

Newsletter

Cloudy prospects for digital currency in Russia: further restrictions

January 18, 2021

Dear Ladies and Gentlemen,

We would like to inform you about recent updates concerning regulation of digital currency in Russia.

Background

At the end of July 2020, the President of the Russian Federation signed the Federal Law No. 259-FZ "On Digital Financial Assets, Digital Currency and on Amendments to the Certain Legal Acts of the Russian Federation" ("**DFA Law**"). This introduced the first large-scale regulations on (i) digital financial assets and (ii) digital currency. The majority of its provisions entered into force on January 1st 2021.

The notion of "digital currency", within the meaning of the DFA Law, stands for a combination of electronic data (digital code, or symbol) that are:

- A. contained in an informational system and;
- B. are offered and/or can be accepted as a means of payment that does not constitute a Russian, foreign and/or international currency and/or as an investment and;
- C. for which there is no person obliged to each owner of such data, except for an operator and/or units of an informational system that are only responsible for ensuring compliance of issuance of these data and making/amending entries in this informational system.

As a result of the DFA Law's adoption, activities with digital currency have been significantly restricted in comparison to digital financial assets, in particular:

- Russian companies, Russian branches of foreign companies, as well as Russian tax residents, cannot accept digital currency in the form of consideration, nor in other form as a payment for their goods, work or services;
- claims of Russian companies, Russian branches of foreign companies, as well as Russian tax residents, in connection with ownership of digital currency, can only be granted judicial protection

if these persons report the fact of ownership of, and transactions with, digital currency;

- digital currency is recognized as property mostly for the purposes of foreclosure, as well as imposition of additional obligations on its owners; and
- advertisement of digital currency, as a payment method, is not allowed.

Proposed amendments

Since the DFA Law only sets out general provisions, there is still room for some uncertainty as to the perspectives of Russian digital currencies' regulation. The Russian Ministry of Finance has taken a first step, in this regard, by elaborating a set of bills that introduce amendments to Russian tax, administrative, criminal and anti-money laundering ("**AML**") laws. Based on publicly-available information, as of the date of this newsletter, the bill that establishes changes to the Russian Tax Code ("**Tax Bill**") has been passed to the State Duma and is now under consideration.

Generally, the Tax Bill provides for the obligation to report having obtained the right to dispose, including through third parties, of digital currency, as well as to provide reports on transactions with such currency and its balance ("**Reports**"). Both obligations must be fulfilled by April 30th, of the following accounting year, starting from the 2021 accounting year.

The relevant requirements are imposed on persons that have received, or disposed of, digital currency totalling an amount that exceeds 600,000 Roubles, or its equivalent in foreign currency, during the calendar year. This amount is calculated on the basis of the market price at the date of each transaction, which must be determined, in accordance with the official procedure, to be established by the Russian Federal Tax Service.

Additionally, the requirements, as described above, are supported by the following sanctions that enumerate tax liability:

- a fine of 50,000 Roubles for failure to timely report, having obtained the right to dispose of digital currency, including through third parties, or to provide Reports;
- a fine of 10% of the larger of the two amounts in Roubles' equivalent – a received amount, or a debited amount - for failure to submit a Report, or provision of a Report that contains unreliable information;
- fine of 40% of the amount of unpaid tax for non-payment, or incomplete payment, of taxes, where profit (income) from transactions, settled with digital currency, has not been included in tax base.

Another three bills are now in various stages of consideration by the Russian Government (e.g. public hearings, regulatory impact assessment), and, at this stage, the potential time(s) of their submission to the State Duma cannot be precisely anticipated.

Two of these bills propose amendments to the Russian Code of Administrative Offences and the Russian Criminal Code. They specify an array of digital currency-related offences and relevant sanctions:

- administrative liability for illegal acceptance of digital currency, digital currency in the form of consideration, or in another form as a payment for goods, work or services;
- criminal liability for systematic (during two, or more, reporting periods) non-submission of

Reports, or inclusion of knowingly-unreliable information in Reports: (i) on a large scale (totalling, during three consecutive years, in excess of 15 mln Roubles), or (ii) on an especially large scale (such amount exceeding 45 mln Roubles), or where other elements exist (conspiracy, or organized group crime etc.).

The fourth bill envisages amendments to Russian AML legislation. In particular, this bill extends certain obligations, applicable to entities that perform operations with monetary funds and other property, to persons that issue digital currency, or arrange issuance and circulation of digital currency. Consequently, the relevant persons would be required to perform KYC procedures, freeze (block) monetary funds, arrange internal control, record information, report suspicious transactions, identify public officials, etc.

Prospects

During recent years, Russian cryptocurrency industry has existed in the so-called "grey area", primarily because of the absence of an established position, regarding legality of cryptocurrency, among the state authorities. Despite the legislative progress, public opinion is still far from settled: in particular, we see that the Blockchain Technology and Crypto Economy Commission has already prepared a report aimed at criticizing the Tax Bill, which highlights the negative effect of the excessive fines for the industry, as well as anticipated capital outflows.

Given the above, texts of the bills may be revised by the Russian legislators. We will monitor all developments and will keep you updated of key changes.

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If you have any questions, please, do not hesitate to contact ALRUD partner



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