

Russian Subsidiaries of Foreign Groups of Companies: New Obligations Since 2018

Newsletter

21 August 2018

Federal Law No. 340-FZ of 27 November 2017 introduced a number of amendments into the Tax Code of the Russian Federation (the **Russian Tax Code**) aimed at implementing the provisions on international automatic exchange of information between tax authorities of different countries under the Convention on Mutual Administrative Assistance in Tax Matters, Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information and Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports.

The mechanism of automatic exchange of tax information will start working in Russia in 2018. In addition, new obligations and liabilities to enter into effect in 2018 have been imposed on Russian subsidiaries of foreign groups of companies.

For details, please see the Mosgo & Partners newsletter below.

1. WHO IS SUBJECT TO THE NEW OBLIGATIONS AND LIABILITIES?

The amendments into the Russian Tax Code will apply to so-called *Multinational Enterprises (MNEs)* headquartered in Russia or abroad. The new law will apply to foreign MNEs that meet all of the following criteria:

1. The foreign MNE is required by its domestic law to prepare and file consolidated financial statements.
2. The MNE has subsidiaries in Russia.
A subsidiary is deemed Russian if incorporated in Russia in any legal form, or if it is a Russian tax resident (excluding regular subsidiaries, only taxed at source in Russia).
3. The MNE has annual consolidated group revenue equal to or exceeding the threshold established by its domestic law.
In most cases, this threshold is equivalent to EUR 750 million (Germany, Belgium, the Netherlands, etc.) or USD 850 million (US).



The new obligations are imposed over Russian subsidiaries of large international groups with annual consolidated revenue over EUR 750 million/ USD 850 million.

All MNE members are divided into 3 groups:

A. Holding Company:

A company controlling all other MNE members through ownership or otherwise, and in charge of filing consolidated financial statements for the entire MNE.

B. Authorized Company:

A company within the MNE, authorized by the Holding Company to file Country-by-Country Reports (**CbCR**) in the jurisdiction of the Authorized Company's nationality.

C. Ordinary Company:

All other MNE members.

In case of foreign MNEs, new obligations under the Russian Tax Code are imposed on Ordinary Companies, *i.e.*, the Russian subsidiaries of foreign MNEs.

2. WHAT NEW OBLIGATIONS DO RUSSIAN SUBSIDIARIES OF FOREIGN MNES HAVE SINCE 2018?

The new obligations of Russian subsidiaries of MNEs are as follows:

- ***To file a notification of membership in the MNE.***

The deadline is 8 months from the end of the fiscal year of the Holding Company. For the first time, the notification is to be filed for the fiscal year that started in 2017. If it coincides with the 2017 calendar year, the Notification of Membership in an MNE should be filed by 31 August 2018.



Russian subsidiaries of MNEs are obliged to file notifications of membership in the MNEs by the end of August, 2018.

- ***To file a CbCR.***

To be filed if requested by a Russian tax authority, where the authority is aware that:

- i. the foreign Holding Company or the foreign Authorized Company failed to file the CbCR under their domestic law; or
- ii. the foreign Holding Company or the foreign Authorized Company filed the CbCR under their domestic law, but the country of their residence belongs to the "black list" of the Russian tax authorities.

The deadline is set in the tax authority's request and may not be shorter than 3 months. The period for the request by the Russian tax authorities for a CbCR will depend on the deadlines for filing the CbCR by the Holding or Authorized Company under the domestic law of the MNE. For the first time, this request may concern the fiscal year that started in 2017.

- **To file the Master File.**

To be filed if requested by a Russian tax authority. The Russian law does not provide for any specific grounds for such a request. The only instance mentioned in the Russian Tax Code is a request by a tax authority of a foreign country. The period for a request for the Master File starts after the expiry of 12 months and ends after the expiry of 36 months from the end of the fiscal year in question. For the first time, the request may refer to the fiscal year that started in 2017. The deadline is 3 months from the request.

- **To file the Local File.**

To be filed where the Russian subsidiary has a transfer pricing deal with a foreign co-member of the MNE and, as prescribed by the Russian Tax Code, notified this deal to the Russian tax authorities. The Local File is to be filed if requested by a Russian tax authority promptly after the end of the calendar year of making the transfer pricing deal, but not earlier than on the 1st of June of the next calendar year. For the first time, this request may concern the 2018 fiscal year. For the 2018 and 2019 fiscal years, a “soft” procedure applies: the Russian tax authorities may make requests only after the expiry of 12 months from the end of the year when the revenues/ expenditures under the relevant transfer pricing deals are booked.

3. LIABILITY

For the breach of the above obligations, Russian subsidiaries of MNEs may be fined in the amounts from RUR 50,000.00 to RUR 100,000.00.

At the same time, the law provides for **transition periods** when no fines are imposed. In most cases, a fine may be assessed in 2020 at the earliest.

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