

TRUSTS FOR RUSSIAN CLIENTS – TRANSPARENCY AND REPORTING OBLIGATIONS

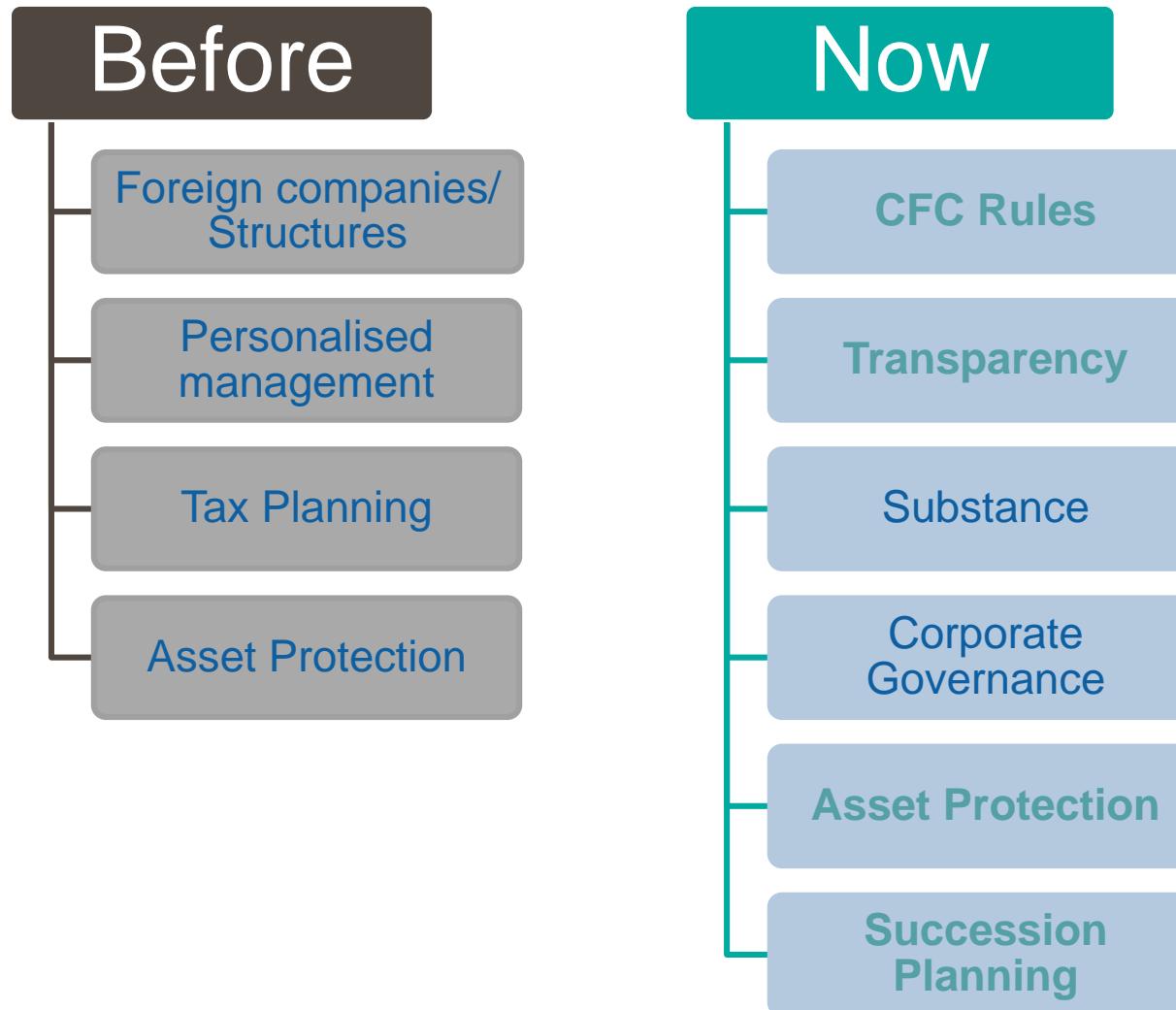
1 DECEMBER 2016, GENEVA

TATIANA RYDEARD
LAW TRUST SWITZERLAND AG

CHANGING LANDSCAPE

- **Political and business environment in 2016**
 - State Duma Elections on 18 Sep 2016: not much to say yet
 - Economic climate
 - Foreign investment: extensive discussions but little happening
 - Sanctions
- **New Legislations in Practice in 2016**
 - Participation in foreign companies and structures: ongoing
 - CFC rules: active preparation for the first reporting is on the way
 - Amnesty closed
 - Developments in corporate residency criteria / impact on substance
 - “Softening of currency regulations”

RULES OF ENGAGEMENT



TRUSTS IN RUSSIA: THEORY AND PRACTICE

- **It was not a common practice to establish trust during the early days, Foundations were preferred as concept was better understood.**
- **Confidentiality Reasons vs Transparency and Reporting Obligations**
- **Asset protection and succession planning in Russian Law**
 - Protection of assets?
 - Estate Planning: Russian Matrimonial law?
 - Estate Planning: Russian Inheritance law?
 - Tax issues?

TRANSPARENCY...



WHO IS REPORTING

- **Under CRS & FATCA**



- **Under CFC**



REPORTING OBLIGATIONS CFC

- **Notification on Establishment of a trust (Settlor):**
 - Has to be submitted once
 - For new trusts not later than three months from the date of set up
 - Failure to notify – RUB 50,000 (approx. EUR 700)
- **Notification on CFC: Trust will be deemed as CFC if: (a) the Settlor is Russian Tax resident and is deemed as controlling person; (b) there are other Controlling Persons that are Russian Tax Residents:**
 - Has to be filed on an annual basis
 - The first one – not later than March 20, 2017 for 2015
 - Failure to notify – RUB 100,000 (approx. EUR 1,400)

CFC OR NOT: CONCEPT OF CONTROL OVER TRUSTS IN CFC LAW (1)

Generally, Settlers are *controlling persons* of a *Structure*. However, the settlor may not be deemed as controlling person, and therefore no reporting will be required, if:

- (i) The settlor has no right to receive (or claim to receive) income from the Structure directly or indirectly, fully or partially;
- (ii) The settlor has no right to manage the income of the Structure;
- (iii) Assets transferred to the structure are irrevocable during all period of its existence and/or in case of liquidation of the Structure;
- (iv) The settlor has no control over the structure and decisions taken;
- (v) The settlor will not receive the above mentioned rights in the future.

CFC OR NOT: CONCEPT OF CONTROL OVER TRUSTS IN CFC LAW (1)

Russian Tax code also states that an individual, who controls the trust but is not a settlor of the trust, can also be deemed as a controlling person if:

- (i) Such person has a right to receive income or its part, received by the trust; AND/OR
- (ii) An individual has the right to manage the assets of the Structure; AND/OR
- (iii) An individual has the right to receive the assets of the Structure in case of liquidation.

Result: Resident Beneficiaries and Protectors will have to report the trust as CFC and pay taxes in Russia if any of the above conditions is met.

KEEP CONTROL AND REPORT OR RELINQUISH AND ALLOW OTHERS TO BENEFIT

- **Broadly, distributions to Russian tax resident beneficiaries are taxed at 13%**
- **However, distributions of capital to the settlor and the members of his family are tax-free**
- **Use of property contributed to a trust (e.g. Swiss Chalet)?**
- **Loans from the trust?**

REPORTING EXAMPLE

2015

- 25 Sep – establish the trust
- 25 Dec – deadline to file notification on establishment

2016

- 25 Sep – first financial year end (but can be extended to 31 Dec to bring in line with Russian reporting period)

2017

- FS produced for year end 25 Sep 2016 (31 Dec 2016)
- 31 Dec – profit of the trust is attributed to the controlling person (usually to the Settlor)

2018

- 20 Mar – deadline to file CFC notification
- 30 Apr – submission of personal declaration including CFC income and financial statements of the CFC and audit report
- 15 July – tax payment
- 30 July – deadline for tax authorities to request additional supporting documents/ comments

CRS V FATCA

- **CRS is more relevant to Russian clients than FATCA**
- **Over a hundred countries now committed to exchange under CRS starting for some in 2017. Switzerland and Russia from 2018.**
- **CRS v FATCA**

	FATCA	CRS
Registrations	✓	-
Scan for Tax Residence	-	✓
Scan for Citizenship	✓	-

TRUSTS & CRS

- **In the CRS a trust is considered to be an Entity**
- **The CRS will apply:**
 - (i) when a trust is a Reporting Financial Institution (FI)**
 - (ii) when a trust is a NFE that maintains a Financial account with a Reporting Financial Institution**
- **Decision on what kind of entity a trust is will depend on what assets are in the trust and who “manages” the trust**

TRUST : FINANCIAL INSTITUTION OR NFE (A NONFINANCIAL ENTITY)

- **What determines if a trust is a Financial Institution?**
- **Financial Institution =**
 - Custodian Institution
 - Depository Institution
 - Investment Entity
 - Specified Insurance Company

TRUST : FINANCIAL INSTITUTION OR NFE (A NONFINANCIAL ENTITY)

▪ What is Investment Entity?

- **Test1:** Is the entity carrying on business and 50% or more of its gross income attributable to trading in money, market instruments, foreign exchange and other financial instruments, portfolio management or otherwise investing administering or managing Financial Assets on behalf of others? – *Trust companies will most likely fall into this category.*
- **Test 2:** Is more than 50% of the trust's income from investing, reinvesting and trading in financial assets? – *portfolio holding v collection of luxury cars or real estate*)

Yes = go to TEST 3

No = NFE

- **Test 3:** Is the trust “managed” by a Financial Institution? – *individual v corporate trustee*

Yes = *The trust is FI*

No = NFE

REGISTRATION AND REPORTING

- **FATCA – IRS registration obligations**
- **CRS – No registration obligations**
- **Trusts that are NFEs don't need to register or report, they will be reported on by any FIs they use (e.g. banks)**
- **Under both FATCA and CRS FIs must either report or make arrangements for someone else to report for them**
 - Option 1: Trustee Documented Trust (FATCA & CRS)
 - Option 2: Trust reports as FI (FATCA & CRS)

CRS - THE FINANCIAL ACTIVITY TO BE REPORTED WHERE A TRUST IS A FI

Account Holder	Account Balance	Gross Payments
Settlor	Total value of all trust property	Value of payments made to the settlor in reporting period (if any)
Beneficiary: mandatory	Total value of all trust property	Value of distributions made to the beneficiary in reporting period
Beneficiary: discretionary (in a year in which a distribution is received)	Nil	Value of distributions made to the beneficiary in reporting period
Any other person exercising ultimate effective control	Total value of all trust property	Value of distributions made to such person in reporting period (if any)
Debt interest holder	Principal amount of the debt	Value of payments made in reporting period
Any of the above, if account was closed	The fact of closure	

CRS - THE FINANCIAL ACTIVITY TO BE REPORTED WHERE A TRUST IS A PASSIVE NFE

Account Holder	Account Balance	Gross Payments
Settlor	Total account balance or value	Gross payments made or credited
Trustee	Total account balance or value	Gross payments made or credited
Beneficiary: mandatory	Total account balance or value	Gross payments made or credited
Beneficiary: discretionary	Nil	Gross payments made or credited
Protector (if any)	Total account balance or value	Gross payments made or credited
Any of the above, if account was closed	The fact of closure	

CONTROLLING PERSONS: WHAT WILL BE REPORTED

**the settlor(s), trustee(s), beneficiary(ies), protector(s)
any other natural person exercising ultimate effective
control over the trust.**

	Reportable Person	Trust
Name	✓	✓
Address	✓	-
Residence	✓	-
Tax Identification Number (TIN)	✓	-
Date of Birth	✓	-
Identifying number of the trust	-	✓
Account Number	✓	-

CRS IMPLEMENTATION IN RUSSIA

- **12 May 2016** - Russia signed a multilateral agreement acceding to the Standard for Automatic Exchange of Financial Information
- CRS effective from 2017, first wave of reporting in 2018, but Russia has not signed any bilateral agreements yet!
- Consequential amendments to Russian law are still required
- 6 September 2016 draft federal law published Concerning the Introduction of Amendments to Part One of the Tax Code of the Russian Federation (in Connection with the Implementation of the International Automatic Exchange of Financial Account Information and Documentation for International Groups)
- Only basic provisions included in the draft law, which refers to regulatory actions the Russian government needs to take after consultation with the Bank of Russia
- The draft law expressly provides that the supply by a Russian financial institution of information under CRS to the Federal Tax Service does not amount to a breach of any provisions protecting banking or other secrets, nor does such disclosure require consent

QUESTIONS



Tatiana Rydeard
Managing Director

Tel: +41 41 531 30 32
Mobile: +41 79 825 8820
tatiana.rydeard@thelawtrust.com