

FATCA: Russian Response

On 20 June 2014 the State Duma (the lower chamber of the Russian Parliament) adopted Federal Law "On Specifics of Carrying Out Financial Transactions with Foreign Citizens and Legal Entities, on amendments to the Code of Administrative Offences and on Abolishment of Certain Legislative Acts of the Russian Federation" ("Law on Financial Transactions with Foreign Taxpayers", or "FTFP Law"). The FTFP Law seeks to address some of the FATCA compliance issues that have been faced by Russian financial institutions after the unilateral withdrawal of the United States from signing the otherwise agreed Intergovernmental Agreement (IGA) with Russia. The FTFP Law still needs to be approved by the Federation Council (upper chamber of the Parliament), signed into the law by the President and officially published, but it is likely that all these steps will be accomplished within the next few days. We set out the key provisions of the FTFP Law below.

Similarly to other jurisdictions, one of the key issues faced by Russian financial institutions in connection with FATCA compliance is the potential conflict between the data sharing requirements imposed by FATCA and Russian data protection and confidentiality laws. While other jurisdictions have resolved this tension by signing IGAs with the United States, for Russia this has for the moment ceased to be an option. The FTFP Law is an emergency legislation adopted by Russia in an attempt to allow Russian financial institutions to comply with FATCA without breaching Russian laws of

confidence. At the same time, the FTFP Law sets out certain rules and procedures around gathering and sharing client information, establishes penalties for non-compliance with these rules and also imposes certain other obligations on foreign financial institutions.

Concept of Foreign Taxpayers

The FTFP Law defines "**foreign taxpayers**" as "individuals and legal

entities who are subject to foreign legislation on taxation of foreign accounts". Accordingly, Russian financial institutions are allowed to gather information with regard to foreign taxpayers, and share this information with foreign tax authorities, subject to compliance with the FTFP Law requirements and limitations. At the same time, the FTFP Law prohibits data sharing in respect of those "foreign taxpayers" who are: (1) Russian citizens without (a) dual citizenship, or (b) who have dual citizenship but only with the countries that are member of the Customs Union, or (c) who do not have a residency permit in a foreign

Key issues

- Russian financial institutions are generally allowed to share customer information with foreign tax authorities under supervision of Russian regulators.
- Russian regulators may prohibit disclosure in specific instances.
- Failure to notify Russian regulators or comply with their instructions may result in monetary fines for financial institution and its officers.
- Foreign financial institutions are obliged to report the accounts of their Russian customers to Russian tax authorities.

jurisdiction; and (2) Russian legal entities, 90% of shares in which are controlled directly or indirectly by Russian citizens referred to in item (1) above. A financial institution has to publish the criteria by which it will designate customers as "foreign taxpayers" within 15 days after they have been approved. At the same time, the Central Bank of Russia ("CBR") has the power to prescribe amendments to these rules.

Information Gathering and Collection

Financial institutions are allowed to share with foreign authorities the information on a foreign taxpayer only if they have obtained consent from such foreign taxpayer. Also, they may require from foreign taxpayer information required by foreign legislation. Foreign taxpayers must be given at least 15 business days to provide the required information / consent. Failure to provide such information / consent entitles financial organisations to reject performance of financial transactions for such clients (with the exception of payments to individuals employed by such clients, alimony payments, payment of injury claims or payments made pursuant to court order), or to unilaterally rescind the relevant client agreement.

Russian Authorities Monitoring Procedures

A Russian financial institution that has registered with a foreign tax authority for the purposes of compliance with

foreign legislation on taxation of foreign accounts has to notify the CBR, the anti-money laundering authority ("AML authority") and the tax authority (collectively, the "Russian authorised bodies") about such registration within three business days thereafter (the procedure for making notification is to be adopted by the Government in coordination with the CBR). As regards those financial institutions that have registered with foreign tax authorities before the enactment of the FTFP Law, they are obliged to notify the CBR within 10 business days after the FTFP Law comes into effect (which will be the date of its official publication).

If a Russian financial institution receives from a foreign tax authority any request for information in respect of a foreign tax taxpayer, it has to notify the Russian authorised bodies within two business days following receipt of such request.

If a financial institution on-boards or identifies a foreign taxpayer among its clients, it has to notify the Russian authorised bodies of this fact. In addition, the financial institution must at least 10 business days before sharing data with a foreign tax authority, notify the Russian authorised bodies of the contemplated disclosure. Having reviewed the notification the AML authority has the right to ban the disclosure. If the financial institution does not hear anything from the AML authority within 10 business days after sending the notice, the financial institution may proceed with disclosing the information to the foreign tax authority.

Liability for Non-Compliance with FTFP Law

Failure to comply with the requirements of the FTFP Law may result in the following penalties for the Russian financial institution:

- Failure to notify the Russian authorised bodies about registration with foreign tax authorities may result in a fine ranging from RUB 30,000 – 40,000 for officers of the financial institution, and RUB 500,000-700,000 for the financial institution itself;
- Failure to notify the Russian authorised bodies about foreign taxpayer being identified, or of receipt of an information request from a foreign tax authority, may result in a fine of RUB 20,000-30,000 for the officers, and RUB 300,000-500,000 for the financial institution itself;
- Disclosure to a foreign tax authority of information on a foreign taxpayer where such disclosure has been banned by the AML authority, or where such disclosure is otherwise prohibited by Russian laws, may result in a fine of RUB 40,000-50,000 for the officers, and RUB 700,000-1,000,000 for the financial institution itself.

Obligations on Foreign Financial Institutions

In addition to the provisions described above dealing with the ability of Russian financial institutions to

comply with FATCA and FATCA-style legislation that may be adopted by foreign jurisdictions, the FTFP Law also establishes its own FATCA-style requirements on foreign financial institutions. In particular, foreign financial institutions are obliged to notify the Russian tax authorities of the accounts (deposits) opened by them for Russian citizens and legal entities controlled by Russian citizens. The notifications in respect of accounts opened in a given calendar year have to be made by 30 September of the following year. The form for making such notifications shall be developed by the Federal Tax Service. According to the FTFP Law, "failure to comply with the notification requirement shall result in application to a foreign financial organisation of measures envisaged by the legislation of the Russian Federation". As the FTFP Law does not itself establish any sanctions for non-compliance, the exact meaning of this provision may require further consideration. It is also not entirely clear, which type of entities will be regarded as foreign financial institutions, and which types of accounts will be in scope of reporting (i.e., only bank accounts or also any other types of financial accounts).

Authors



Alexander Anichkin
Partner

E: alexander.anichkin@cliffordchance.com



Dmitry Tolkachev
Senior Associate

E: dmitry.tolkachev@cliffordchance.com

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