THE PRIVATE WEALTH & PRIVATE CLIENT REVIEW

SIXTH EDITION

Editor
John Riches

THE LAWREVIEWS

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PREFACE

I INTRODUCTION

At a macro level, the dominant trend affecting the private wealth arena in the last 12 months continues to be the impact of various supranational initiatives seeking greater transparency with respect to anti-money laundering regimes and tax information exchange. I propose to focus in this year's introduction on the central importance of the concept of 'beneficial ownership' and the theme of convergence in the increasingly interconnected arenas of anti-money laundering policy and tax information exchange.

The clearest examples of this trend can be found in the introduction of centralised beneficial ownership registers, especially in the European Union and the Crown Dependencies and Overseas Territories of the United Kingdom (generally collectively referenced as CDOTs).[1] There are two specific manifestations of this:

a corporate beneficial ownership registers; and

b trust beneficial ownership registers.

In parallel, 2017 has witnessed the first substantive reporting by the first wave 'adopters' of the Common Reporting Standard (CRS) in the context of the 2016 calendar year.

I would like to first reference the common definitions that connect CRS with beneficial ownership registers and then refer in detail to the UK domestic trust register that was introduced by Regulations adopted in June 2017[2] (2017 MLR) before noting some key developments in the CRS domain.

i Common use of beneficial ownership concept

The key 'source document' with respect to the concept of beneficial ownership is the Financial Action Task Force (FATF) 2012 Recommendations.[3] These recommendations were introduced as part of the international anti-money laundering policy but have been adopted as an essential element of the international tax information exchange policy implemented by the CRS.

1 These jurisdictions includes Jersey, Isle of Man, Guernsey, Cayman Islands, Bermuda and British Virgin Islands.

2 To give them their full title, 2017 No. 692, The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.

3 FATF/OECD (2013), International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation, The FATF Recommendations February 2012, FATF/OECD, Paris, available on www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf.

This is clearly confirmed in a CRS context by the CRS Commentary on the concept of controlling persons. Paragraph 132 of the interpretive notes to Recommendation 10 on Customer Due Diligence, states:

> *Subparagraph D(6) sets forth the definition of the term 'Controlling Persons'. This term corresponds to the term 'beneficial owner' as described in Recommendation 10 and the Interpretative Note on Recommendation 10 of the Financial Action Task Force Recommendations (as adopted in February 2012), 13 and* ***must be interpreted in a manner consistent with such Recommendations, with the aim of protecting the international financial system from misuse including with respect to tax crimes.***[4]

The FATF recommendations lead to a position where one essentially moves away from a strict legal definition of who might be entitled to enjoyment of an asset as a beneficial owner to an expanded concept. Under these rules, if it is not possible to identify a beneficial owner based on 'ownership interests' it is necessary to identify a beneficial owner based on 'control' even though the person or persons who control a legal entity have no capacity to call for the assets of the entity for their own personal benefit. In addition, as a last resort, if no 'ownership' or 'control' test can be satisfied, the final step is to look to the 'senior managing official' of the entity at the top of the ownership chain. This three-level ordering of who is to be regarded as the 'beneficial owner' is taken from the interpretive notes to Recommendation 10 of the FATF 2012 Recommendations:[5]

> *Identify the beneficial owners of the customer and take reasonable measures to verify the identity of such persons, through the following information:*
>
> *(i) For legal persons:*
> *(i.i) The identity of the natural persons (if any – as ownership interests can be so diversified that there are no natural persons (whether acting alone or together) exercising control of the legal person or arrangement through ownership) who ultimately have a controlling ownership interest in a legal person; and*
> *(i.ii) to the extent that there is doubt under (i.i) as to whether the person(s) with the controlling ownership interest are the beneficial owner(s) or where no natural person exerts control through ownership interests, the identity of the natural persons (if any) exercising control of the legal person or arrangement through other means.*
> *(i.iii) Where no natural person is identified under (i.i) or (i.ii) above, financial institutions should identify and take reasonable measures to verify the identity of the relevant natural person who holds the position of senior managing official.*

The immediately following interpretive notes describe the steps to be taken to identify the beneficial ownership of a trust (or similar legal arrangement such as a foundation). In this case the approach is subtly different. They start with a composite list that blends together

4 Emphasis added.

5 FATF/OECD (2013), International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation, The FATF Recommendations February 2012, FATF/OECD, Paris, available on www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf at pages 61-62.

those who might benefit personally with those who are perceived to have some 'control'. They state:

> *For legal arrangements:*
> *(ii.i) Trusts – the identity of the settlor, the trustee(s), the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust (including through a chain of control/ownership);*
> *(ii.ii) Other types of legal arrangements – the identity of persons in equivalent or similar positions.*

What is notable here is the introduction of a 'residual' concept of:

> *Any other natural person exercising ultimate effective control over the trust*

I will refer to this as the 'NPEEC' in the rest of this article.

Until recently, there has been a major problem with construing who might be regarded as an NPEEC in a trust context especially because there has been no guidance in a FATF or CRS context that sheds light on what is meant by 'control'. This has created uncertainty as to when a person has 'control' over a trust, for example, will it include someone who has power to remove a trustee, someone who can only exercise powers jointly with someone else or someone who holds only powers of veto rather than positive powers to act.

In the Anti-Money Laundering context, the 2017 MLR includes a definition of 'beneficial owner' and 'control' for the purposes of the Regulations. At Regulation 6 it states:

> *6.—(1) In these Regulations, 'beneficial owner', in relation to a trust, means each of the following—*
> *(a) the settlor;*
> *(b) the trustees;*
> *(c) the beneficiaries*
> *(d) where the individuals (or some of the individuals) benefiting from the trust have not been determined, the class of persons in whose main interest the trust is set up, or operates;*
> *(e) any individual who has control over the trust.*
> *(2) In paragraph (1)(e), 'control' means a power (whether exercisable alone, jointly with another person or with the consent of another person) under the trust instrument or by law to—*
> *(a) dispose of, advance, lend, invest, pay or apply trust property;*
> *(b) vary or terminate the trust;*
> *(c) add or remove a person as a beneficiary or to or from a class of beneficiaries;*
> *(d) appoint or remove trustees or give another individual control over the trust;*
> *(e) direct, withhold consent to or veto the exercise of a power mentioned in sub-paragraphs (a) to (d).*

A critical point to note here is that the mere existence of one of the relevant powers with respect to a trust is sufficient to be regarded as control even in circumstances where that power is not actually exercised. This is substantially different from the idea of a person who exercises effective management of a trust or a company in many tax contexts, The more conventional concept is a facts and circumstances test that requires the actual exercise of powers rather than the mere capacity to exercise them for control to be attributed to a person.

What is striking here is that in Regulation 6(2), both the holding of joint powers and that the withholding of consent or ability to veto the exercise of key powers is to be equated

with 'control'. I will return to the specific implications for CRS Reporting in the context of trusts later – for now, it is sufficient to note the expansive definition of beneficial ownership which sits behind the various regimes.

A final point to note is that the scope of powers that can be held with respect to a trust that come within this incredibly wide concept of control extend substantially beyond the power to appoint and remove trustees.Thus powers that relate to changing the class of beneficiaries, varying or terminating the trust and powers to invest or deal with trust property are also to be equated with control.

ii UK Trust Register

I now turn to the UK Trust Register in its own terms. The reason I wish to consider this piece of domestic UK legislation in detail is because, as far as I am aware, it represents the first instance where a major 'onshore' jurisdiction with a domestic trust law has introduced a centralised beneficial ownership register for trusts. The 2017 MLR effectively implements the UK's obligations under the EU Fourth Money Laundering Directive ((EU) 2015/849 (4AMLD)) to introduce a UK trust register. The regulations have a wide context with respect to the combating of terrorist financing and the fight against organised crime more generally. It seems likely that they will be widely copied, especially by trusts administered in the CDOTs where the UK has substantial influence.

The Regulations require the UK tax authority (HMRC) to maintain a trust register. The trust register will principally apply to trusts with UK resident trustees. However, trusts with non-UK resident trustees are also within the scope of the register if they hold UK situate assets that generate the obligation to report to UK HMRC with respect to certain taxes, including income and capital gains tax, inheritance tax and stamp duty land tax. The scope of the register requires more extensive information to be reported and maintained than that required to be disclosed under CRS.

In addition to the information which would typically be disclosed for the purposes of CRS (see paragraph 11 above) it also necessary to provide HMRC with the following information:

a The trustees must provide information about certain professional advisers to the trust, namely those who provide 'legal, financial or tax advice[6]' to the trust.

b There is a requirement to provide 'a statement of accounts for the trust, describing the trust assets and identifying the value of each category of the trust assets'. CRS, in contrast, only requires a composite value for the notional 'account value' of the trust fund of the trust without breaking this value down into categories.

c In considering who might be regarded as a beneficiary, Regulation 44(5)(b) states that trustees must report information 'about any other individual referred to as a potential beneficiary in a document from the settlor relating to the trust such as a letter of wishes'. This means that reference has to be made to documents other than the trust deed itself which, in the longer term, is likely to create a significant degree of confusion and uncertainty over reporting given that there is no current requirement to undertake such an exercise that I am aware of in any CRS or other equivalent tax reporting context with regard to persons who are not named as current beneficiaries.

6 See regulation [ ] of 2017 MLR.

The UK Trust Register will (subject to the caveat noted below) only be accessible by law enforcement agencies in the UK and throughout the rest of the EU/EEA – the issue of what happens to this EU/EEA access post Brexit is presently unclear. The categories of persons with access to the UK Trust Register under 2017 MLR are arguably narrower than those described in Article 14 of 4AMLD. Article 14 states that:

> *persons who are able to demonstrate a legitimate interest with respect to money laundering, terrorist financing, and the associated predicate offences, such as corruption, tax crimes and fraud should also have access to beneficial ownership*

It is, therefore, possible that NGOs and investigative journalists with an anti-corruption profile could seek access to the UK Trust Register on the basis that the UK (as a current EU member) has failed to implement 4AMLD in full.

iii Trustee obligations under the UK Register

A trustee of a relevant trust[7] is obliged to:

a maintain an up-to-date register of the 'beneficial owners' of and advisers to the trust;

b provide HMRC with detailed information about the beneficial owners on an annual basis and with respect to the assets of the trust and their capital value;

c inform relevant persons[8] of:
- its status as a trustee;
- the beneficial owners of the trust; and
- any change of beneficial owners (within 14 days of the change occurring).

d respond to any request for information from any law enforcement agency with respect to the trust within the reasonable period specified in the notice of request.

iv Information about the trust under the UK Trust Register

With respect to the trust itself, it will be necessary to confirm:

a the name of the trust and its date of creation;

b a statement of accounts for the trust, describing the trust assets and identifying the value of each category of the trust assets;

c the place where the trust is administered;

d a contact address for the trustees; and

e the full names of any advisers who are being paid to provide legal, financial or tax advice in relation to the trust.

With respect to individuals identified as beneficiaries or NPEECs it will be necessary to provide:

a full name and date of birth;

b details of the individual's role or roles in relation to the trust; and

c unique tax reference number of the individual.

7 Essentially a trust within scope of reporting.

8 Essentially financial in institutions and other professional persons with reporting regulations under AML rules.

Where a corporate entity is involved in a trust, one is obliged to 'look through' that entity and identify the individual(s) who control it; they are subject to disclosure in their own right.

v CRS developments

In a CRS context, I would like to consider two key areas. The first is the issue of local guidance and fragmentation, especially with respect to trust reporting. The second is the vexed issue of reporting protectors and its overlap with the NPEEC concept.

vi Fragmentation

On fragmentation, it is notable that during 2017, many jurisdictions issued their own local guidance on certain issues. To take a few examples:

a Canada: as in the case of the Foreign Account Tax Compliance Act (FATCA), Canada takes the position that other than in certain instances where banks or similar entities are concerned, most trusts with professional trustees are to be regarded as passive non-financial entities (NFE) not reportable financial institutions (RFI).

b Singapore: Singapore has issued guidance that permits settlors who are excluded as beneficiaries to report a nil value in terms of the value of their equity interest in the notional account represented by the trust fund.

c Bermuda: a trust where the settlor reserves a right to direct investments is not to be regarded as an RFI even though its trustee is a financial institution.

d Cayman Islands: all financial institutions are required to file a nil report even though they are non-reporting FIs. This is contemplated in CRS but is likely to create a significant degree of extra reporting in large and complex trust structures.

The concern here is that there will be substantial confusion over what to report where local guidance generates positions that contradict OECD's own commentary or the position taken in other jurisdictions generally. It is also likely that a pattern of jurisdictional arbitrage will emerge.

vii Protectors

On the issue of reporting protectors, it is well known that there is an inconsistency in the class of persons who are to be identified as the controlling persons of a trust when compared with those who to be identified as holding an equity interest in a trust. The two lists of persons are substantially similar except that the latter makes no express reference to 'protectors'. This has led to a great deal of confusion and divided opinion on when protectors are required to be reported. OECD in an FAQ issued in June 2016 takes the view that protectors must always be reported but a strict reading of the wording of the Model Treaty leads to the conclusion that they should only be disclosed as holders of an equity interest where they satisfy the test as a NPEEC.

What is interesting is that, in the context of the UK Trust Register, 2017 MLR do not make express reference to protectors either. Instead, as noted above, they refer to 'any individual who has control over the trust' and then refer to the powers over the trust that are to be equated with 'control'.

viii NPEECs and control

I would like to consider the question of who is to be regarded as 'exercising control' and who might be regarded as an NPEEC for CRS purposes if one follows the approach adopted in 2017 MLR.

It is interesting to note that, in commenting on the issue of control under the Controlling Persons heading in the CRS Handbook at paragraph 227, the OECD states:

> *The account held by a trust will also be reportable if it the trusts has one or more Controlling Persons that are Reportable Persons. The concept of Controlling Person used in the CRS is drawn from the 2012 FATF Recommendations on beneficial ownership. As such, the Controlling Persons of a trust are the settlor(s), trustee(s), beneficiary/ies, protector(s) and any other natural person exercising ultimate effective control over the trust.* ***This definition of Controlling Person excludes the need to inquire as to whether any of these persons can exercise practical control over the trust.***[9]

It is reasonable to conclude that OECD's intention was to follow the FATF expansive definition of beneficial ownership which is not based on a conventional legal analysis of matters such as control but, instead, to ensure that those persons reported under CRS include those with the capacity to exercise substantial influence over how a trust is run.

This approach is echoed in OECD's comments at paragraph 214 of the Handbook with respect to those to be regarded as holding an equity interest in an RFI Trust. This states:

> *The Equity Interests are held by any person treated as a settlor or beneficiary of all or a portion of the trust, or any other natural person exercising ultimate effective control over the trust.* ***The reference to any other natural person exercising ultimate effective control over the trust, at a minimum, will include the trustee as an Equity Interest Holder.***[10]

The fact OECD uses the phrase 'at a minimum' is confirmation of this expansive approach.

My view is that the definition of control from MLR 2017 could well be widely adopted in a CRS context to assist in defining NPEECs with respect to trusts. If this does indeed happen, it will mean that virtually all protectors with significant powers with respect to trusts will be reportable as NPEECs, thus rendering the debate about whether protectors of RFI trusts are reportable as such largely academic.

II CONCLUSION

The year 2017 has witnessed some important developments in beneficial ownership reporting. The convergence of the expanded concept of who is to be regarded as a beneficial owner or exercising control in the tax reporting and AML arena looks set to be a dominant trend in the years ahead. Advisers should be very conscious of this, not only in advice on existing wealth ownership structures but also in the design of new ownership structures.

John Riches
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September 2017

9 Emphasis added.
10 Emphasis added.

Chapter 33

RUSSIA

Maxim Alekseyev, Kira Egorova, Elena Novikova and Ekaterina Vasina[1]

I INTRODUCTION

In recent years, Russia has made an incredible breakthrough from the point of view of personal wealth development. Nowadays, the main goals of wealthy Russians are good management of the family property, safe transferring of wealth through generations, asset protection and confidentiality.

The current political situation with sanctions being imposed on particular individuals and companies, and developments in Russian tax and civil legislation have led to the increase in localisation tendencies since more wealthy Russians have expressed an interest in moving their businesses to the Russian jurisdiction. At the same time Russian people continue to use foreign instruments, such as trusts and foundations, in their estate planning rather than domestic instruments. The trends in Russia are in keeping with the worldwide trend of strengthening the framework for combating tax evasion and global transparency. It is clear that the tax planning landscape is changing and that wealthy individuals with close ties to Russia are under pressure from the changes to Russian legislation and international trends and should determine what they might need to revise in their current operations and in planning future activity.

The above conditions gave rise to the development of wealth management services in Russia. Historically, wealthy Russians preferred a high level of self-involvement in asset management and worked a lot with foreign banks, family offices and investment agencies abroad. But we see today that in Russia such services have also started to be rendered by private and state Russian banks, and by emerging private wealth management offices.

II TAX

Russian legislation sets forth three levels of taxation: federal, regional and local. Currently, the following taxes are applicable to individuals: personal income tax (PIT) is among the federal taxes; regional taxes include transport tax; while local taxes include land tax and individual property tax.

Russia taxes the worldwide income of its tax residents (individuals who stayed in Russia for more than 183 calendar days within 12 consecutive months) and Russian-sourced income of non-residents for tax purposes.

1 Maxim Alekseyev is a senior partner, Kira Egorova is of counsel, Elena Novikova is of counsel and Ekaterina Vasina is an associate at ALRUD Law Firm.

i Personal taxation

Personal income tax

Incomes of individuals are subject to PIT.

Individual tax residents should pay a rate of 13 per cent (general rate) on all income received worldwide (salaries, other remunerations, dividends, sale of property, etc.).

Non-residents pay PIT at a 30 per cent rate (except for certain types of employment remunerations taxable at a 13 per cent) and at a 15 per cent rate for dividends.

The 35 per cent rate applies to the certain types of income received by residents, such as interest on bank deposits exceeding certain limits; prizes and winnings received within promotional campaigns for goods, works or services where the relevant income exceeds 4,000 roubles; and certain others.

The PIT is levied on the total income of the taxpayer, but in some cases relevant deductions, allowances and exemptions may be enjoyed.

Capital gains

Capital gains are subject to PIT as general income, taxable at the 13 per cent rate.

Income from the sale of real estate, which has been held for more than five years, is also exempted from PIT. The five-year property holding period is not applicable if the real estate was acquired before 2015, was received as a gift, inheritance and in some other cases (the holding period required for the exemption will still be three years). If the holding period is less than three or five years, the resident may decrease the income derived from the sale of the property by the relevant expenses (allowances).

Sale of securities is subject to special rules. Generally, the taxable base is the proceeds from sale less documented costs. Income from the sale of certain securities may be tax exempted.

Taxation of donations and inheritance

There are no special taxes for donations and inheritance, so PIT is applicable in some cases with the following exemptions:

a gifts (in cash and in kind) from other individuals are not taxable except for gifted real estate, vehicles and shares;

b any gifts between close family members (spouses, parents and children, grandparents and grandchildren) are tax exempt; and

c inheritance is generally exempted from PIT except for royalties, which are taxed as ordinary income at the 13 per cent rate for Russian tax residents.

Taxation of individual property

Individuals (residents and non-residents) are subject to transport tax pertaining to owned vehicles registered in Russia. Moreover, individuals are also obliged to pay land tax on land plots in possession.

Before 2015 individuals were obliged to pay individual property tax on the inventory value of real estate registered in Russia, which was lower than the market price of the real estate.

With effect from 1 January 2015, the property tax for individuals is calculated on the cadastral value of real estate, which is almost equivalent to market value.

The transition period lasts from 2015–19. During this period the tax amount will be calculated using special coefficients, which should ensure a gradual increase of the tax amount for the holders of property.

ii 'De-offshorisation' of the Russian economy

The Russian government, in its Key Guidelines on Russian tax policy for 2014–16, announced the need for the implementation of rules that create an effective mechanism to prevent Russian businesses from misusing low-tax jurisdictions and receiving unjustified tax benefits. Following this tax initiative, the Russian tax law was subject to significant changes during 2014–16.

One of the key developments is the adoption of the De-offshorisation Law,[2] the key aspects of which are outlined below.

It has also been noted that in the development of these initiatives, to ensure a smooth transition period to new regulatory requirements, opportunities such as voluntary declaration of assets and bank accounts or deposits have been provided to businesses. This 'amnesty campaign' was held from 1 July 2015 to 30 June 2016, and during it declarants had the right to disclose certain types of assets belonging to them as of the end of 2014 that were still in their possession at the date of submission of the special declaration, and receive release of criminal, administrative and tax offences liabilities under certain type of violations.

Moreover, the Russian tax legislation was amended by the regulations offering opportunities for the tax residents, who receive income upon liquidation of foreign companies and structures without incorporation of a legal entity, including trusts. Such income (except for cash distributions) is tax exempt in case the company or structure is liquidated prior to 1 January 2018 and the tax resident filed the necessary supporting documentation specified in the legislation.

'Beneficial ownership' concept

For the purposes of the application of double tax treaties (DTT) the beneficial owner of income is defined as a person (or entity) who by virtue of the direct or indirect participation in the foreign entity, or control over the entity, or by virtue of other circumstances has the right to independently use or dispose of the received income. Moreover, the beneficial owner of income is a person (or entity) who authorised the other person to dispose of the received income on behalf of the entity.

Current Russian tax practice provides for the following criteria under which an entity cannot be regarded as a beneficial owner of income:

a the entity has narrow powers to use and enjoy the received income;

b the entity exercises intermediary functions with respect to the income for the benefit of another entity or person and does not undertake any other business functions or risks; and

c the entity directly or indirectly transfers received income (fully or partially) to another entity (or person), which would not enjoy a tax benefit under a DTT if it received the income directly.

2 Federal Law No. 376-FZ on amendments to Part I and Part II of Russian Tax Code (regarding taxation of profits of the controlled foreign companies and incomes of foreign organisations) of 24 November 2014.

The above provisions of the Russian tax law are largely based on the guidance provided for in the official Commentary to the Articles of the OECD Model Tax Convention, which applies the 'substance over form' approach to the beneficial owner of income concept.

In respect of the above-mentioned changes, the Russian tax authorities started actively to apply the 'beneficial ownership' concept to challenge the application of DTT benefits for cross-border payments.

Taxation of capital gains from the indirect transfer of Russian real estate

The De-offshorisation Law stipulates that income derived from sale of shares in foreign organisations whose assets consist of more than 50 per cent of immoveable property located in the territory of Russia should be taxed in Russia (currently at a rate of 20 per cent).

Moreover, the De-offshorisation Law requires foreign organisations (structures established in any form other than a legal entity) that own immoveable property in Russia to provide annually, along with property tax returns, information regarding their stakeholders (shareholders, founders, beneficiaries, trustees, etc), provided their share in a foreign organisation exceeds 5 per cent.

'Tax residency' concept

The De-offshorisation Law introduced into Russian legislation the concept of tax residency for companies. The foreign company may be recognised as a Russian tax resident if it is managed from Russia.

Recognition of a foreign organisation as a Russian tax resident will result in taxation of its worldwide income in Russia and an obligation to comply with other requirements and rules provided by the Russian tax law.

Controlled foreign company (CFC) rules

A CFC is defined as a foreign organisation (or foreign structure established in any form other than a legal entity) that is not a Russian tax resident, but controlled by a Russian tax resident (controlling person).

In this connection, Russian tax residents are required to notify the Russian tax authorities of the following:

a direct or indirect participation in foreign companies if the share exceeds 10 per cent;
b the establishment of foreign structures in any form other than a legal entity; and
c CFCs in respect of which Russian tax residents exercise control.

In accordance with the CFC rules, undistributed profits of CFCs may be taxed in Russia in the hands of the controlling person, being a Russian tax resident, at a rate of 13 per cent (if the controlling person is an individual) or at a rate of 20 per cent (if the controlling person is an entity).

iii Exchange of information

Besides the De-offshorisation Law, other important initiatives allowing Russian tax authorities to use different instruments of information exchange have been launched in recent years, such as:

a The publication in 2014 of a Model Agreement on Exchange of Information on Tax Matters as a basis for the conclusion of bilateral agreements with offshore jurisdictions (the Russian Model of Tax Information Exchange Agreement – TIEA).
b The ratification of the OECD Convention on Mutual Administrative Assistance on Tax Matters, which came into force on 1 July 2015.
c The signing on 12 May 2016 of the OECD's Common Reporting Standard multilateral competent authority agreement with a provision to start financial information exchange for 2017 in 2018.

iv Restrictions for public officials

Since 2013, the Russian government has adopted several federal laws that impose certain restrictions related to public officers possessing foreign assets.

The restrictions are imposed on a large group of public officers, including members of federal and regional parliaments, municipal officials, heads of regional and federal authorities, their deputies, judges, other officials and officers in state corporations (companies), funds and other organisations established by Russia and appointed by the president, government or the General Prosecutor, and certain employees of organisations established by Russia, where those employees are involved in decision-making on matters concerning the sovereignty and national security of Russia.

Public officers, their spouses and children under 18 are not entitled to:

a open and hold a foreign bank account (deposits);
b keep funds in foreign banks; or
c hold or use foreign financial instruments.

v Currency regulation: foreign accounts of individuals

The Law on Currency Regulation[3] sets a number of limitations and obligations with respect to the use of foreign bank accounts by Russian currency residents.

Thus, a Russian citizen is not considered to be a currency resident after one year of living abroad without visiting Russia.

Residents, except for state officials, can freely open foreign accounts. However, residents must notify Russian tax authorities about opening, closing or changing details of their foreign accounts within one month, and annually submit reports on the movement of funds via their foreign bank accounts.

Residents can receive into their foreign accounts only those types of funds that are expressly allowed by law. The law contains the limited list of such transactions.

Over the last few years the list of funds that may be transferred to a resident's foreign bank account[4] was expanded. Particularly from now on resident individuals are allowed to receive into accounts opened with banks in OECD or FATF countries income from non-residents from the transferring of funds and securities into trust management conducted by the non-resident, and to receive funds obtained as the result of disposal of foreign-listed securities (the latter being effective from 1 January 2018).

Residents can freely spend funds from their foreign bank accounts, except for transactions related to the transfer of property and provision of services in Russia.

3 Federal Law No. 173-FZ on Currency Regulation and Currency Control of 10 December 2003.
4 Opened in banks of states that are members of OECD or FATF.

The fine for violation of these rules is up to 100 per cent of the amount of the illegal currency transaction.

III SUCCESSION

Russian law applies to those inheritance relations in which the last permanent place of residence of a testator was in Russia or the testator's real estate property is located in Russia, provided an international agreement does not state otherwise.

Russian law provides for two types of succession: by will and by operation of law.[5] In cases of succession by operation of law, all legal heirs who are called upon to inherit in compliance with the succession priority shall inherit in equal shares. Heirs of the next line of the priority will succeed only if there are no heirs of the previous line. The order of succession may be changed by composing a will. In general, foreign wills are recognised as valid in Russia if they are made in accordance with the legal provisions of the country where the testator had his or her last place of residence when making the will, or its form is in compliance with the requirements of the place of execution of the will or Russian law.

Composition of a will grants the testator the freedom of disposal of his or her property at his or her own discretion and in any proportion. However, certain mandatory rules of Russian law cannot be changed in any way by a will (forced heirship rules[6] or share of a spouse with regard to joint property).[7]

Forced heirship rules provide that the minors or disabled children of the testator, his or her disabled spouse and parents, as well as disabled dependants of the testator in some cases, irrespective of the provisions of the will, shall inherit no less than half of a share such a person would be entitled to in the event of inheritance by law (that is in the absence of a will). The above persons shall be entitled to claim the obligatory share from the part of the property subject to inheritance that is not stated in the will. If such property is not enough to satisfy the claims of the forced heirs, they are entitled to claim their obligatory share even from the property inherited by will.

The only option to withdraw from succession any heirs entitled to the compulsory share is to execute *inter vivos* transactions, such as making donations or establishing a trust or foundation in respect of the property that overrules legal succession of the property.

One more specific aspect of Russian inheritance law is that a testator's spouse is entitled to a spouse's share of property held jointly with the testator (half of the joint property). This half of the joint property is not included in the inheritance and fully belongs to the surviving spouse. The other half is included in the estate and is divided between heirs (the surviving spouse can also be included in the list of heirs). This rule applies even if a will provides otherwise.

To come into possession of the estate, the heirs should submit an application to the notary at the place of the testator's last place of residence or at the place of real estate location in the Russian Federation (depending on circumstances) no later than six months after the testator's death.

5 Article 1111 of the RF Civil Code.

6 Article 1149 of the RF Civil Code.

7 Article 1150 of the RF Civil Code.

The notary shall issue a certificate of succession right to those heirs who come into possession of the estate. It should be noted that such a certificate is usually issued by the notary upon the expiry of the six-month period after the testator's death, except where the heirs may be clearly identified and where no disputes between the heirs are expected to arise.

Despite the fact that Russian civil legislation was undergoing large-scale reform, succession law had not faced any fundamental changes for a long time. Then, in July 2017 the Russian Parliament introduced succession funds adopting amendments to the Civil Code.

According to the amendments, succession funds may be established by a notary public in accordance with the testament of the deceased person within three business days of the death of the testator. The respective testament should include the rules for the management of succession fund, which cannot be amended after the establishment of such a fund (an exception is made for certain unexpected circumstances). The rules should include the provisions on the election of management bodies, on the transfer of succession fund's property (in full or in part) to certain determined or determinable persons (beneficiaries), and storage and disclosure of the succession fund's documentation.

In addition, these amendments elaborated the rules of fiduciary management of inheritance: they include mandatory assessment of inheritance prior its transfer to fiduciary management and the provisions on the control of fiduciary management by notary public as well as requirements of the fiduciary manager.

The respective amendments will come into force on 1 September 2018.

There have not been any recent major developments affecting personal property in Russia. In this regard, certain basic aspects of Russian matrimonial law are described below.

In general, the Family Code recognises joint property rights as the legal property regime of spouses. Joint property includes any property gained by the spouses during their marriage, irrespective of in whose name it was gained or by whom such monetary funds were contributed.

Where there is an intention to dispose of joint property, the relevant spouse shall receive the consent of the other spouse for such a disposal.

In Russia, only an officially registered marriage has the legal consequences mentioned above. From the point of view of Russian family law, cohabitation has no legal standing. Registration of same-sex marriage is not permitted.

Spouses are free to change the joint property regime to a separate property regime by entering into a matrimonial agreement. However, certain restrictions shall be observed: the Family Code provides that the court can find a matrimonial agreement invalid fully or in part upon the demand of one of the spouses, provided the terms of the matrimonial agreement place this spouse in a highly unfavourable situation.

The matrimonial agreement can be concluded before or after the state registration of a marriage. The formal requirements for the validity of matrimonial agreements concluded in Russia are that such agreements shall be executed in written form and certified by the notary public.

Where a separate property regime has been established under a matrimonial agreement, property is no longer the joint property of the spouses and, therefore, the consent of the other spouse for the conclusion of a transaction with the separate property of the spouse is not required. Moreover, following changes to the joint property regime under a matrimonial agreement, in cases of inheritance, a surviving spouse is not entitled to claim a half share in

joint property. Nevertheless, the surviving spouse is still entitled to inherit on other grounds (if mentioned in a will or, in the absence of a will, by operation of law as an heir of the first order – provided that the spouse is not deprived of the inheritance by the testator).

IV WEALTH STRUCTURING & REGULATION

Russian legislation does not recognise the concept of the 'trust'. However, at the time of writing, Russian legislation does not hinder its citizens and residents from transferring assets to foreign trusts whether as the settlor, beneficiary or protector, etc., of such structures. Transferring assets to such a structure breaks the ownership of the assets and they will then be considered to be owned not by the settlor of the structure but by the third parties (e.g., the trustees). In such cases, Russian succession law is not applicable.

The transfer of assets to trusts is not regarded as a taxable event. Income received from trusts as a general rule is subject to PIT at the rate of 13 per cent.

At the beginning of 2016, the tax legislation was amended by the provision allowing amounts that are not deemed to be distributed from the profit of the structure, including trusts, to be exempt from taxation. This exemption is provided for the value of the property (including cash) or property rights, which were previously contributed to the structure by the recipient of trust distribution or by his or her close relatives. However, the Russian Tax Code states that if the structure has any undistributed profit, any distributions within the amount of such profit will be treated as distribution of profit regardless of how it is documented and taxed.

When Russian citizens and residents intend to transfer their property to foreign trusts, certain precautions should be observed. Considering the absence of the concepts of trusts in Russia, Russian citizens and residents cannot transfer their Russian assets directly to a trust but only through a foreign company.

Moreover, Russian matrimonial law provides that the transfer of assets being the joint property of spouses to a trust requires the consent of the other spouse for such action; otherwise, such a transfer may be disputed through a court order as a violation of Russian family law.

Furthermore, despite the absence of the relevant court practice in Russia, to avoid possible disputes between heirs, the forced heirs should be included as beneficiaries of the relevant structure. Alternatively, a person transferring assets to a trust or foundation may otherwise ensure that the compulsory shares of the forced heirs will be satisfied from other assets directly possessed by the deceased and not transferred to the trust.

In the context of wealth structuring, it is important to note that the Russian citizen shall inform the Russian state authorities about the fact that he or she has another citizenship or residence permit or other valid document confirming the right of permanent residence in a foreign country. The notification may be submitted in person, by a representative (authorised by law as well as by the power of attorney) or via the federal postal service. Failure to perform this duty entails a administrative or criminal liability (depending on the nature of the violation). The administrative liability occurs in cases of late filing or provision of incomplete or deliberately false information and entails a fine in the amount of 500 to 1,000 roubles.[8] Failure to provide notification at all entails a criminal liability with one of the following

8 Article 19.8 (3) of the Russian Code of Administrative Offences.

consequences: a fine of up to 200,000 roubles; a fine of the amount of the wages or other income of the convicted person for a period up to one year; or the obligation to perform compulsory works for up to 400 hours.[9]

Pursuant to the amendments, these changes are not applicable to persons residing outside Russia (i.e., those without registered abode in Russia and living abroad).

In addition, we would like to bring your attention to the requirements of the Law on civil registry acts, which provides for an obligation to inform Russian state bodies about civil registry acts committed with respect to the Russian citizen outside the territory of the Russian Federation, as well as for the operation of a unified state register of civil acts (the Register) and transmission of books on civil acts into electronic form.

In accordance with the provisions of the Law on civil registry acts, the citizen of the Russian Federation, with respect to whom a civil act was registered outside the territory of the Russian Federation, should submit information about such registration to the civil registry located at his or her abode in the Russian Federation or Russian consulate. Information should be submitted within one month of such registration starting from 1 January 2018. The provisions are quite recent and currently do not clarify whether it is necessary to submit information about such acts registered before 1 January 2018 and do not establish any liability for the failure to submit such information. However, we cannot exclude the possibility that such liability will be established by adoption of additional legal acts in future.

This information should be stored in the Register, which will compile all information about civil acts registered with respect to Russian citizens outside the territory of the Russian Federation, as well as all civil acts registered in the territory of the Russian Federation. The Register should be operated by the federal tax service, which, among other state authorities, would be able to request information from the Register.

In Russia, services connected with wealth management are generally provided by legal entities and banks. In accordance with the existing anti-money laundering rules, service providers are obliged to perform know-your-customer procedures, including obtaining the information on the ultimate beneficiaries where the client is a legal entity.

The definition of a beneficial owner was introduced in Russian legislation in 2013 for the first time ever. The law defines the beneficial owner as an individual who directly or indirectly (with assistance of third parties) holds more than 25 per cent of assets of a client or has the option to control its actions.

According to new changes in the federal Law on Countering Money Laundering and Terrorism Financing, legal entities (with some minor exceptions) have to take all possible measures to identify their beneficiary owners. To do so, a legal entity has a right to request information from its founders, participants and controlling entities or persons, and such entities or persons are obliged to provide all available information. In addition, the legal entity should appoint an officer, who will be responsible for the storage and annual update of such information (usually a general director or chief accountant). Non-compliance with this requirement leads to the risk of administrative liability of a legal entity in the form of a fine of up to 500,000 roubles.

In addition, financial organisations[10] have to take all possible and reasonable measures to identify the beneficial owner of a client.

9 Article 330 (2) of the Russian Criminal Code.

10 Credit institutions, professional participants in the securities market; insurance and leasing companies; the federal mail organisation; management companies of investment funds and private pension funds;

Where the beneficial owner is not identified, the client's chief executive officer may be recognised as the beneficial owner.

Also, banks, law firms and some other organisations are obliged to report to the Russian Federal Financial Monitoring Service on certain transactions or finance operations concluded or made by the client if such transactions or operations fall under thresholds established by law.

V CONCLUSIONS & OUTLOOK

In summary, it is necessary to say that wealth is always accompanied by many responsibilities, such as the obligations to manage complicated local and international assets, invest wisely and protect one's family. The area of Russian private wealth is one of the fastest growing in the world.

Despite the established practice of using foreign instruments, Russians show a tendency to use Russian instruments in their cross-border estate planning. However, the practice of using the Russian instruments is not completely formed and only the future will show how recent legislative changes are of effectiveness and attractiveness for the private clients.

Also, it shall be noted that the general tendency in the latest legislative amendments is towards increasing state control. An integral part of this process is the tightening of tax regulations.

Russia is not trying to reinvent the wheel; on the contrary, where prospective measures are successfully implemented in other jurisdictions around the world, the foreign experience of these rules is analysed by Russian governmental experts drafting new laws. Hence, foreign investors will mostly see rules that they are already familiar with from their experience of sophisticated jurisdictions, such as the EU countries or the United States.

However, the latest changes to Russian tax law will inevitably affect artificial structures whereby 'letter box' companies located in jurisdictions with favourable tax regimes are used, without a sound business purpose, only to obtain tax benefits. At the same time, robust structures are unlikely to be affected if they are used by foreign companies that have proper substance, genuine business purpose and are managed from the jurisdiction of their residence.

In light of these changes, new structures should be developed carefully. Moreover, existing structures should be reviewed as soon as possible to determine whether reorganisation is necessary to minimise the possible negative effects of the anticipated measures on information exchange.

Thus, Russian law and practice is changing and is moving in a direction with global trends – restraining the aggressive use or abuse of tax benefits stated in DTTs and increasing global transparency and tax control – and as a result, it is expected that Russia will accede to the OECD Base Erosion and Profit Shifting plan.

operators of payment collection; companies providing intermediary services in buy or sell deals of real property.

Appendix 1

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Maxim Alekseyev leads projects dealing with both Russian and foreign partners within the territory of Russia and abroad. In his private client practice, Maxim has extensive experience in advising HNWIs on various types of issues to help them manage and secure their assets, business and family relations. He advises clients on different aspects of estate planning and administration, personal wealth management, as well as family business governance, and risk management in respect of assets protection. Maxim is acknowledged as a leading Russian expert focusing on private wealth planning, succession, onshore and offshore structures, private banking and individual taxation.

Maxim Alekseyev is a member of the International Bar Association (IBA), the American Bar Association (ABA), the Inter-Pacific Bar Association (IPBA) and the Society of Trust and Estate Practitioners (STEP), a professional body joining the world's most prominent experts specialised in the management of personal finance.

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Kira Egorova is of counsel and head of the international accounting and corporate support department at ALRUD Law Firm. Her principal area of practice is private client law.

She graduated from the Moscow State University department of economics with a degree in economic cybernetics.

Kira Egorova advises private clients, families with dynastic wealth and family offices, as well as their counsels. Her clients also include corporate executives, business owners (and former business owners who have experienced a liquidity event), professionals, fund managers, private foundations and others. She counsels clients in connection with the significant number of projects involving purchase of luxury items and other property. Kira has extensive experience in advising the Russian HNWIs on development of ownership and succession structure for diversified private and business assets, located in different jurisdictions. Kira leads projects of negotiations and conclusion of shareholder agreements and associated matters.

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She graduated from the Moscow State Academy of Business Administration, specialising in financial management and accounting. In 2005 she successfully secured a qualification in international standards of financial statements – ACCA DipIFR. She has been an ACCA member since 2012.

Elena possesses profound experience in accounting, corporate taxation and international taxation, management accounting and communication with the Russian tax authorities. She provides ALRUD clients with advice on a diverse range of complicated tax issues, supports them during tax audits, represents clients' interests in negotiations with state authorities, participates in performing tax due diligences and tax audits.

Elena, together with the ALRUD tax team, provides ongoing tax support for JVC, Tupperware and Moody's Investors Service with regard to their operating in Russia and the CIS. She performs tax expertise of the incentive plans, secondment and other employment issues for ALRUD clients.

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