# Contemporary problems of implementation BEPS provisions about controlled foreign companies in Russian legislation.

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## Definition of controlled foreign company (CFC)

**BEPS** 

Broad definition of CFC

**Russian Tax Code** 

Broad definition of CFC

CFC rules apply to corporate entities

- + trusts
- +partnerships
- +permanent establishments

CFC rules apply to corporate entities

+ foreign entities with no corporate status (trusts, partnerships, permanent establishments)

Within this provision Russian tax legislation is in exact accordance with BEPS.

### Level of control

#### **BEPS**

More than 50 %

Aggregate interests of minority shareholders acting together to exert influence (3 situations)

- 1) "acting-in-concert" test
- 2) interests of related parties
- 3) concentrated ownership requirement

#### **Russian Tax Code**

More than 25 %

Concentrated ownership requirement –

if Russian residents own more than 50% than each interest of more than 10% is taken into account

### Calculating CFC's income

#### **BEPS**

Use the rules of the parent jurisdiction (i.e. the jurisdiction that is applying the CFC rules)

Specific rule limiting the offset of CFC losses so that they can only be used against the profits of the same CFC or other CFCs in the same jurisdiction

#### **Russian Tax Code**

Use the CFC jurisdiction's rules or

rules established in the Russian Federation



- Less income to be attributed
- Create complexity
- Increase the costs for the tax administration

### **Attributing income**

#### **BEPS**

Reference to:

- Proportion of ownership
- Actual period of ownership

Application of the tax rate of the parent jurisdiction to the income

#### **Russian Tax Code**

Reference to:

- Proportion of ownership
- Amount of income

Application of the tax rate of the parent jurisdiction to the income

## Prevention or elimination of double taxation

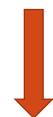
#### **BEPS**

Allow a credit for foreign taxes actually paid

Exempt dividends and gains on disposition of the CFC shares from taxation if the income of the CFC has previously been subject to CFC taxation

#### **Russian Tax Code**

Calculated tax for CFC – foreign taxes actually paid = ?



- Tax Code interpretation problems
- Risk of double taxation

## Problems of obtaining information

Tax information exchange on request



Nominee shareholders



Automatic tax information exchange in 2018



Problems of exchange with offshores



## My suggestions of the Russian Tax Code improvement

- Increase the level of control to apply CFC rules from established 25% to 50% recommended in BEPS
- Use the rules of the parent jurisdiction (Russian Federation) in the process of calculating CFC's income
- Include a specific rule limiting the offset of CFC losses so that they can only be used against the profits of the same CFC or other CFCs in the same jurisdiction
- In the process of attributing income make reference to actual period of ownership to prevent tax evasion
- To eliminate double taxation exempt dividends and gains on disposition of the CFC shares from taxation if the income of the CFC has previously been subject to CFC taxation
- Improve tax information exchange





## THANK YOU FOR YOUR ATTENTION



