/3)

The amnesty led to the filing of more than 7,200 declarations, as a result of which the Russian tax authorities received information about the CFC [1], foreign accounts, as well as other assets of individuals.

It should be noted and negative impressions after the first campaign for amnesty. For example:

- ❖ **Formalism.** Some tax authorities refused to accept the declaration, if it was executed in a different type of font than that provided by the form.
- ❖ **Legal Technics.** The Amnesty Law provided for guarantees only for individuals, the CFC itself was not subject to the release from liability.
- ❖ **Psychological aspect.** There were concerns regarding the disclosure of sensitive information by the tax authorities, as well as the qualification of actions for those component elements of a crime that were not explicitly provided for in the Amnesty Law, for example, under Art. 159, 171, 174 of the Criminal Code of the Russian Federation.

Despite all the difficulties, the main fears of the declarants did not come true, and the information provided was not used against them. Nevertheless, the goal of the amnesty was not fully achieved, which confirms necessity for its reperformance.

[1] <https://www.vedomosti.ru/economics/articles/2017/12/22/746232-amnistiya-kapitalov>

Main provisions of the Amnesty Law bill of 2018 (1/2)

The bill on the extension of the amnesty for 2018 [1] was submitted to the State Duma on January 30 and has already passed a preliminary hearing.

The parliamentary newspaper reports [2] that the State Duma plans to adopt a package of bills on amnesty of capital in the first half of February.

The bill set a deadline for declaring from March 1, 2018 to February 28, 2019, while the document does not contain any major amendments.

Unlike the previous amnesty, in 2018 individuals are planned to be given the opportunity:

- ❖ to indicate in the declaration accounts (deposits) in foreign banks, both opened and closed on the date of submission of the declaration (provided that they were opened before January 1, 2018),
- ❖ to submit a declaration to any tax authorities (at the declarants choice), whereas in the first stage it could be submitted either to the Central Department of the Federal Tax Service of Russia or at the place of registration of an individual.

[1] On Amendments to the Federal Law "On the Voluntary Declaration of Assets and Accounts (Deposits) by Individuals in Banks and on Amending Certain Legislative Acts of the Russian Federation" <http://sozd.parlament.gov.ru/bill/377595-7>

[2] <https://www.pnp.ru/politics/zhukov-zakonoproekty-ob-amnistii-kapitala-mogut-prinyat-na-sleduyushhey-nedele.html>

Main provisions of the Amnesty Law bill of 2018 (2/2)

An additional bill has also been submitted to the State Duma [1] proposing to bring the Tax Code into line with the Amnesty Law.

So, in addition to extending the deadlines for the liquidation of the CFC by March 1, 2019, the legislators proposed not to consider the Notifications on participation in foreign organizations or CFC submitted (submitted together with the declaration) in violation of the deadline [2].

The bill also proposes to exempt from personal income tax any income in cash and in kind received by an individual in the liquidation of the CFC, if the liquidation of such a company is completed before March 1, 2019. Up to date of this publication, cash received from the liquidation of the CFC, are not subject to exempt from taxation.

Individuals will have an opportunity to reduce the gain on sale of property (including securities) received by the declarant from the nominal owner, provided that its value if it is not above the fair market value and documented.

[1] On Amending Part One and Two of the Tax Code of the Russian Federation and Article 3 of the Federal Law on Amendments to Parts One and Two of the Tax Code of the Russian Federation (regarding the taxation of profits of controlled foreign companies and the income of foreign organizations) <http://sozd.parlament.gov.ru/bill/377596-7>

[2] In accordance with the Russian Tax Code, such notifications are to be submitted before March 20 of the year following the reporting.

Conclusion

In case the bills come into force, individuals owning assets located abroad will have another chance to report such assets to the Russian authorities and, in the absence of tax losses, transfer these assets to the territory of the Russian Federation.

We will monitor and inform you about the further stages of legislative changes in this area.

In case of additional questions, we will be happy to provide you with clarifications.

The information contained in this presentation is current as of the date of its publication and can not serve as a basis for making a professional judgment.



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