

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

Natalia Andrianova,
a Master student of the Higher School of
State Audit (Faculty) of Lomonosov
Moscow State University.

Definition of controlled foreign company (CFC)

BEPS

Broad definition of CFC

CFC rules apply to
corporate entities

+ trusts

+partnerships

+permanent
establishments

Russian Tax Code

Broad definition of CFC

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**

