GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

# Peer Review Report Phase 2 Implementation of the Standard in Practice

## RUSSIAN FEDERATION

OECD

# Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Russian Federation 2014

PHASE 2:
IMPLEMENTATION OF THE STANDARD IN PRACTICE

October 2014
(reflecting the legal and regulatory framework
as at December 2013)


BETTER POLICIES FOR BETTER LIVES

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# About the Global Forum

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 120 jurisdictions, which participate in the Global Forum on an equal footing.

The Global Forum is charged with in-depth monitoring and peer review of the implementation of the international standards of transparency and exchange of information for tax purposes. These standards are primarily reflected in the 2002 OECD Model Agreement on Exchange of Information on Tax Matters and its commentary, and in Article 26 of the OECD Model Tax Convention on Income and on Capital and its commentary as updated in 2004. The standards have also been incorporated into the UN Model Tax Convention.

The standards provide for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. Fishing expeditions are not authorised but all foreseeably relevant information must be provided, including bank information and information held by fiduciaries, regardless of the existence of a domestic tax interest or the application of a dual criminality standard.

All members of the Global Forum, as well as jurisdictions identified by the Global Forum as relevant to its work, are being reviewed. This process is undertaken in two phases. Phase 1 reviews assess the quality of a jurisdiction's legal and regulatory framework for the exchange of information, while Phase 2 reviews look at the practical implementation of that framework. Some Global Forum members are undergoing combined – Phase 1 and Phase 2 – reviews. The Global Forum has also put in place a process for supplementary reports to follow-up on recommendations, as well as for the ongoing monitoring of jurisdictions following the conclusion of a review. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

All review reports are published once approved by the Global Forum and they thus represent agreed Global Forum reports.

For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, and for copies of the published review reports, please refer to www.oecd.org/tax/transparency and www.eoi-tax.org.

# Executive Summary

1. This report summarises the legal and regulatory framework for transparency and exchange of information in the Russian Federation (Russia), as well as the practical implementation of that framework.

2. Russia has a broad network of exchange of information (EOI) agreements which consists predominantly of double tax conventions (DTCs) dating from the 1990s. In November 2011 Russia made a significant commitment to enhancing its capacity to exchange information for tax purposes through the signing of the multilateral Convention on Mutual Administrative Assistance (Multilateral Convention).

3. Obligations to protect the availability of relevant ownership, identity and accounting information are founded predominantly in the Civil Code, the Law on State Registration, the Tax Code and the Law on Accounting. For the maintenance of bank information, reliance is placed on Russia's anti-money laundering regime as well as the rules established by the Central Bank of Russia. Some concerns are noted with respect to the availability of information under Russia's legal and regulatory framework, such as ownership information regarding foreign entities carrying on business in Russia, and information on the identity of beneficiaries, settlors and trustees of foreign trusts for which a trustee is resident in Russia.

4. The Federal Tax Service maintains an extensive database of ownership information, and can be seen as one of Russia's most advanced government bodies in terms of the use of information technology. Within the Federal Tax Service about 900 tax offices (with the total of about 5 000 employees) are authorised to make the requisite registrations regarding legal entities and individual entrepreneurs. The same offices that are responsible for registration also verify information and are responsible for enforcement. In cases of non-filing or wrong filing, administrative penalties apply, which might also be invoked during an audit.

5. Russia received a number of requests for ownership information in the period under review and the Federal Tax Service estimate that a large percentage of the requests in respect of direct taxes pertained to information on the ownership of companies. In almost all cases, Russia's EOI partners

report having asked for information on companies. Generally, this information was provided in a timely manner and in the form requested. Peers have in general not highlighted any particular issue regarding information in this respect. Russia's EOI partners indicate that this information was provided in virtually all cases and that it was of high quality.

6. With regard to the availability of accounting information, there are generally obligations in place to ensure all relevant accounting records, including underlying documentation will be maintained for a minimum 5 year period. Russia received a number of requests for accounting information in the period under review. Russia's EOI partners indicate that this information was provided in virtually all cases and that it was of high quality. However, one peer noted that in two cases underlying information could not fully be provided.

7. Bank information is also required to be kept, although some bearer savings book accounts may remain for which the identity of the account holder will not be known until the books are presented. Recent amendments to AML law prohibit credit institutions not only from opening anonymous accounts, but also from maintaining such accounts. In practice, Russian authorities report that at present bearer savings book accounts are frozen. However, it is not clear whether steps are actually taken to enforce the prohibition to maintain such accounts, or whether the holder of a bearer savings book could still present themselves to the credit institution and carry out a transaction in respect of the account. Therefore, it is recommended that Russia monitors the practical implementation including the enforcement of the recently introduced prohibition on credit institutions to maintain anonymous accounts.

8. The Federal Tax Service has a variety of powers to access information for tax purposes; and there is also a special regime for accessing bank information. These domestic powers can be employed for EOI purposes due to the provisions to give effect to Russia's international agreements, which are found in the Constitution, Civil Code and Tax Code. There is a separate power providing access to bank information which also allows access to information as of 1 January 2013 relating to private individual's bank accounts. Access will be broadened further pursuant to a second amendment that took effect as of 1 July 2014. As of this date information relating to private individual bank accounts can also be accessed and used for domestic purposes, regardless of whether a DTC applies. As of this date banks will also start providing information on new accounts opened by private individuals to the Federal Tax Service electronically on an automatic basis. Consequently, access may be further facilitated while relevant bank account information will gradually be more and more available within databases of the Federal Tax Service itself. Russia has received a considerable number of requests for bank information in the period under review. These requests were generally responded to satisfactorily. Where Russia was unable to

provide bank information this was with respect to accounts of private individuals, as Russian authorities did not have any access powers to obtain this type of bank information until 2012, and in most cases during the period under review this type of information could not be provided. It is recommended that Russia monitors the practical implementation of the recently introduced powers to obtain bank information with respect to accounts of private individuals.

9. Secrecy in respect to information held by auditors is protected by a professional secrecy regime. There are no exceptions to that secrecy obligation where that information is sought for EOI purposes, and this could affect Russia's ability to access relevant information. Certain rights and safeguards exist under Russian tax law, namely with respect to the ability to appeal the decision of a tax official, however these do not unduly impact on effective access to relevant information.

10. Russia's main exchange of information mechanisms are based on DTCs that generally follow the terms of the OECD Model Tax Convention. In respect of the Multilateral Convention as well as a few of its signed DTCs, Russia has not yet taken all steps necessary for its part to bring those agreements into force. In addition, Russia's interpretation of the provisions relating to 11 of its EOI partners will limit the exchange to information relevant to persons covered by the convention. With one further DTC currently limited to exchange of information relevant to the provisions of the convention, 57 of Russia's 87 signed agreements are in force and in line with the standard.

11. On confidentiality, obligations to protect the confidentiality of information exchanged exist in Russia's EOI agreements, and enforcement measures in domestic law to support this duty are in place. Confidentiality of information exchanged under an EOI agreement is governed primarily by the Federal Law on Personal Data and the relevant provisions of the EOI agreement. In combination there is clearly an obligation to protect confidentiality of the information exchanged. The protection of audit secrets under Russia's domestic law is broad, and will affect its ability to give full effect to its commitments to exchange information under its EOI agreements. Although this issue did not come up in practice during the period under review, this has the potential to hinder effective exchange of information. Peer input did not identify any issues regarding the scope of audit secret during the period under review and the Russian Competent Authority reports that they did not encounter any practical difficulties with the application in this respect, A new law on audit secrecy is currently drafted and it is recommended that Russia amends its legislation to ensure the scope of audit secrecy under Russia's domestic law is consistent with access to information for EOI purposes under the international standard.

12. The Ministry of Finance is the competent authority for international exchange of information for tax purposes under all Russia's EOI agreements.

The Ministry of Finance delegated this competency to the Federal Tax Service of the Russian Federation (FTS). Thus, the FTS is the competent authority for EOI on behalf of the Ministry of Finance. Within the FTS the Control Directorate is the main unit in charge of EOI on request. There are no legal restrictions on the ability of Russia's competent authority to respond to requests within 90 days of receipt by providing the information requested or by providing an update on the status of the request. However, it is recommended that Russia should also provide status updates in cases where it is not in position to meet the 90 day deadline.

13. Over the period of review Russia has received almost eight thousand (7945) requests for information related to both direct taxes as well as customs and VAT. Requests received are not itemised based on the type of tax they relate to. However, the FTS estimate that the percentage of direct tax requests and VAT requests is approximately equal, some of them are complex i.e. they concern direct taxes and VAT at the same time. Over the period of review requests received from CIS countries concerned both direct taxes and VAT, requests received from other countries concerned only direct taxes. Including the time taken by the requesting jurisdiction to provide additional information, the requested information was provided within 90 days, 180 days and within one year in 87%, 93% and 94% of the time respectively.[1]

14. Russia has been assigned a rating for each of the 10 essential elements as well as an overall rating. The ratings for the essential elements are based on the analysis in the text of the report, taking into account the Phase 1 determinations and any recommendations made in respect of Russia's legal and regulatory framework and the effectiveness of its exchange of information in practice. On this basis, Russia has been assigned the following ratings: Compliant for elements A.2, B.2, C.3 and C.5, Largely Compliant for elements A.1, A.3, C.1, C.2 and C.4, and Partially Compliant for element B.1. In view of the ratings for each of the essential elements taken in their entirety, the overall rating for the Russian Federation is Largely Compliant.

15. Overall, Russia has a legal and regulatory framework in place that generally supports the availability, access and exchange of all relevant information for tax purposes in accordance with the international standards of transparency and exchange of information for tax purposes (hereinafter: international standard). Furthermore, Russia has in place appropriate organisational processes to ensure effective exchange of information. Recommendations have been made where elements of Russia's EOI regime have been found to be in need of improvement. A follow up report on the steps undertaken by Russia to answer these recommendations should be provided to the PRG within twelve months after the adoption of this report.

1. These figures are cumulative.

# Introduction

## Information and methodology used for the peer review of the Russian Federation

16. The assessment of the legal and regulatory framework of the Russian Federation (Russia) as well as its practical implementation was based on the international standards for transparency and exchange of information as described in the Global Forum's *Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information For Tax Purposes*, and was prepared using the Global Forum's *Methodology for Peer Reviews and Non-Member Reviews*. The assessment has been conducted in two stages: the Phase 1 review assessed Russia's legal and regulatory framework for the exchange of information as at July 2012, while the Phase 2 review assessed the practical implementation of this framework during a three year period (1 July 2010 through 30 June 2013) as well as amendments made to this framework since the Phase 1 review up to 29 December 2013. The following analysis reflects the integrated Phase 1 and Phase 2 assessments.

17. The assessment was based on the laws, regulations, and exchange of information mechanisms in force or effect as at 29 December 2013, the Russian responses to the Phase 2 questionnaire, supplementary questions and other materials supplied by Russia, information provided by partner jurisdictions and explanations provided by Russia during the on-site visit that took place from 21-24 January 2014 in Moscow, Russia During the on-site visit, the assessment team met with officials and representatives of the Ministry of Finance and the Federal Tax Service, including officials and representatives from the Control Directorate (including Division for Exchange of Information with Foreign Competent Tax Authorities), Taxpayers Registration and Recording Directorate, Transfer Pricing and International Cooperation Directorate, IT Directorate (including IT security division), Taxation of legal entities Directorate as well as representatives of the Moscow Tax Office Department.

18. The *Terms of Reference* breaks down the standards of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information; (B) access to information; and (C) exchange of information. This review assesses Russia's legal and regulatory framework and its application in practice against these elements and each of the enumerated aspects. In respect of each essential element a determination is made that either: *(i)* the element is in place; *(ii)* the element is in place but certain aspects of the legal implementation of the element need improvement; or *(iii)* the element is not in place. These determinations are accompanied by recommendations for improvement where relevant. In addition, to reflect the Phase 2 component, recommendations are made concerning Russia's practical application of each of the essential elements and a rating of either: *(i)* compliant, *(ii)* largely compliant, *(iii)* partially compliant, or *(iv)* non-compliant is assigned to each element. As outlined in the Note on Assessment Criteria, an overall "rating" is applied to reflect the jurisdiction's level of compliance with the standards (see the Summary of Determinations and Factors Underlying Recommendations at the end of this report).

19. The Phase 1 and Phase 2 assessments were conducted by assessment teams comprising expert assessors and representatives of the Global Forum secretariat. The 2012 Phase 1 assessment was conducted by a team which consisted of two assessors and a representative of the Global Forum Secretariat: Guillaume Drano, Fiscal Attaché at the Permanent Representation of France to the European Union; Richard Thomas, Attorney Advisor, Office of Associate Chief Counsel, Internal Revenue Service of the United States; and Caroline Malcolm from the Global Forum Secretariat. For the Phase 2 assessment Caroline Malcolm was replaced by Boudewijn van Looij, also from the Global Forum Secretariat.

## Overview of Russia

### *Political and legal system*

20. The Russian Federation (Russia) is a country in northern Eurasia and covering 17 million square kilometres, it is the largest country in the world measured by land mass. With 144 million inhabitants[2], it is also the world's eighth most populous country. The capital of Russia is Moscow and it shares borders to the north with Norway and Finland, to the west with Estonia, Latvia, Lithuania, Poland, Belarus, Ukraine, and Georgia, to the south with Azerbaijan, Kazakhstan, the People's Republic of China (China) and

2. Russian Federation Federal State Statistics Service (www.gks.ru).

Mongolia, and to the southeast with Democratic People's Republic of Korea. To the east, Russia faces the Pacific Ocean.

21. Russia is a semi-presidential federal republic, with a President as Head of State and Prime Minister as leader of the government. The cabinet consists of the Prime Minister, his deputies and the appointed ministers. The parliament is bi-cameral, with the Federation Council as the upper house, consisting of 166 members; and the State Duma, the lower house, with 450 members. Further, the Russian Federation is comprised of administrative divisions known as provinces, republics, autonomous okrugs, krays, federal cities or autonomous oblast. The official language is Russian and the currency is the Russian rouble (RUB).[3] It is a member of many international organisations, including the United Nations (UN).

22. Russia has a civil law system, and the legal framework is governed by the Constitution of the Russian Federation (the Constitution) which was adopted on 12 December 1993. The hierarchy of laws is the Constitution of the Russian Federation, followed by international treaties, and then domestic legislation. The Constitution and federal laws apply to the whole territory of Russia (article 4(2), Constitution). The Constitution has supremacy over other laws, and other laws adopted in the Russian Federation shall not contradict the Constitution (article 15(1) of the Constitution). Further, article 15(4) of the Constitution provides that "the commonly recognised principles and norms of the international law and the international treaties of the Russian Federation shall be a component part of its legal system. If an international treaty of the Russian Federation stipulates other rules than those stipulated by the law, the rules of the international treaty shall apply". This is further supported by specific provisions in the Civil Code and the Tax Code that provide for the provisions of an international agreement to prevail. In case domestic legislation is silent, the international treaty will apply directly.

23. The domestic legal framework consists of laws made at the federal, regional and municipal level with federal laws having supremacy (article 15(4), Constitution). The Civil Code is the principal legislation governing legal entities and arrangements. Other civil laws must be made in accordance with the Civil Code (article 3, Civil Code).

24. Russia's judicial system has 3 streams, with constitutional courts (headed by the Constitutional Court), courts of commercial jurisdiction (headed by the Supreme Arbitration Court), and courts of general jurisdiction (headed by the Supreme Court). The streams are distinct and matters on appeal are not ultimately decided by a single principal court. Broadly speaking, general jurisdiction courts adjudicate criminal matters and civil disputes

3. RUB 1= USD 0.0276287, and USD 1= RUB 36.1934 as at 20 March 2014 (www.xe.com).

between private individuals and the Commercial Courts are charged with handling disputes between commercial entities (which includes individual entrepreneurs). The constitutional court deals with any matters arising from the Constitution, including disputes between citizens and the State.

25. The interpretation of law by a superior court will as a matter of fact generally be binding on inferior courts because of the power of superior courts to cancel and modify judicial acts.[4]

26. For appeals relating to the imposition of a sanction for a tax offence, appeal must first be made to a higher tax official, although an appeal to a court remains possible at a later stage. Appeals on other matters relating to the application of the Tax Code may be made in the first instance to either a higher tax official or to a court. For entities or individual entrepreneurs, appeals are made through the commercial courts system, whilst individuals' appeals are made through the general jurisdiction courts. Arbitration Courts in the regions are the courts of first instance. As set out under section B.2., an appeal on a decision of a tax official which relates to the exercise of access powers for EOI purposes or other acts of tax officials which pertain to EOI matters would follow the same system. The Arbitration Courts of Appeal are the courts of second instance, and decisions of those courts may in turn be appealed to the Federal Arbitration Courts in the Districts. The Supreme Arbitration Court of Russia is the final appeal court. Further, the Supreme Arbitration Court has an important role as in respect of tax disputes as it may interpret legal provisions both in respect of particular cases, and also general interpretation in respect of all cases having a similar factual matrix. The purpose of such interpretations by the Supreme Arbitration Court is to ensure uniform understanding and application of legal provisions by commercial courts.

### *Commercial and Economic framework*

27. Russia has undergone significant changes since the transition from the Soviet Union moving to a more market-based and globally-integrated economy. The chief sectors of the Russian economy are natural resources, industry, and agriculture. The natural resources sector includes petroleum, natural gas, timber, furs, and precious and nonferrous metals. In 2011, Russia became the world's leading oil producer, surpassing Saudi Arabia. Furthermore, Russia is the second-largest producer of natural gas and holds the world's largest natural gas reserves, the second-largest coal reserves, and the eighth-largest crude oil reserves. Russia is the third-largest exporter of both steel and primary aluminium. Manufacturing and industry includes a complete range of manufactures,

4. Resolution of the Constitutional Court of the Russian Federation dated 21 January 2010 No. 1-P,.

notably automobiles, trucks, trains, agricultural and construction equipment. The agriculture sector includes grain, sugar beets, sunflower seeds, meat, and dairy products.

28. In 2013 the GDP of Russia was estimated to be in the region of USD 2.55 trillion. Russia's main commodities trading partners (import and export) are, in order: China, Germany, the Netherlands, Ukraine, Italy, Belarus, Turkey and the United States. Russia's main investment partners are, in order: Cyprus[5] [6], the Netherlands, Luxembourg, the United Kingdom, Germany, China, the British Virgin Islands, Ireland, Japan and France.

### *Financial sector and relevant professions*

29. The financial services sector is supervised by the Federal Financial Markets Service (FFMS) and the Central Bank of Russia. The FFMS is a Russian federal executive body which regulates and supervises the financial market including securities issuance, trading professional market participants and the self-regulatory organisations (for lawyers and notaries). The Central Bank of Russia is independent from other government bodies and amongst other responsibilities, is the regulator and supervisor for financial institutions. All banks must be licensed by the Central Bank and are subject to the Banking Law. As of 1 August 2014 there are 984 banks and 73 non-banking credit entities registered by the Central Bank of Russia. However, only 877 banks have license for performing banking operations (76 of them are wholly-owned foreign subsidiaries). As of 1 January 2014 the total assets of Russian banks were RUB 57.4 trillion (USD 1.59 trillion).

30. In 2013, a legislative reform was started to gradually integrate the FFMS into the Central Bank of Russia. This reform of the financial markets supervision is envisaged to take place in two main stages. First, from the end of 2013 to the start of 2015, the FFMS will function autonomously but within the Central Bank of Russia, without redistribution of its functions to the structural subdivisions of the Central Bank of Russia. Then, as a second stage, from January 2015, all functions of the FFMS of Russia will

5. Footnote by Turkey: The information in this document with reference to « Cyprus » relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

6. Footnote by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

be transferred to the structural subdivisions of the Central Bank of Russia. As a result, the Central Bank of Russia will also become the authority which regulates, controls and supervises the non-credit financial institutions operating in the financial markets and (or) their activities in accordance with the federal laws.

31. The legal framework that regulates Russia's financial sector is made up predominantly of:

- the Civil Code;
- Federal Law No.395-1 on Banks and Banking Activities dated 2 December 1990;
- Federal Law No.39-FZ on the Securities Market dated 22 April 1996 (Law on the Securities Market); and
- Regulations made by the Central Bank of Russia and the Federal Financial Market Service (subject to the reform of the FFMS as described above).
- In respect of anti-money laundering and countering the financing of terrorism, the key regulatory authority is Rosfinmonitoring (Russia's financial investigation unit), also known as the Federal Financial Monitoring Service (FFMS). The Federal Law No.115-FZ on countering the legalisation of illegal earnings (money laundering) and the financing of terrorism of August 7, 2001 (AML Law) forms the basis of Russia's anti-money laundering/Counter-financing of terrorism regime. It applies to entities accomplishing transactions in amounts of money or other property" which includes (article 5):
- credit entities;
- professional securities market-makers (including brokers, dealers, and depositories)
- insurance entities and financial leasing companies;
- the organisation of the federal postal service;
- the entities managing investment funds or non-governmental pension funds;
- operators engaged in payments' acceptance;
- the entities which provide broker's services in the accomplishment of transactions of the purchase or sale of immovable assets;
- credit consumer co-operatives; and
- micro-finance entities.

32. Further, the AML Law extends to the branches and representative offices and also to affiliates of the entities which carry out transactions in amounts of money or other property and which are located outside the Russian Federation. The obligations in the AML Law are further supplemented by regulations, orders and letters, in particular the AML Regulations (Regulations of the Central Bank of Russia No. 262-P on the identification by credit institutions of clients and beneficiaries for the purposes of counteraction to the legalisation or laundering of incomes derived illegally and to financing terrorism, of 19 August 2004), and the AML Letter (Letter of the Central Bank of Russia No. 99-T on the methodological recommendations for credit entities on elaborating internal control rules for the purpose of countering the legalisation of income received through crime (money laundering) and the financing of terrorism, of 24 July 2005).

### *Tax System*

33. The Federal Tax Service (FTS) is the federal executive authority responsible for controlling and supervising compliance with Russia's legislation on taxes and fees. It also has a number of other responsibilities, including the state registration of legal entities, individual entrepreneurs as well as maintaining the taxpayers' registry.

34. Russia's Tax Code provides in article 1 that Russian tax legislation is comprised of the Tax Code, as well as secondary legislation on taxes and fees which is made in accordance with the Tax Code. Tax legislation may also be made at a regional or municipal level (and which applies only in that region or municipality), and must also be made in accordance with the Tax Code.

35. Secondary legislation, such as orders and regulations, may be made by the federal, regional or municipal executive bodies which are authorised to discharge the functions of elaborating state policy and regulating legal acts on taxes and fees. At the federal level, the Ministry of Finance is the only agency which can issue official interpretations or clarifications of the Tax Code, which the FTS are required to follow.

36. Article 19 of the Tax Code defines taxpayers and payers of fees, as "entities and individuals who are under an obligation, under this Code, to pay taxes and/or fees, respectively". Further, Article 24 of the Tax Code defines a tax agent as a person who is required "to calculate, withhold from the taxpayer and remit taxes to the budget system of the Russian Federation."

37. At the federal level, the principal tax on entities is the profits tax which has a maximum rate of 20% (article 284, Tax Code). Entities formed in Russia are liable to tax on their worldwide income, and foreign entities with a permanent establishment in Russia (defined in article 306, Tax Code) are liable on their Russian source income (article 246, Tax Code). Withholding

taxes are also applied on certain other Russian source income paid to a foreign entity, regardless of a connection to a permanent establishment – mainly passive income such as royalties, interest, dividend income, and rental income, ranging from 10-20% (subject to an applicable DTC) (articles 246 and 309, Tax Code).

38. A company will be tax-resident in Russia only if it is formed under the laws of Russia, and it will be subject to tax on its worldwide income. There is no deemed residency rule, for example for companies which have their "effective management and control" in Russia. The standard rate of corporate tax is 20% (article 284, Tax Code). Companies, formed outside of Russia, as well as other foreign entities, will be taxed on their Russian source income when they have a "permanent establishment" in Russia. A permanent establishment exists when entrepreneurial activities begin to be carried out in Russia on a regular basis. At minimum, a permanent establishment is a "Representative Office" but can also include a branch, division, bureau, office, agency or any other economically autonomous subdivision. Russian source income is income from whatever source that is received by the permanent establishment in Russia.

39. In its double tax conventions, Russia follows the definition of permanent establishment in Article 5 of the OECD Model Tax Convention and its Commentary, and Russia's national model tax agreement includes a provision on "service PEs" described in paragraph 42.23 of the OECD Commentary to article 5.

40. Partnerships themselves are subject to the profits tax, although for some types of partnerships the duty to pay the tax due falls on the individual partners even though the amount of the liability is determined at the partnership level. General, Business and Limited partnerships are separate legal entities from their partners and are taxed and liable at the partnership level. The profits tax liability for Simple partnerships and Investment partnerships, which are not recognised as separate legal entities, is calculated on the profits of the partnership but liable to the partners.

41. The income of trusts created under foreign law or administered in Russia will only be taxable, to the extent that the trustee or beneficiaries are subject to tax in Russia. Any property or income held in trust will be attributed to the legal owner. Where the trustee is resident in Russia, the income received by the trust is considered to be earned by the trustee and will be subject to personal or profit tax, depending on the nature of the trustee. This will also be the case with respect to investment unit trusts which can be formed under Russian law, which requires the trustee to be a company formed in Russia.

42. All foreign persons (being entities, or individuals) exercising commercial activities in the territory of Russia are required to register with the FTS, regardless of whether those activities give rise to any tax obligations (article 83, Tax Code; and Order No. 117N on the specifics of tax registration of foreign entities, of 30 September 2010).

43. There is also a special type of taxation regime applicable to certain activities and categories of taxpayer, termed a "Simplified Taxation System" (STS). This regime has the status of a federal tax and provides exemptions from certain federal, regional and local taxes, and also applies separate record-keeping requirements (chapter 26.2 of the Tax Code). Taxpayers under this regime are subject to a tax rate of 5% to 15%. Whilst the criteria for being a STS taxpayer are complex (articles 346.11-346.13, Tax Code), in brief the STS will apply if in the 9 months prior to the entity's application, their turnover has not exceeded RUB 45 million (approx. USD 1.2 million). There are some exceptions to this rule however, with entities carrying out certain types of activities required to follow the "normal" tax system, even if their turnover is less than RUB 45 million (article 346.12(3), Tax Code). This includes persons who are banks, investment funds, professional securities market makers, solicitors and notaries. In 2012, there were 2.4 million STS taxpayers.

44. The Ministry for Finance is the named competent authority for international exchange of information for tax purposes under Russia's exchange of information (EOI) agreements. This power is delegated to the FTS where the Control Directorate manages EOI requests made by all countries. Regional tax offices and the Inspectorate for centralised data processing are also involved with exchange of information and report to Control Directorate of the FTS.

45. For automatic information exchange, competent authority is delegated to the Deputy Commissioner of the FTS and the Head of the Information Technologies Directorate (which is the FTS directorate which manages Russia's automatic information exchange). Russia has signed 87 conventions for the avoidance of double taxation with respect to taxes on income and capital.

## Recent developments

46. In May 2014 a draft law on amending Articles 82 and 93.1 of the Russian Tax Code was introduced by the Ministry of Finance to the Government of the Russian Federation, which has not yet submitted it to the Duma. The purpose of these amendments is to ensure that access for EOI purposes is possible for all relevant information which would otherwise be protected by the domestic law on "audit secrets". More specifically,

the amendments[7] hold a proposal to delete the words "and audit secrets" in paragraph 4 of Article 82, of the Tax Code. In addition, in Article 93.1 of the Tax Code a new paragraph 2.1 will be added, stating the right of the FTS to request relevant information from audit organisations for EOI purposes.

7. In accordance with the draft law:

extract from paragraph 4 of Article 82, which currently reads as follows:

"In exercising tax control it shall not be permitted to collect, store, use or disseminate information concerning a taxpayer (levy payer, tax agent) which has been received in violation of the provisions of the Constitution of the Russian Federation, this Code or federal laws or in violation of the principle of the protection of information which constitutes the professional secrets of other persons, and in particular legal secrets and audit secrets".

the words "and audit secrets" shall be deleted;.

# Compliance with the Standards

## A. Availability of Information

### Overview

47. Effective exchange of information requires the availability of reliable information. In particular, it requires information on the identity of owners and other stakeholders as well as information on the transactions carried out by entities and other organisational structures. Such information may be kept for tax, regulatory, commercial or other reasons. If the information is not kept or it is not maintained for a reasonable period of time, a jurisdiction's competent authority may not be able to obtain and provide it when requested. This section of the report assesses the adequacy of Russia's legal and regulatory framework on the availability of information. It also assesses the implementation and effectiveness of this framework.

48. The most common types of legal entities which can be formed under Russian law are joint stock companies and limited liability companies. For all companies formed under Russian law, obligations are in place to ensure that ownership and identity information is kept on their members. For partnerships formed under Russian law, such obligations are generally also in place. However, there is no express obligation to keep ownership and identity information relating to foreign companies with a sufficient nexus with Russia and foreign partnerships carrying on business, or with income, deductions or credits for tax purposes, in Russia**.** While, there is no express obligation to keep up to date information on the identity of the partners in a simple partnership, partners must report their income from the partnership, and each partner makes an individual return which would indicate the name

of the partnership. As each of the partners, whether they are a legal entity or an individual entrepreneur, must be registered, the FTS is able to cross-check the information about the identity of any partner and their association with a particular partnership.

49. Investment unit trusts formed under Russian law are regulated by the Federal Financial Market Service and there are obligations to keep identity information relating to those trusts. Trusts cannot otherwise be formed under Russian law, however it is recognised that trusts formed under the laws of foreign jurisdictions may be administered from Russia, or have a trustee resident in Russia. Although some requirements, including an amendment in 2013 regarding beneficial ownership, to keep identity information on beneficiaries, settlors and trustees for these types of trusts may apply, these measures will not ensure that the information is available in all relevant cases and a recommendation is made in this regard. Enforcement measures, in particular administrative fines, support the existing obligations to maintain relevant ownership and identity information. Within the FTS about 900 tax offices (with the total of about 5 000 employees) are authorised to make a registration. The same offices that are responsible for registration also verify information and are responsible for enforcement. In cases of non-filing or wrong filing administrative penalties apply, which might also be invoked during an audit. According to the Russian authorities, in 2013 approximately 22 500 legal entities and individual entrepreneurs were subject to administrative fines because of non-filing or wrong filing registration, which amounts to 0.27% of total number of operating legal entities as well as individual entrepreneurs in the registries (in total 8 121 971, consisting of 4 610 158 legal entities and 3 511 813 individual entrepreneurs) within mentioned period. In 2012 approximately 24 000 legal entities and individual entrepreneurs were under pending enforcement procedures which amounts to 0.28% of total number of operating legal entities as well as individual entrepreneurs in the registries (in total 8 561 030, consisting of 4 537 251 legal entities and 4 023 779 individual entrepreneurs) within mentioned period. In 2011 approximately 92 000 legal entities and individual entrepreneurs were under pending enforcement procedures which amounts to 1.06% of total number of operating legal entities as well as individual entrepreneurs in the registries (in total 8 646 154, consisting of 4 542 095 legal entities and 4 104 059 individual entrepreneurs) within mentioned period. Lastly, in 2010 approximately 131 000 legal entities and individual entrepreneurs were under pending enforcement procedures which amounts to 1.52% of total number of operating legal entities as well as individual entrepreneurs in the registries (in total 8 603 621, consisting of 4 491 307 legal entities and 4 112 314 individual entrepreneurs) within mentioned period. Overall, two recommendations are made for element A.1, which is found to be in place, but needing improvement.

50. As of 1 January 2013 a new Federal Law on Accounting took effect. The present Law on Accounting and the Tax Code establish requirements to keep accounting records, including underlying documentation, for all persons liable to tax in Russia. The obligation to keep these records for a minimum 5-year period is generally established in most cases, including all legal entities, and for the class of persons subject to the simplified tax system, an obligation to keep accounting records for 4 years is clearly established. The element A.2 is found to be in place.

51. Finally, obligations to keep bank information are established by the rules of the Central Bank of Russia as well as Russia's anti-money laundering regime. Client identity information obligations are generally sufficient and the law also establishes clear obligations to keep financial and transactional information relating to accounts. However a recommendation is made with respect to bearer savings book accounts which may remain in existence from before client identity requirements were put in place. Recent amendments to AML law prohibit credit institutions not only from opening anonymous accounts, but also from maintaining such accounts. Element A.3 is found to be in place. In practice, Russian authorities report that bearer savings book accounts are frozen. However, it is not clear whether steps are actually taken to enforce the prohibition to maintain such accounts, or whether the holder of a bearer savings book could still present themselves to the credit institution and carry out a transaction in respect of the account, and a recommendation in this regard is made.

## A.1. Ownership and identity information

Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities.

### *Companies (ToR A.1.1)*

52. Russia's corporate law framework, found primarily in the Civil Code, distinguishes between commercial and non-commercial legal entities. Under article 66 of the Civil Code, commercial entities in the form of companies may be created as open joint stock companies (OJSCs), closed joint stock companies (CJSCs), limited liability companies (LLCs) or additional liability companies (ALCs).

53. Companies are formed and managed in accordance with the Civil Code as well as either the Law on LLCs or the Federal Law 208-FZ on Joint Stock Companies of 26 December 1995 (Law on JSCs). For Joint Stock companies (open or closed), authorised capital is divided into a definite number of shares which must be nominal. A closed JSC (CJSC) may only distribute

stock to its founders or another pre-determined range of persons and may not exceed 50 shareholders (article 7, Law on JSCs). An open JSC (OJSC) has more than 50 shareholders and the participants have the right to dispose of their interest in the shares without the consent of the other shareholders.

54. Limited liability companies (LLCs) and additional liability companies (ALCs) are companies whose authorised capital is divided into shares (article 87, Civil Code), with a minimum share capital of RUB 50 000 (approx. USD 1400; article 14, Law on LLCs) and which may not have more than 50 members (article7, Law on LLCs). The liability of an LLC member is limited to their capital contribution. An ALC is governed by the same provisions of the Civil Code as an LLC, as well as by the Law on Limited Liability Company (Law on LLCs), except to the extent specified in Article 95 of the Civil Code. In particular, article 95 notes that for ALCs, all investors are severally (but not jointly) responsible for the ALC's liabilities.

55. The two most common types of legal entities formed under Russian law for carrying out commercial activities are joint stock companies and limited liability companies. As of 1 January 2014, the number of companies registered in Russia was as follows:

- 163 142joint stock companies, of which 130 990 are closed joint stock companies;
- 3 693 451 limited liability companies;
- 1 156 additional liability companies; and
- 12 894 foreign organisations recorded with the FTS (they perform their activities in Russia through permanent establishment and other grounds provided by the Tax Code.

56. In addition, there are other types of commercial entities such as partnerships, individual entrepreneurs which may also engage in commercial activities. Further information on these other commercial entities and arrangements are discussed elsewhere in Part A.1. Finally there are non-commercial entities and arrangements such as co-operatives, which are discussed briefly in Part A.1.5.

### *Ownership information required to be provided to government authorities*

57. All entities which engage in commercial activities (commercial entities) are required to register with the Federal Tax Service under the Federal Law no. 129-FZ on State Registration of Legal Entities and Individual Entrepreneurs" of 8 August 2011 (Law on State Registration). Companies do not gain legal personality until registration and the FTS maintains the Unified

State Register of Legal Entities (article 2, Law on State Registration). There is a separate state register maintained by the FTS in respect of Individual Entrepreneurs (article 5(2), Law on State Registration). Information held in the Unified State Register must be maintained for 15 years from the date of cessation of business (article 3, Rules for Storage in Unified State Registers of Legal Entities and of Individual Entrepreneurs of the Documents (Information) and for Handing Them Over for Permanent Storage to the State Archives (approved by Decision of the Government of the Russian Federation No. 630 of October 16, 2003).

58. The FTS has been authorised to administer the registry functions for the Unified State Register since 2002. Prior to that there were more than 4500 separate registry authorities without any unified registry documents or a single resource dedicated to registered legal entities. To solve this issue three unified state registers where created: USRLE (legal entities); USRIE (individual entrepreneurs); and USRT (taxpayers). All registration is conducted by the tax authorities. Within the FTS the Taxpayers Registration and Recording Directorate is primarily responsible for all methodological, organisational and IT support that is necessary for properly registering, recording and maintaining all taxpayer information.

59. The procedure applied for registration is unified throughout the country. Entities are registered at the regional level and the information is maintained on federal level in the Unified State Registry. A "one stop shop" principle has been implemented and the maximum time for registration to become effective is set at five working days. One of the aims is to facilitate the startup of new businesses.

60. According to the Russian authorities the numbers of registered legal entities grew from just over 1.4 million in 2003 to over 4.6 million in 2013.

61. Upon registration, each commercial entity obtains a unique identifying number, and certain information is entered in the relevant Unified State Register (article 5(1), Law on State Registration), including:

- Full name and organisational legal form;
- Address of the permanent executive body of the legal entity, or other person authorised to act in their name (including identifying details and taxpayer identification number)
- Identity information on the participants (members) in the entity, including their names, personal identification number, passport information (for individuals) and the share proportion held by the participant;
- For joint stock companies, identification of the persons responsible for holding the register of shareholders; and

- For LLCs and ALCs, information on the nominal values of shares, and information on the person engaged to manage any shares transferred by way of succession.

62. Any changes to the information provided under article 5(1), must be notified to the FTS within 3 working days (article 5(5), Law on State Registration). The earlier, out-dated information must also be preserved by the government under article 5(3) of the Law on State Registration.

63. Within the FTS about 900 tax offices are authorised to make a registration. In total, within FTS about 5000 people are working on registration. The same offices that are responsible for registration also verify information and are responsible for enforcement. In the larger regional centers like Moscow and Saint Petersburg special units are dedicated to enforcement. Further, special units work with courts in cases of litigation.

64. There are procedures in place to verify information upon registration. For example, passport information is verified by the notary who certified the applicants' signature. Further verification takes place with the Federal Migration Service. And in cases where an entity is being registered by another legal entity, there is verification that registering entity is in good standing.

65. Article 5(5) Law on State Registration requires all relevant changes to be reported to the registry within a period of three working days. It is the obligation of the taxpayer to keep information complete and up to date. For instance when there is a change in the activities of the entity, or a change regarding information that is included in the founding document, or any other changes of data that is contained in the register, for instance in case there is a new director, a new address, a reorganisation or liquidation. Information to be reported includes information on bank accounts, and, as Russian authorities explain, this information is provided directly by banks to the tax authorities. Each change is registered with a unique number, also showing the person that made the actual change in the registry and the date at which these changes took place.

66. Russian authorities reported experiencing some difficulties in practice in obtaining information regarding legal entities set up in the name of legal or natural persons, without the intention to ever perform any real commercial activity (so called "one day firms"). In this respect Russian authorities note that there is a regular system of verification that is undertaken by the FTS. According to the Russian authorities, in 2013 approximately 22 500 legal entities as well as individual entrepreneurs were subject to administrative fines because of non-filing or wrong filing registration, which amounts to 0.27% of total number of operating legal entities and individual entrepreneurs in the registries (in total 8 121 971) within mentioned period. In 2012

approximately 24 000 legal entities and individual entrepreneurs were under pending enforcement procedures which amounts to 0.28% of total number of operating legal entities and individual in the registries (in total 8 561 030) within mentioned period. In 2011 approximately 92 000 legal entities as well as individual were under pending enforcement procedures which amounts to 1.06% of total number of operating legal entities and individual entrepreneurs in the registries (in total 8 646 154) within mentioned period. Lastly, in 2010 approximately 131 000 legal entities as well as individual were under pending enforcement procedures which amounts to 1.52% of total number of operating legal entities and individual entrepreneurs (in total 8 603 621) in the registries within mentioned period. Enforcement in this respect is based on obligations in the Criminal Code, Civil Code and the Federal Law on State Registration (Law No 129-FZ). In total, the sum of the fines to be paid in this respect amount to RUB 38 million in 2013. Further to this, Russian authorities point out that an entity that shows no activity on its bank account for a longer period of time and doesn't file any tax returns will be marked as closed in the public register. Consequently according to article 21.1of the Federal Law No 129-FZ an entry on the dissolution of such legal entity will be made to the Unified State Register of Legal Entities. The Law provides for the procedure for excluding a non-active legal entity from the registry by the decision of a registering authority. This decision will be published and brought to the attention of the entity in question, its creditors as well as any other parties whose rights and interests might be influenced by such decision. Provided that the decision was not challenged by anybody during the three month period after the publication an entry on expulsion from the register will be made in the USRLE. Russian authorities state that the consequences of this procedure are equal to liquidation of the legal entity – the legal capacity is terminated without any succession. Russian authorities report that over the years 2010-13 in total 1 456 915 companies were excluded from the USRLE as inactive, as shown in the table below.

**Number of companies excluded from USRLE as inactive**

| Year | 2010 | 2011 | 2012 | 2013 | Total |
|---|---|---|---|---|---|
| Number of legal entities excluded from USRLE as inactive | 156 111 | 460 872 | 475 068 | 354 864 | 1 456 915 |
| Total number of legal entities in the USRLE | 4 491 307 | 4 542 095 | 4 537 251 | 4 610 158 | X |

67. Russian authorities also state that, based on amendments in 2013 (Federal Law No. 134-FZ of 28 June 2013, on amending certain legislative acts of the Russian Federation in regarding the countering of illegal financial transactions,) regarding article 51(3) of the Civil Code as well as article 23(1), sub items j to p, of the Federal Law on State Registration (Law No. 129-FZ), they now check upon registration the reliability of the information included in

the register and if the address in fact exists and if personal ID data, presented in the application forms conforms with data received from Federal Migration Service by registration authority from ID issuing authorities. While upon registration it may not be obvious that an entity will be used as a "one day firm", additional checks might take place in a later phase, e.g. concerning the proper filing of tax returns, and whether a named individual is really authorised to represent the company as a director. Furthermore Russian authorities explain that banks collect data on owners of legal entities who are their clients. It is mandatory for banks to identify beneficiary owners of their clients and provide such information to competent government authorities.

68. Regarding the general compliance rate, statistics provided by the Russian Authorities demonstrate that in 2013 the registration authority refused registration (including uploading data (amendments) to Unified State Register of Legal Entities and Unified State Register of Individual Entrepreneurs) of legal entities in approximately 245 000 cases (11% of total number of 2 181 070 applications filed) and of individual entrepreneurs in approximately 53 000 cases (3% of total number of 1 690 629 applications filed in this respect). As stated above applications to be filed include a broad range of changes including changes regarding activities of an entity, or changes regarding information that is included in the founding document, as well as any other changes of data that is contained in the register, for instance information with respect of a new director, a new address, a reorganisation as well as liquidation. Each change is registered with a unique number, also showing the person that made the actual change in the registry and the date at which these changes took place. According to Russian authorities, in total, 21 526 legal entities and 1 055 individual entrepreneurs were held administratively liable for provision of inaccurate information or failure to provide information to the registration authority in due time. In 2012 registration authorities refused registration in 9.66% of a total number of filed applications with regard to legal entities and of an individual entrepreneur in approximately 2.25% of a total number of filed applications, while for 2011 these numbers were 8.37% and approximately 2.19% of a total number of filed applications. In 2010 registration authorities refused registration (including amendment of information in USRLE and USRIE) of legal entities in approximately 245 000 cases (9.67% of a total number of filed applications) and of an individual entrepreneur in approximately 31 000 cases (1.81% of a total number of filed applications).

69. The grounds for refusing registration are listed in Law on State Registration; this list is exhaustive. The most frequent situations where a registration was refused include failure to provide documents required by law, filing of documents by an inappropriate applicant, or the situation where the registration authority possesses verified information that the address stated in the provided documents was wrong. Penalties for being held administratively

liable for provision of inaccurate information or failure to provide information to the registration authority are either a warning or a RUB 5000 (about USD 138) fine, for provision of knowingly false information – also RUB 5000 (about USD 138) fine or disqualification for up to a period of 3 years.

### *Ownership information required to be held by companies*

70. For all JSCs (open or closed), a register of all members which includes the number of each type of shares held must be maintained (article 44(1), Law on JSCs). The register may be maintained by the company itself, or by a registrar, and where there are more than 50 members, the register must be kept by a registrar (i.e. not by the company itself, article 44(3), Law on JSCs). The engagement of a registrar does not relinquish the responsibility of the company to ensure the register is kept (article 44(4), Law on JSCs). The registrar must update the register of securities upon receipt of an order on the transfer of securities which is completed in the proper form (article 8(3), Law on Securities Market).[8] There is an obligation to update the register of members within 3 days of the relevant documents (such as share transfers) being filed with the entity (article 45(1), Law on JSCs).

71. For LLCs and ALCs, the founding members must conclude a written agreement which includes information on the size and allocation of share capital for each founding member (article 11(5), Law on LLCs). It is the responsibility of the relevant participants to notify the company of any changes in the details recorded (article 31.1, Law on LLCs). Pursuant to article 31.1, of the LLC law the LLC or ALC must keep up to date a register of participants including information on their identity, the number of shares held, and the dates of transfer or acquisition of shares.

72. Where an entity has more than 500 participants, the register must be kept by a professional securities market-maker[9] pursuant to article 8 of the Law on Securities Market.

73. As noted above, the founders of companies are included in the register while subsequent changes in ownership have to be registered with the company itself, or, in certain cases, with a professional registrar – a legal entity-professional securities market participant. Information about the person who maintains the register is provided to the registration authority and

8. The Law on Securities Market regulates relations arising during the issue and circulation of securities, regardless of the type of the issuer, for example, whether the entity is publicly traded or otherwise (article 1).
9. The obligations of a professional securities market-maker (PSMM) are regulated by the Law on Securities Markets. PSMMs include brokers, dealers, clearing houses, depositaries and persons responsible for keeping share registers.

then reflected in USRLE. The company is obliged to notify the tax office, and will be liable in case of non- or wrong filing. The liability for improper maintenance and keeping of register of shareholders is based on article 15.22 of the Code on Administrative Offences, and article 185.2 of the Criminal Code of the Russian Federation.

### *Tax law and Companies*

74. In addition to the information filed with the FTS as the authority responsible for State Registration of Legal Entities and Individual Entrepreneurs, companies must also provide information to the FTS pursuant to the Tax Code, which include tax returns. Tax returns typically do not include ownership information in respect of companies, although when a dividend is paid, the shareholders to whom such a dividend has been paid must be identified in the tax return, providing the recipient's name, taxpayer identification number and the amount of the income.

### *AML regime*

75. Federal Law No.115-FZ of August 7 2001 (AML Law) forms the basis of Russia's anti-money laundering/Counter-financing of terrorism regime. It applies to organisations (entities and individuals) (AML Service Providers) carrying out transactions in amounts of money or other property" (articles 5 and 7.1, AML Law) including:

- credit organisations;
- professional securities market-makers (including brokers, dealers, and depositories)
- insurance organisations and financial leasing companies;
- the organisation of the federal postal service;
- the organisations managing investment funds or non-governmental pension funds;
- organisations engaged in the acceptance of payments;
- barristers, solicitors, notaries and persons pursuing entrepreneurial activities in the area of provision of legal or accountancy services, where the persons named carry out certain activities, including the management of funds or bank accounts on behalf of a client or the formation, maintenance or management of legal entities.

76. Trust service providers are not subject to Russia's AML regime.

77. Generally, the AML regime obligations divides AML Service Providers into two groups, namely financial institutions ("Financial AML Service Providers": as well as financial institutions, this group includes the gaming industry, real estate sector and dealers in precious metals and stones), and other service providers ("Non-Financial AML Service Providers": this group includes all other AML Service Providers, which is predominantly lawyers, accountants and notaries).

78. All AML Service Providers must establish client identity information except where the value of the operation is less than RUB 15 000 (approx. USD 415), pursuant to articles 7(1)(1), 7(1.1), and 7.1 of the AML Law. This information will include:

- For natural persons: surname, name, citizenship, data on identification document (or migration card, or residence permit), address (residence or temporary), and their taxpayer identification number.

79. For legal persons: name, taxpayer identification number (or a code of a foreign organisation), state registration number, the place of state registration and the legal address.

80. For Financial AML Service Providers, more detailed regulations on the scope of these obligations is provided in the AML Regulations and AML Letter, described in more detail in Part A.3 of this report. They do not however require the Financial AML Service Provider to keep information regarding ownership of legal persons: for instance, the owners of the company or the partners (including limited partners) in a partnership. There is an obligation for Financial AML Service Providers to regularly update client identity information (article7 (2) AML Law).

81. For Financial AML Service Providers, there is also an obligation to take measures to identify beneficiaries (based on information "substantiated and as available in the circumstances"), although there is no obligation to obtain beneficiary information where the client is another AML Service Provider (reg.1.3, AML Regulations)[10]. Pursuant to article 3 of the AML Law, a beneficiary is defined as:

> a person for whose benefit a client is acting, for instance under a contract of agency service and contracts of agency, commission and trust in the course of transactions in amounts of money and other property

10. As Russian authorities explain, all Financial Service Providers in Russia are domestic. Foreign financial organisations cannot operate in Russia – only Russian organisations with foreign ownership (whole or partial). They follow the same rules of disclosure and identification as purely Russian providers.

> Russia has made amendments to its AML law in 2013 (Federal Law of 28 June 2013 No. 134-FZ). In particular, the concept of "beneficial ownership" has been added to supplement the requirement to identify the "beneficiary". "Beneficial owner" means a natural person who directly or indirectly (through third persons) owns (has a predominant stake of over 25 per cent in the capital of) a client being a legal entity or has the possibility of controlling the actions of a client." (AML Law, article 3).

82. Pursuant to article 7(5.4), Financial AML Service Providers are specifically empowered to "demand and receive from the client, or the representative of the client, personal identification documents, constitutive documents and documents on the state registration of the legal entity or individual entrepreneur". For Financial AML Service Providers, there are also more specific requirements to know client identity information, and are set out in Part A.3 below. The obligations to keep transaction records are described in Part A.2.

83. Information obtained under the AML Law must be kept by all AML Service Providers for a minimum period of 5 years, counted from the date of the termination of the relationship with the client (article 7(4), AML Law).

84. As a result, with the exception of obligations on AML Financial Service Providers which are discussed below, the AML obligations will not by themselves ensure that all relevant ownership and identity information is maintained by an AML Service Provider in line with the standard.

### *Foreign companies*

85. All foreign persons exercising commercial activities in the territory of Russia are required to register with the FTS, regardless of whether those activities give rise to any tax obligations (article 83(2), Tax Code). The registry includes 2.3 million foreign individuals that have property or income in Russia. An Order describes the specific registration requirements for foreign entities (Order No. 117N on the specifics of tax registration of foreign entities which are not investors under a production sharing agreement or agreement operators of 30 September 2010). Item 4 of the Annex to the Order sets out the documents to be filed, including the constituent documents of the entities however these requirements do not include information on the owners of the organisation.

86. The Unified State Register of Taxpayers includes 12 894 foreign companies, which are required to register due to their activities in Russia through a permanent establishment. As stated in the previous paragraph, the information maintained in respect of these companies is not the same as the information kept on domestic entities. Registered information on foreign companies is predominantly based on information that is registered in the

jurisdiction of incorporation (e.g. foreign certificate of registration, founding documents), as well as the reason for the registration. This information is completed with the address and type of activities in Russia as well as information on real estate and vehicles owned in the Russian Federation.

87. Tax returns must be filed by foreign entities who have a permanent establishment in Russia and which have at least one source of income subject to tax in Russia. Non-residents receiving Russian source passive income only, are not required to file tax returns. Tax returns typically do not include ownership information in respect of foreign companies, although when a dividend is paid, the shareholders to whom such a dividend has been paid must be identified in the tax return, providing the recipient's name, taxpayer identification number and the amount of the income.

88. The AML Law also applies to branches and representative offices of foreign companies which are regularly carrying on activities in Russia, as well as affiliates of Russian entities which are located outside the Russian Federation and carry out transactions in amounts of money or other property.

89. Russian authorities have indicated, and feedback from peers has confirmed, that there have been no requests for information on companies formed under the laws of a third jurisdiction during the period under review. However, Russia should ensure that an obligation is established for up to date ownership and identity information to be kept for relevant foreign entities, including companies and partnerships.

### *Nominees*

90. There is no concept of nominee ownership under Russian law that relies on the separation of legal and beneficial ownership. Nominee holders of shares are referred to in Russia's law, but in these cases, the law is explicit that the "nominee" is acting as an agent, and does not assume legal ownership of the relevant property.

91. The Law on Securities Market describes a nominal holder of securities as "a person registered in the system of keeping the register, and is also a depositor of the depositary concerned, but not the owner of these securities" (article 8(2), Law on Securities Market). A nominal holder can be a professional securities market maker (PSMM, who is subject to the AML regime as a Financial AML Service Provider) (article 8, Law on Securities Markets). A PSMM can include a broker, dealer or depositary. In any event it appears that the nominal holder will have a relationship with the depositary concerned. Further, the depositary itself also falls within the definition of a PSMM.

92. A person who engages in depositary activity (a depositary) must be established as a legal entity (article 7, Law on Securities Market). Pursuant to

article 7 of the Law on Securities Markets, the depositary relationship must be established by written contract where the depository provides services which can include the holding of share certificates, or registering the transfer of share ownership. As with other nominal holders of securities, there is no transfer of the legal ownership of the shares. Depositaries can be engaged with respect to any type of entities, for example to hold shares relating to either private or public companies. If there is a chain of depositors holding a share certificate, the contract between the depositaries must make provision in the contractual agreement for the management of the identity information concerning the securities owner. The depositor has the right to be named as the nominal holder of the shares, in the register of shares. A nominal holder of shares will be indicated as such to the person responsible for maintaining the share register (article 8(3), Law on Securities Market).

93. The nominal holder or in any event the depositary will be subject to Russia's AML regime to keep client identity information described in detail above. It will include (for operations with a value greater than RUB 15 000 (approx. USD 415)):

- For natural persons: surname, name, citizenship, data on identification document (or migration card, or residence permit), address (residence or temporary), and their taxpayer identification number.
- For legal persons: name, taxpayer identification number (or a code of a foreign organisation), state registration number, the place of state registration and the legal address.

94. They will also be subject to the enforcement measures of the AML regime for non-compliance with those obligations, as described in Part A1.6 of this report. Therefore where securities are held nominally by a person acting in a professional capacity, Russia's AML regime will apply, under which there are clear obligations in place to know the identity of the person for whom they act.

95. The AML authorities responsible for professional service market makers and for the depositaries that hold shares is the Federal Financial Markets Service of Russia (FFMS of Russia), Federal Law No.39-FZ on the Securities Market dated 22 April 1996. Statistics provided by the Russian authorities provided regarding penalties imposed by bank of Russia in respect of AML Financial Service Providers (regarding the years 2008-12)[11] demonstrate the level of enforcement in respect of the obligations to maintain information in these cases. Furthermore it is clear that the FSFM attempts to inspect all institutions under its authority at least once every two years and Russia has taken several measures to improve the effectiveness of all the

11. Included in paragraph 168 of the report.

Russian supervisory authorities including supervision of FSFM. Furthermore, a better co-ordination between supervisory authorities supported more effective supervision, for example through the provision of relevant AML/CFT information to the supervisors. In addition, supervision has been co-ordinated, detailed guidelines have been published, more supervisory inspections have been undertaken, licences have been revoked and the number of suspicious transactions report s from supervised entities has also improved. The October 2013 FATF follow up report therefore notes that Russia has brought compliance with recommendation 23 regarding "regulation and supervision of financial institutions" up to a level of largely compliant.

### *Conclusion and practice regarding the availability of ownership information on companies*

96. Ownership information for all companies formed under Russian law is required to be kept by the companies themselves (JSCs, LLCs and ALCs) and also in the Unified State Register maintained by the FTS. Although Russian law does not recognise the concept of nominee ownership, persons who act as the nominal holders of securities are subject to the AML regime and required to keep client identity information. There are no requirements under Russian law to ensure that ownership information is kept for foreign companies that have a sufficient nexus with Russia.

97. Over the period of review, Russia has received almost eight thousand (7945) requests for information related to both direct taxes as well as customs and VAT. Requests received are not itemised based on whether they relate to ownership information or any other specific type of information. However, the FTS estimate that a large percentage of the requests in respect of direct taxes pertained to information on the ownership of companies.

98. In almost all cases, Russia's EOI partners report having asked for information on companies. Generally, this information was provided in a timely manner and in the form requested. In general peers have not highlighted any particular issue regarding ownership information. However, one peer noted that ownership information of a Russian Company including its directors and shareholders were requested but full information was not provided. According to this peer it was just stated that the company is in process of liquidation and the name of the person authorised for liquidation has been provided. This peer further reports that it has also been stated that the former director has not handed over the archives of the documents to the liquidator. Accordingly, in the view of the requesting jurisdiction, the information provided was not useful. Russian authorities, however, consider that the information was provided and it is also understood that Russia has opened criminal proceedings against the former director. An issue regarding the translation of some of the materials provided into English may have caused some confusion in this case. This issue

is analysed in section C.1.7. As discussed above, Russia's authorities report that they experienced difficulty obtaining information about so-called "one day firms". As stated, so-called one-day firms are legal entities set up in the name of legal or natural persons, without the intention to ever perform any real commercial activity, but with the sole goal of acting as formal party in a financial transaction commonly pursuing unlawful goals. Managers and founders of such companies are usually individuals that act as dummies for reward with real owners remaining behind the scene. The reasons for setting up these entities can be multiple. Russian authorities state that the ability to perform illegal financial operations for unlawful purposes, including tax evasion and shifting of profits gained in terms of illegal activities, is the biggest risk inherent to fly-by-night companies. One of the most commonly known purposes of such a vehicle is to make use of an entity for the purpose of VAT evasion. It appears that the Russian authorities have made considerable efforts to ensure that such firms are not allowed to register, and actively follow up on all entities' obligations to file tax returns. As noted, a large number of entities have been fined in these cases and recent amendments to Russia's legislation have improved the ability of Russia's authorities to enforce the rules in this regard. Nevertheless, in this respect Russia should monitor its ability to respond to EOI requests for ownership information on companies.

### ***Bearer shares*** *(ToR A.1.2)*

99. Bearer shares cannot be issued under Russian Law. The Law on Securities Markets applies "during the issue and circulation of securities, regardless of the type of the issuer", that is, regardless of whether the securities (including shares) relate to publicly traded entities or otherwise. Article 2 of the Law on Securities Market, defines a share as an "inscribed security" which in turn are defined as securities where the ownership information of the shareholder shall be accessible to the issuer in the form of a register of the owners of securities. Further, the transfer of the rights to the securities and the exercise of the rights recorded by them require the identification of the owner. In addition, some legislation includes specific provisions on issuing shares in nominal form, such as article 25 of the Law on Joint Stock Companies.

### ***Partnerships*** *(ToR A.1.3)*

100. There are 4 types of partnerships that can be formed under Russian law: simple, general, limited and investment. As at 1 January, 2014, the number of partnerships registered in Russia was:

- 330 General partnerships; and
- 501 Limited partnerships;

101. Russian authorities state that currently six Investment Partnerships exist, while there are no figures available on the number of Simple Partnerships.

102. The Civil Code provides under article 66 for the formation of General Partnerships and Limited Partnerships and both of these entities have a separate legal personality from their constituent partners. In General Partnerships all partners are general partners who take part in the business activities of the partnership and accept joint and several responsibility for its debts to the extent of all their assets (article 75, Civil Code). Limited Partnerships (LPs) have their partnership shares divided into general partners and limited partners, where general partners are liable to the extent of all of their assets; while the limited partners have liability limited to their capital contributions (article 85, Civil Code). Under Russian law, a person cannot be a general partner in more than one General Partnership or more than one LP (articles 69 and 82, Civil Code).

103. Since July 2012, Business Partnerships (BP) can also be created as a separate legal entity from its partners, pursuant to Federal Law No. 380FZ on Business Partnership. These types of partnerships are designed mainly to attract investors implementing high-risk innovative projects. Each partner in a BP has limited liability (article 2, Law on BPs); although by consensus the partners in a BP can elect to satisfy the debts of the partnership by recourse to the partners own assets (article 3(4), Law on BPs).

104. Russian law also recognises Simple Partnerships (SPs) and since January 2012, Investment Partnerships (IPs). Neither an SP nor an IP is a separate legal entity from its partners.

105. Simple Partnerships are formed merely as a contractual relationship, governed by articles 1041-1054 of the Civil Code. All partners are entitled to act on behalf of the partnership and are jointly and severally liable for the debts and obligations of the partnership both during the existence of the partnership and also after its dissolution (articles 1047 and 1050, Civil Code). It is possible to create a "silent" SP, where the existence of the contractual relationships is not disclosed to third parties (article 1054, Civil Code) however in other regards a silent SP is subject to the same obligations as an SP.

106. IPs are a form of partnership similar to a joint venture and in addition to the Civil Code obligations on SPs, they are regulated by Federal Law No. 335FZ on Investment Partnership (Law on IP). In an IP, only managing partners may run the business of the partnership (article 9, Law on IP). Liability is determined in accordance with article 14 of the Law on IP: for liability arising from contracts with other commercial entities, each partner (other than a managing partner) has limited liability; for liability arising from non-contractual obligations or where the other contracting party is not a business entity, then all partners have joint, unlimited liability; and for tax

liabilities, the managing partner is required to calculate the profits tax liability of the IP and allocate it across the partners with each partner responsible for meeting their own tax law obligations including the filing of separate tax returns (article 24.1, Tax Code).

### *Ownership and identity information required to be provided to government authorities*

107. As they are considered commercial entities, General Partnerships, BPs and LPs are required to register with the Federal Tax Service pursuant to the Law on State Registration. These partnerships do not gain legal personality until registration. Upon registration, the partnership is entered in the Unified State Register of Legal Entities and must provide certain specified information including information on the participants (article 5(1)(e), Law on State Registration) including their names, personal identification number, passport information (for individuals) and the partnership share held by the participant. Information provided to the Unified State Register of Legal Entities must be kept up to date with notification required within 3 days of any changes (article 5(5), Law on State Registration). Furthermore, regarding business partnerships, article 10, paragraph 5 of the Federal Law no. 380 FZ of 3 December 2011 on business partnership, makes clear that information on the composition of the partnership members is entered into the Uniform State Register of Legal Entities. However, more specific information on the exact size and cost of each partner's share in the Business Partnership's pooled capital is not to be included and there's a requirement for the partnership itself to keep this information. Therefore for this (more specific) information it is necessary to ask directly the business partnership itself.

108. The Unified State Register is maintained by the FTS. The organisation of the USRLE is described in the context of the registration of companies in part A.1. Filing of the documents as well as enforcement of these obligations takes place along the same lines as is the case for other entities like companies.

109. As neither an IP nor an SP is considered a legal entity, there is no requirement for them as such to register with the FTS pursuant to the Law on State Registration. However, pursuant to the Tax Code, the managing partner will have to register the IP as a taxpayer with the Unified State Register of Taxpayers (article 24.1(4)(1) Tax Code). Therefore the USRT will include information on the partnership. This will include the name of the partnership, date of conclusion of contract, names of participating entities as well as the shares and contract number of participants in the partnership. Russian authorities confirm that the accounts of all partners are in the FTS database and changes to the membership of the partnership are also registered. Russian authorities further state that individual persons may be parties to the investment partnership agreement (partners) only if they are registered

as individual entrepreneurs. In addition, article 83 Tax Code was amended in 2013 and supplemented with item 4.4. The new provision requires a legal entity participating in an IP as a managing partner to be registered with the FTS within a period of five days (Federal Law of 23 July 2013, No. 248-FZ). Registration of a company as a managing partner is performed by tax office at the place of tax registration thereof. In this case such company is required to provide a copy of investment partnership contract within 5 days as of the date when it was received by the company or of the notification on the appointment as a managing partner. Then within the same period a tax registration notification of the company in its capacity as a managing partner is issued (Paragraph 4.4. Article 83 of the Russian Tax Code).

110. In practice, Russia's tax authorities report that they have been able to obtain information on the identity of partners in an IP and they are able to identify a particular IP based on the identity of one of its partners. The USRT will also hold information on the bank accounts and the annual financial results of an IP.

111. Regarding a Simple Partnership, Russian authorities state that, because each of the partners, whether they are a legal entity or an individual entrepreneur, must be registered, the FTS is able to cross-check the information about the identity of any partner and their association with that partnership. Moreover, a change of a partnership share would have tax consequences, and so this information would be included in the tax returns of the respective partners to the partnership.

112. All foreign persons, including foreign partnerships, exercising commercial activities in the territory of Russia are required to register with the FTS, regardless of whether those activities give rise to any tax obligations (article 83(2), Tax Code). An Order describes the specific registration requirements for foreign entities (Order No. 117N on the specifics of tax registration of foreign entities which are not investors under a production sharing agreement or agreement operators of 30 September 2010). Item 4 of the Annex to the Order sets out the documents to be filed, including the constituent documents of the entities. However, these requirements do not include information on the owners of the foreign organisation.

113. In summary, foreign partnerships with commercial activities in the territory of Russia are required to register with FTS, but there's no express obligation under Russian law to register information on their partners (i.e. the parties to the partnership) with the FTS or to keep a registry.

114. Furthermore, as stated, for Business Partnerships there's a requirement to register the members of the partnership, but there is no requirement to register information regarding the exact size and cost of each partner's share in the partnership with the Unified State Register. Consequently, in a

number of cases the information in the registry does not cover all relevant ownership information on partnerships. For full ownership information in these cases it is necessary to request this information from the partnership itself, or to rely on ownership information stemming from tax filing requirements specific to partnerships. Russian authorities state and peer input confirms that there were no requests for this type of information during the period under review.

*Ownership and identity information required to be held by partnerships*

115. General Partnerships and LPs are formed by written agreements. For General Partnerships, the agreement is signed by all partners (article 7(1), Civil Code). The agreement shall contain the name of the entity and its address, as well as the contribution and partnership share of each partner (article 70(2), Civil Code). All partners must be informed when a partner leaves or transfers his partnership share (articles 76-79, Civil Code), and the partnership is required to update the identity information on its partners in the Unified State Register of Legal Entities within 3 days of any changes (article5(5), Law on State Registration).

116. For LPs, the partnership agreement is signed by all of the general partners (article 83(1), Civil Code), and shall contain the name of the entity and its address, as well as the contribution and partnership share of each general partner (article 83(2), Civil Code). Information on the general partners would need to be maintained in order to meet the obligation to update such information with the Unified State Register (article 5(5), Law on State Registration). The partnership shall issue to each limited partner a participation certificate recording their investment in the partnership (article 85(1), Civil Code). There is no express obligation for the partnership itself to keep a register with identity information on the limited partners. However the transfers of parts will be governed by the rules applicable to transfers of shares for limited liability companies (article 85(4), Civil Code). Accordingly, all transfers of shares must be notified to the partnership (article 21(15), Law on LLCs) and to the Unified State Register of Legal Entities (article 21(16), Law on LLCs).

117. A BP must keep a register of its members, including their capital contribution, and dates of transfer to and from the partnership (articles 10, 21, and 23, Law on BPs). BPs are required to have partnership "rules", which must be signed by all of the founding partners and contain information on the total size and composition of its capital (article 8, Law on BPs). The information on the composition of the members (but not their partnership share) must be registered in the State Register (article 10, Law on BPs). Any amendments to the partnership rules must be made unanimously, and are required to be registered with the FTS in accordance with the Law on State Registration.

118. For SPs, there is no express obligation for the contract of formation to include identity information for each of the partners. A partner wishing to leave a Simple Partnership must notify the partnership in writing three months prior to the proposed date of withdrawal (article 1051, Civil Code). Although there is no express obligation to keep an up to date list of partners in a SP, the obligations to establish the partnership by written contract, the written notification of withdrawal of a partner, the joint and several liability of the partners as well as the ability of any partner to bind the other partners as regards a third party, will generally ensure that up to date information on the identity of the partners is held by the partnership.

119. IPs are formed by an Agreement of Investment Partnership. Article 11 of the Law on IP, specifies that the agreement must contain terms including the total amount of contributions from each partner, and any changes to these terms are to be made by mutual agreement of the partners. The agreement, as well as any amendments to it including agreement on the full or partial transfer of partners' rights, must be attested by a notary in the number of copies equivalent to the number of partners, plus one; and a copy is to be kept by the notary (article 8(1), Law on IPs). All partners have a right to receive a notarised copy of the Agreement (article 4(2), Law on IPs). The Law on IPs provides that information in the Agreement of Investment Partnership is confidential; falling with the law on Commercial Secrecy (article 12, Law on IPs) and Russia has advised that this will include partner identity and partnership share information. The notary who attests the partnership agreement shall disclose the existence of the agreement, the date of the agreement, and information on the managing partner (article 12(3), Law on IPs). However, there is an exception to commercial secrecy to allow the FTS access to the partner identity information (discussed in Part B.1 of this report). In any event, as noted above, the managing partner of an IP must provide and update partnership information to the USRT.

120. For foreign partnerships, there is no express obligation under Russian Law for them to keep a register of the identity of their partners.

### *Tax law and partnerships*

121. Partnerships themselves are subject to the profits tax, although for some types of partnerships the duty to pay the tax due falls on the individual partners even though the amount of the liability is determined at the partnership level. General, Business and Limited partnerships are separate legal entities from their partners and are taxed and liable at the partnership level. The profits tax liability for Simple Partnerships and Investment Partnerships, which are not recognised as separate legal entities, is calculated on the profits of the partnership but liable to the partners.

122. General Partnerships, BPs and LPs file a single tax return, and for foreign partnerships, tax returns must be filed where they have a permanent establishment in Russia which has at least one source of income subject to tax in Russia. Partnership tax returns will only be required to include information on the identity of the partners where there is a distribution of income or losses to the partners. For Simple and Investment Partnerships, the partnership itself does not file a tax return and tax will be levied at partner level.

123. However, pursuant to the Tax Code, IPs are required to register with the FTS including providing a copy of the partnership agreement (article 24.1(4)(1), Tax Code). The partnership agreement will include information on the total contribution of the partners (article 11, Law on IP), however Russian authorities point out that individual persons may be parties to the investment partnership agreement (partners) only if they are registered as individual entrepreneurs. Russian authorities confirm that because of the registration, the accounts of all partners are in the FTS database and consequently changes to the membership of the partnership are also registered.

124. Partners in a Simple Partnership must report their income from the partnership activities and each partner makes an individual return which indicates the name of the partnership. As each of the partners (whether they are a legal entity or an individual entrepreneur) must be registered, the FTS is able to cross-check the information about the identity of any partner and their association with that partnership. Moreover, a change of a partnership share would have tax consequences, and so this information would be included in the partner's tax returns. Chapter 16 of the Tax Code establishes the offences and liability for non-compliance with the Code's obligations. This includes a fine of RUB 10 000 (approx. USD 276) for carrying on commercial activities without registration with the FTS as required, and failing to submit a tax declaration as required, entailing a fine of 5-30% of the unpaid tax, and a minimum of RUB 10 000 (approx. USD 276). In practice the identity of partners in a Simple Partnership are available by virtue of the tax filing requirements in respect of partnerships carrying on business in Russia, even though there is no express obligation for information to be kept on the identity of these partners. While no issues have arisen in practice, Russia should ensure that up to date information is required to be kept on the identity of the partners in a simple partnership.

### *AML regime and partnerships*

125. Persons involved in providing services to a partnership such as the formation, registration or management of partnerships as a legal entity are subject to the AML regime as Service Providers.[12] In addition, where a partnership carries out an operation or transaction with an AML Service Provider (such as an investment manager or credit institution), the AML client identity obligations will also apply. These obligations under article 7 of the AML Law and described above in the section on *Companies*, will include

- For natural persons: surname, name, citizenship, data on identification document (or migration card, or residence permit), address (residence or temporary), and their taxpayer identification number.
- For legal persons: name, taxpayer identification number (or a code of a foreign organisation), state registration number, the place of state registration and the legal address.

126. Where a partnership forms a separate legal entity (General Partnerships, BPs and LPs) AML obligations apply in respect of the partnership as a whole. Where there is no separate legal entity (SPs and IPs), it is only identity information on the managing partner which is required to be kept by an AML Service Provider. Information obtained under the AML Law must be kept by AML Service Providers for a minimum period of 5 years, counted from the date of the termination of the relationship with the client (article 7(4), AML Law).

127. As concluded in Part A.1 on *Companies*, the AML obligations will not, by themselves, ensure that all relevant ownership and identity information is maintained in line with the standard.

### *Conclusion and practice regarding the availability of ownership and identity information for Partnerships*

128. Therefore, for all partners of a General, Limited and Investment Partnerships, there is a clear obligation for partner identity information to be available and maintained by the partnership itself. Information about General and Limited Partnerships is stored in the USRLE. Information about Russian organisations participating in IP's as managing partners as well as about other partners (Russian and foreign companies, individual entrepreneurs may participate in IPs) is kept in Unified State Register of Taxpayers. While there is no express obligation to keep up to date information on the identity of

12. Where that person is a barrister, solicitor, notary or other person carrying on commercial activities in the area of legal or accountancy services (article 7.1, AML Law).

the partners in a Simple Partnership, partners must report their income from the partnership, and each partner makes an individual return which would indicate the name of the partnership. As each of the partners, whether they are a legal entity or an individual entrepreneur, must be registered, the FTS is able to cross-check the information about the identity of any partner and their association with that partnership.

129. Over the period of review, Russia has received almost 8000 requests for information. A small percentage of these pertained to information related to the identity of partners in a partnership. Russia's EOI partners report having asked for information on partnerships in one case. The requested information was provided and no difficulties were reported.

### ***Trusts*** *(ToR A.1.4)*

130. With the exception of regulated investment unit trusts (IUTs), it is not possible to establish trusts under Russian law, however there are no restrictions on persons in Russia acting as a trustee or providing other services to trusts created under foreign law. Indeed, the 2008 FATF report on Russia notes at paragraph 43 that:

> According to the authorities, trust service providers do not exist in Russia, although nothing would prohibit any natural or legal person from providing any of the activities listed in the FATF Recommendations (and such services are advertised).

131. Russia is not a Party to the Hague Convention on the Law Applicable to Trusts and on their Recognition of 1 July 1985. Generally speaking, as the concept of a trust does not exist, a trustee resident in Russia and holding Russian property in trust would be considered as the ultimate owner of such property and the property would be held in their name. To some extent, Russian tax law does recognise that trusts formed abroad may have effects in Russia, and this aspect is considered further below.

#### *Investment Unit Trusts*

132. IUTs are the only type of trusts which can be created under Russian law. The Federal Law No. 156-FZ on Investment Funds of 29 November 2001 (Investment Funds Law) governs the establishment of collective investment vehicles which can be formed as joint stock companies (Chapter II of the Investment Funds Law), or as IUTs (Chapter III). Pursuant to article 12(6), IUTs may be "open" (quoted on the stock exchange, and investors may redeem units at any time), "interval" (may redeem units within a fixed time period) or "closed" (may not redeem units until the expiration of the term of the trust deed).

133. A management company must be appointed as the trustee (article 10) and an up to date register of unit holders (who are the settlors and beneficiaries of the trust) must be kept (article 14(5)). The units themselves are registered securities and are issued only in electronic form (article 14). Where units are held by a nominal holder, the nominee is obliged to provide the data required to compile a list of unit holders within 2 days of receiving a request for information from the person responsible for keeping the register (article 14(6)).

134. An IUT must have trust administration rules which include the information described in the Investment Funds Law, including the full name of the management company and person responsible for keeping the register (Article 17). The trust administration rules must be registered with the Federal Financial Markets Service (FFMS) and changes to the information contained therein do not take effect until the amendments are also registered (article 19). The management company must be a JSC, an LC or an ALC formed under Russian law, and are subject to the AML regime as well as being licensed and regulated by the FFMS (article 38). The person responsible for keeping the register must also be licensed by the FFMS (article 47) and is personally liable for any failures in exercising those responsibilities (Article 48).

### *Tax Law and Trusts*

135. The income of trusts created under foreign law which have a trustee resident in Russia or are administered in Russia will only be taxable to the extent that the trustee or beneficiaries are subject to tax in Russia. Where the trustee is resident in Russia, the income received by the trust, is considered to be earned by the trustee, and any property of the trust will be attributed to the legal owner (often the trustee). The Russian resident trustee will be subject to personal or profit tax, depending on their legal status.

136. A Russian resident trustee will be required to be registered with the FTS. Furthermore, they will be subject to the Tax Code's record keeping obligations for the determination of their own taxes on their worldwide income; however those obligations do not expressly require identity information about beneficiaries and the settlor of a trust to be kept. Thus, in the case of a trust with a trustee resident in Russia, all records that are necessary for determining whether the trust income is taxable in the hands of the trustee must be kept by the trustee. It is also possible that the deed establishing the trust or the law under which the trust is established, may require identity information on the settlor and beneficiaries to be stated in the trust deed or otherwise maintained by the trustee. In each of these cases, this identity information could be requested from the trustee in Russia.

137. All foreign persons, including trustees, carrying on commercial activities are required to be registered with the FTS under the Tax Code, and they will be subject to its record keeping obligations. An order issued by the Ministry of Taxes and Contributions "on the approval of the Regulations on the particularities of registration of foreign organisations with tax authorities" dated 7 April 2000, specifically recognised the possibility of trusts being considered as an activity of a "foreign organisation" which could be a separate taxable entity (Annex 2 of the Order of Ministry of Taxes and Contributions, 7 April 2000). Accordingly, in addition to situations where the trustee is resident in Russia, a foreign entity acting as a trustee could be taxable in Russia either because they operated through a permanent establishment in Russia (as defined under the Russian Tax Code, this would require a fixed place of business), or on a withholding basis with respect to certain types of Russian source income.

138. More generally, if trust information is considered relevant for EOI purposes, the access powers of the FTS will allow them to seek information in the possession or control of a person in Russia, such as an administrator or trustee who would be subject to the record-keeping obligations established by the law governing the trust, in accordance with the choice of law for that particular trust.

### *AML regime and trusts*

139. Under the AML Law all financial institutions are obliged to identify customers. Russia has made amendments to its AML law in 2013 (Federal Law of 28 June 2013 No. 134-FZ). In particular, the concept of "beneficial ownership" has been added to supplement the requirement to identify the "beneficiary". "Beneficial owner" means a natural person who directly or indirectly (through third persons) owns (has a predominant stake of over 25 per cent in the capital of) a client being a legal entity or has the possibility of controlling the actions of a client." (AML Law, article 3).

140. Trust Service Providers are not themselves regulated by Russia's AML regime, and therefore no information regarding the parties to a trust (namely, the settlor, beneficiary or trustee) is required to be kept under the AML Law by a trustee or trust administrator for instance, even where that person is resident in Russia.

141. However, although there is no guidance available on its scope with respect to trusts, the definition of "beneficiary" or "beneficial owner" in the AML Law appears to be sufficiently broad such that if a trustee was a client of a Financial AML Service Provider (for example a person engaged to establish or manage a legal entity, or act as a share depositary), then the Financial AML Service Provider would be required to keep client identity information

including client's representative and/or beneficiary identity information (art 7 item 1, AML Law) and take measures ("well-grounded and affordable in the prevailing circumstances") to identify the trust's beneficiary or beneficial owner (article7 item 2, AML Law). Non-Financial AML Service Providers (predominantly, barristers, solicitors, lawyers and notaries) are not required to "take measures" to identify beneficial owners, but they are subject to the more general client identity requirements under article 7 item 1 of the AML Law.

142. Therefore, where a trust is the client of a Financial AML Service Provider, the requirement to identify the beneficial owner would extend to any person who has the possibility of controlling the actions of the trust. This should include any trustee of the trust, as well as a trust protector or other person who, in accordance with the terms of the trust, have the power to make decisions in respect of the trust's assets.

### *Conclusion and practice regarding availability of trust information*

143. Information with respect to the trustee (management company) and unit holders (who are the settlors and beneficiaries of the trust) in an IUT are required to be maintained under the Investment Funds Law. In addition, pursuant to the Tax Code, where a trustee is resident in Russia, some trust information may be available, which could include information on the identity of the settlor or beneficiaries of the trust. In addition under the Tax Code, for cases where the trustee is not resident in Russia but a foreign trust carries on activities through a permanent establishment in Russia or receives Russian-source income which is subject to withholding tax in Russia, certain trust information may also be available.

144. Therefore although trustees and trust service providers are not themselves specifically covered by the AML regime, where an AML Service Provider is engaged with respect to a trust's activities, the AML regime may in some circumstances ensure that identity information relevant to a trust is required to be kept, including information on beneficiaries and/or beneficial owners. The latter only if a 25 per cent threshold regarding beneficial ownership would be met.

145. Overall, the measures established under Russian law, including the 2013 amendment regarding beneficial ownership, will not ensure that identity information on the settlor, trustee and beneficiaries will be known in all cases for trusts which are administered in Russia or which have a Russian resident trustee. In some instances, the obligations of the Tax Code and AML regime may mean that this information is available. Trusts formed in Russia pursuant to the Investment Funds Law are required to maintain information on the identity of the trustee, settlors, and beneficiaries.

146. Over the period of review, Russia has received almost 8000 requests for information. However, Russian authorities have indicated, and feedback from peers has confirmed, that there have been no requests for information concerning the identity of a trustee, settlor or beneficiary of a trust during the period under review. Therefore it can be noted that a Phase 1 recommendation was included and the legal framework has not changed. However, the materiality of the gap has been established based on the experience in the period under review. As noted, statistics indicate that this issue didn't come up during the period under review and there were quite a large number of requests. This all adds up to the conclusion that the materiality of this issue in practice is insignificant, or – possibly – does not exist.

### ***Foundations*** *(ToR A.1.5)*

147. There is no legislation that permits the establishment of foundations in Russia.

### *Other types of legal entities and arrangements*

148. The Civil Code also provides for the establishment of Production Cooperatives, including for commercial purposes (article 107(1), Civil Code). The formation and management of Production Cooperatives is also regulated by the provisions of the Federal Law No. 41-FZ on Production Cooperatives, of 8 May 1996 (Law on Productive Cooperatives). As at 1 January 2014 there were 31 518 Production Cooperatives registered in Russia.

149. Production Cooperatives have a separate legal personality from their members and must contain at least 5 members (article 1 & 4, Federal Law on Production Cooperatives). They are mainly established for the purpose of joint production or other form of economic activity (such as farming or other type of service) and are based on the personal labour of its participants.

### *Ownership and identity information required to be provided to government authorities*

150. Similar to other legal entities such as companies, Production Cooperatives are required to register and provide information to the Unified State Register maintained by the FTS pursuant to the Law on State Registration. At the time of registration, Production Cooperatives are required to supply identity information on its members, and all changes in the information entered in the Unified State Register are required to be registered (article 5, Law on State Registration).

### *Ownership and identity information required to be retained by the Production Cooperative*

151. The Charter, being the constituent document of the Production Cooperative, will stipulate amongst other things, the internal information keeping requirements. The Charter is approved by general meeting of members of the Production Cooperative and must contain all information on the Production Cooperative and its members such as (articles 52, 108(2), 110(4), Civil Code; article 5 Federal Law on Production Cooperatives):

- Cooperative name and registered address;
- Share structure and order of distribution of profits and losses;
- Identity information of members; and
- Annual reports, accounting balance sheets and distribution of the Cooperatives profits and losses.

152. Transfer of the membership shares or withdrawal of membership in the Production Cooperative is governed by article 111 of the Civil Code. Withdrawals shall result in the members being able to recover their contribution and certain other payments, whilst transfers of shares to third parties shall be admitted only with the consent of the other members.

153. Production Cooperatives, as a legal entity, are taxable pursuant to the Tax Code and will therefore be subject to the same tax obligations as described for other legal entities such as companies.

154. Finally, Production Cooperatives must elect an Auditing Commission or Inspector, who shall act as an independent observer of the activities of the Cooperative (article 18, Federal Law on Production Cooperatives). The duties of the Inspector shall include, amongst other things, a right to demand that the officials of the Cooperative present any documents necessary for inspection (article 18(3), Federal Law on Production Cooperatives). The results of any audits conducted by the inspector are then presented to the general meeting of the Cooperative and the Supervisory Council. The co-operative may also bring in external auditors from time to time to inspect that all necessary documents that are required to be kept by the Cooperative are being maintained as required (article 18(5) Federal law on Productive Cooperatives).

155. As a result of these obligations in the Civil Code, the Law on Production Cooperatives and the Law on State Registration, there are obligations in place to ensure that information on the identity of the members and accounting information in respect of the activities of the Cooperative will be maintained.

*Conclusion and practice regarding foundations and production cooperatives*

156. As noted there is no legislation that permits establishment of foundations in Russia. The Civil Code provides for the creation of production co-operatives. Production co-operatives are required to register with the Unified State Register that is maintained by the FTS.

157. Russian authorities have indicated, and feedback from peers has confirmed, that there have been no requests for ownership information regarding foundations or production co-operatives during the period under review.

### *Enforcement provisions to ensure availability of information (ToR A.1.6)*

158. The existence of effective measures for the supervision and enforcement of obligations to retain identity and ownership information are an important part of an effective legal and regulatory framework.

159. Commercial entities, including companies general limited partnerships, and production co-operatives that fail to submit or do not submit within the prescribed time limits, the required information to the Unified State Register, will be liable for a warning or an administrative fine imposed on the entity's officers of up to RUB 5 000 (approx. USD 140) pursuant to the Law on State Registration (article 14.25, Code on Administrative Offences).

160. In addition, article 25 of the Law on State Registration provides alternative measures concerning legal entities and individual entrepreneurs who do not meet their obligations to provide information to the FTS under the Law on State Registration. Failure to meet such obligations grants the FTS the power to file a petition in Court for the liquidation of such entities, or in the case of an individual entrepreneur termination of his activities, in the case of repeated or gross violations, or other violations of an irreparable nature. These sanctions will apply to the obligation to provide ownership and identity information upon the formation of commercial entities such as companies and partnerships, as well as the obligation to keep such information up to date.

161. Within the FTS about 900 tax offices are authorised to make a registration. In total, within FTS about 5000 people are working on registration. The same offices that are registering also verify information and are responsible for enforcement. In the larger regional centers like Moscow and Saint Petersburg special units are dedicated to enforcement. Further, special units work with courts in cases of litigation.

162. In cases of non-filing or wrong filing administrative penalties apply, which might also be invoked during an audit. According to the Russian authorities, in 2013 approximately 22 500 entities, including companies,

General, Business and Limited Partnerships, and Production Cooperatives were subject to administrative fines because of non-filing or wrong filing registration, which amounts to 0.28% of total number of operating entities in the registries within mentioned period. In 2012 approximately 24 000 companies were under pending enforcement procedures which amounts to 0.28% of total number of operating entities in the registries within mentioned period. In 2011 approximately 92 000 companies were under pending enforcement procedures which amounts to 1.06% of total number of operating entities in the registries within mentioned period. In 2010 approximately 131 000 companies were under pending enforcement procedures which amounts to 1.52% of total number of operating entities in the registries within mentioned period. Enforcement in this respect is based on obligations in the Criminal Code, Civil Code and the Federal Law on State Registration (Law no 129-FZ). In total, the sum of the fines to be paid in this respect amount to RUB 38 million in 2013 (for information on other periods see table below). to this, Russian authorities point out that an entity that shows no activity on its bank account for a longer period of time and doesn't file any tax returns will be marked as closed in the public register.

163. The table below shows the sum of the fines imposed in respect of companies for non-filing or wrong filing regarding the years 2010-13.

| Total amount of administrative penalties imposed during the period under review, mln. RUB (USD) | |
|---|---|
| 2010 | 124 (3.43) |
| 2011 | 89 (2.46) |
| 2012 | 45 (1.24) |
| 2013 | 38 (1.05) |

Russian authorities point out that the significant decrease in the amount of fines imposed is caused by a streamlining of the registry processes during the review period. As a consequence all data required for updating the registry started to be received electronically from other agencies (previously it was the obligation of companies to provide information). Therefore, there was a significant decrease of the number of administrative requirements, leading to a similar decrease of the number of administrative penalties.

164. Regarding the general compliance rate, statistics provided by the Russian Authorities demonstrate that in 2013 the registration authority refused registration (including uploading data to Unified State Register of Legal Entities and Unified State Register of Individual Entrepreneurs) of legal entities in approximately 245 000 cases (11% of total amount of applications filed) and of individual entrepreneurs in approximately 53 000 cases (3% of total amount of applications filed).

165. According to Russian authorities, in total, 21 526 legal entities and 1 055 individual entrepreneurs were held administratively liable for provision of inaccurate information or failure to provide information to the registration authority.

166. Regarding Simple partnerships partners must report their income from the partnership, and each partner makes an individual return. As a change of a partnership share would have tax consequences, it would be noted in the returns. Chapter 16 of the Tax Code establishes the offences and liability for non-compliance with the Code's obligations. This includes a fine of RUB 10 000 for carrying on commercial activities without registration with the FTS as required, and failing to submit a tax declaration as required, entailing a fine of 5-30% of the unpaid tax, and a minimum of RUB 10 000.

167. For Investment Partnerships which are also not separate legal entities and not required to register as commercial entities in the Unified State Register, there are no express enforcement measures with regards to the obligation under the partnership agreement authorised by a notary, to keep information on the identity of the partners. However, pursuant to article 24.1(4)(1), Tax Code, the managing partner will have to register the IP with USRT. Therefore the USRT will include information on the partnership. This will include the name of the partnership, date of conclusion of contract, names of participating entities as well as the shares of participants in the partnership. Russian authorities confirm that the accounts of all partners are in the FTS database and changes to the membership of the partnership are also registered. Chapter 16 of the Tax Code establishes the offences and liability for non-compliance with the Code's obligations. This includes a fine of RUB 10 000 for carrying on commercial activities without registration with the FTS as required, and failing to submit a tax declaration as required, entailing a fine of 5-30% of the unpaid tax, and a minimum of RUB 10 000. Russian authorities further state that individual persons may be parties to the investment partnership agreement (partners) only provided that they are registered as individual entrepreneurs.

168. Contractual obligations, including contracts establishing Simple and Investment Partnerships, are protected by the provisions of the Civil Code. This will include civil liability of the entity or its representative persons for any damages caused by the violation of the contract's terms (see generally, Civil Code articles 9, 11 and 12; specifically in respect of Simple Partnerships, Civil Code article 1047).

169. In addition, for some entities there are specific obligations pursuant to the laws under which they are formed. A JSC which does not ensure a register of members is properly maintained, can trigger the joint liability of the company and any registrar on which the company has relied, for any loss or damage caused to shareholders as a result (article 44(4), Law on JSCs). For

LLCS and ALCs, article 44(1) of the Law on LLCs imposes liability on the company for any losses caused by a failure to properly maintain a register of members. These offences are established pursuant to article 13.25 of the Code on Administrative Offences which provides for fines from RUB 2 500 to RUB 5 000 for individuals, and between RUB 200 000 and 300 000 for legal entities. These fines will also apply with respect to failures to meet the other obligations imposed by legislation on JSCs, LLCs or ALCs.

170. An AML Service Provider who does not comply with the obligations to keep information established by the AML Law, including obligations to keep client identity information is liable to a penalty pursuant to article 15.27 of the Code on Administrative Offences. These administrative fines range from RUB 10 000 to RUB 30 000 for individuals, and for legal entities from RUB 50 000 to RUB 100 000. The amount of the fines will be greater where they concern other AML obligations such as suspicious transaction reporting. Russian authorities provided the following statistics regarding penalties imposed by bank of Russia in respect of AML Financial Service Providers (regarding the years 2008-12).

**Penalties imposed by Rosfinmonitoring (AML Agency), Bank of Russia, other supervisory bodies in 2008-12**

| | | | Number of penalties | Officials | Legal persons |
|---|---|---|---|---|---|
| Financial organisations | Credit organisations | 2008 | 6 | 5 | 1 |
| | | 2009 | 4 | 1 | 3 |
| | | 2010 | 10 | 5 | 5 |
| | | 2011 | 260 | 67 | 193 |
| | | 2012 | 307 | 48 | 259 |
| | Professional participants in the securities market (including mutual investment funds) | 2008 | 15 | 5 | 10 |
| | | 2009 | 64 | 28 | 36 |
| | | 2010 | 38 | 14 | 24 |
| | | 2011 | 80 | 38 | 42 |
| | | 2012 | 36 | 12 | 24 |

171. Nominal holders of securities must provide within seven days identity information on the persons for whom they act if requested by the registrar (being the person responsible for keeping the registrar of members in an entity) (article 7(2), Law on Securities Market). Article 8(3) of the Law on Securities Markets imposes liability for any damages arising due to an ability to exercise the rights under the securities, on any person who "improperly carries out the procedure for supporting the system of keeping and compiling the register, and who has breached the forms of reporting (to the issuer, registrar, depositary, and owner)".

172. Chapter 16 of the Tax Code establishes the offences and liability for non-compliance with the Code's obligations. This includes: a fine of RUB 10 000 for carrying on commercial activities without registration with the FTS as required, and failing to submit a tax declaration as required, entailing a fine of 5-30% of the unpaid tax, and a minimum of RUB 10 000. Further FTS of Russia and its territorial bodies undertake measures to enhance oversight regarding the compliance of taxpayer's obligations. According to Russian authorities this primarily involves audit and analytical work of the tax authorities in order to timely detect risks of tax offenses by taxpayers and to encourage them to voluntarily comply with their tax obligations. According to the results of audit and analytical work in 2013 there were 140 thousand revised tax returns filed, increasing the tax liabilities by RUB 47 billion in total in 2013. According to Russian statistics in 2012 this amounted to an increase of RUB 44 billion, while this was – RUB 49 billion in 2011 and RUB 48.5 billion in 2010 (reference can be made to the table in paragraph 291).

173. Enforcement measures, in particular administrative fines, are generally in place to support the existing obligations in Russia's law to keep ownership and identity information. In addition, contractual or statutory liability for losses or damages caused by violation of obligations may apply.

**Determination and factors underlying recommendations**

| **Determination** | |
|---|---|
| **The element is in place, but certain aspects of the legal implementation of the element need improvement.** | |
| **Factors underlying recommendations** | **Recommendations** |
| There is no clear obligation for ownership and identity information to be kept on foreign entities, including foreign companies which have a sufficient nexus with Russia and foreign partnerships which are carrying on business in Russia, or have income, credits or deductions for tax purposes in Russia. | Russia should ensure that an obligation is established to ensure that up to date ownership and identity information is kept for relevant foreign entities, including companies and partnerships. |

| Determination | |
|---|---|
| **The element is in place, but certain aspects of the legal implementation of the element need improvement.** | |
| **Factors underlying recommendations** | **Recommendations** |
| Russian law does not ensure that information is available to identify the settlors, trustees and beneficiaries of foreign trusts with a Russian trustee or where the trust is administered in Russia. Certain AML Service Providers may in some cases be required to keep information on trust beneficiaries where they are engaged in respect to a trust's activities. | Russia should ensure that information identifying the settlors, trustees and beneficiaries of foreign trusts, which are administered in Russia or in respect of which a trustee is resident in Russia, is available to its competent authority in all cases. |

| Phase 2 rating |
|---|
| **Largely compliant** |

## A.2. Accounting records

Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements.

### *General requirements (ToR A.2.1); Underlying Documentation (ToR A.2.2); and Document retention (ToR A.2.3)*

174. Requirements to keep accounting records arise predominantly from Russia's Tax and Civil Codes, as well as the Federal Law No. 129-FZ on Accounting of 21 November 1996 (the 1996 Law on Accounting). As of 1 January 2013 Federal Law No. 402-FZ on Accounting (the 2013 Law on Accounting) took effect, replacing Federal Law No. 129-FZ on Accounting.

#### *The 1996 Law on Accounting*

175. The 1996 Law on Accounting applied to all legal entities established under Russian law (all companies, General, Business and Limited Partnerships, and Production Cooperatives), and to branches and representative offices of foreign legal entities. For commercial entities which do not have a separate legal personality (such as Investment and Simple Partnerships), or entities which are subject to the STS, the obligations of the Law on Accounting generally did not apply. However under the 1996 Law on

Accounting, STS taxpayers were required to keep records of fixed assets and intangible assets (article 4(3), 1996 Law on Accounting).

176. Under article 8 of the 1996 Law on Accounting, legal entities were required to ensure that records of liabilities and economic transactions be kept by means of double entry on interrelated accounts. All transactions should be supported by vouchers which are the primary account source documents and which must contain certain information including the name and date of the document, a description of the economic transaction, and the name of the person responsible for the transaction and their signature. Further details on the required contents and completion of vouchers were set out in articles 12-18 of the Ministerial Decree No. 34n on adoption of Regulations on accounting and accounting statements in the Russian federation" of 29 July 1998 (Regulation on Accounting).

177. Under article 17 of the 1996 Law on Accounting, legal entities were required to keep primary (original) documents for accounting purposes, as well as accounting records and financial statements for not less than 5 years.

178. Further, on a monthly, quarterly and annual basis, legal entities were required to prepare accounting reports which included a balance sheet, profit and loss report as well as explanatory note and in some cases, certified audit reports (articles 29-30, Regulation on Accounting).These accounting reports should be such as to allow a true and complete picture of the entity's assets and financial condition, any changes in its status, and also its financial results (article 32, Regulation on Accounting).

179. As noted, the 2013 Law on Accounting took effect as of 1 January 2013. The law sets out that a general duty of bookkeeping applies to all commercial and non-commercial legal entities established under Russian law, individual entrepreneurs as well as branches and representative offices of foreign legal entities, situated on the territory of the Russian Federation.

180. Article 10 then specifies that accounting records are kept by way of making a double entry on accounts. The basis for this is data contained in source accounting documents, regarding an enumerated list of objects of accounting (article 5), i.e. *facts of economic life*, assets, liabilities, sources of financing, incomes, outlays, or other objects, if this is established by the federal standards. According to article 9 every fact of economic life shall be formalised in a source accounting document. These documents are subject to a timely registration and accumulation in the accounting registers. According to article 9(2) the obligatory requisites of a source accounting documents are the following:

(a) designation of the document;

(b) date of the document's compilation;

(c) designation of the economic subject which has compiled the document;

(d) content of the fact of economic life;

(e) size of the natural and (or) the monetary measurement of the fact of economic life, with an indication of the units of measurement;

(f) designation of the post occupied by the person (persons), who has (have) made a deal or an operation and who is (are) responsible for its correct formalisation, or designation of the post, occupied by the person (persons), responsible for correctly formalising an event that has taken place;

(g) signatures of the designated persons with an indication of their surnames and initials, or of other requisites, necessary for identifying these persons.

181. Article 8 points out that, when formulating the accounting policy with respect to a particular accounting object, the method for keeping accounting records shall be selected from among those admissible by federal standards. As to the presentation in the accounting register, article 9 points out that this register should contain a chronological and (or) systematic grouping of accounting objects. Further obligations include designation as well as signatures of persons, responsible for keeping the register.

182. Article 18 requires an obligatory copy of the compiled annual accountancy (financial) reports to be presented within three months after the end of the accounting period. Article 29(1) requires source accounting documents, registers of the accounting and accounting (financial) reports to be kept in conformity with the rules for organising the state archive business, but for not less than five years after the accounting year. In addition, article 29(2) of the Law on accounting requires documents regarding the accounting policy, the economic subject's standards and other documents, connected with organising and keeping the accounting, including appliances, providing for reproduction of electronic documents, as well as for verification of the electronic signature's authenticity to be kept for at least five years. Therefore, under the Law on Accounting a minimum 5-year retention period of accounting records as well as underlying documentation is clearly established.

183. An exclusion from the general duty of bookkeeping under the Law on Accounting applies to individual entrepreneurs and persons engaged in a private practice, if they keep records of their income and outlays and or other taxation objects in accordance with procedures laid down in the tax law (Law on Accounting, article 6(2)). The same exception exists for entrepreneurs, as well as branches and representative offices of foreign legal entities situated on the territory of the Russian Federation, if they otherwise keep records of

their incomes and outlays, and (or) of other taxation objects in accordance with procedures laid down in tax law.

184. However, a more general and wide ranging exemption general duty of bookkeeping under the Law on Accounting – that existed under the 1996 Law on Accounting – namely for individuals *as well as* legal entities subject to the STS no longer applies.

185. More specifically, as of 1 January 2013 only *individuals* coming within the exemption under article 6(2) of the Accounting Law may now possibly qualify for record keeping requirements under the STS. A further reaching exemption that existed prior to 1 January 2013 and that also included (legal) entities that were subject to the STS no longer applies.

186. However, for small businesses that do not fall within the scope of the exemption provided for in article 6(2) of the 2013 Law on Accounting, article 20 of the Law on Accounting provides a simplified method of accounting, including simplified annual accounting (financial) statements. Article 21(3) of the Law on Accounting states that these methods are established by Federal standard.

187. The simplified accounting statements consist of a simplified form of balance sheet and income statement, including information regarding assets, liabilities, income, expenses and business operations that can be considered essential for understanding an entity's financial state or financial performance.

188. A definition of small enterprises is included in article 4 of Federal Law No. 209-FZ on the development of small and medium business in the Russian Federation of 24 July 2007. A legal entity will fall[13] within the scope of the definitions as set for small enterprises if the following conditions are met:

- The average number of employees is under 100;
- The previous year sales revenue exclusive of VAT is under RUB 400 million (approx. USD 11 million);

13. However, pursuant to article 14(3) of Federal Law No. 209-FZ from 24 July 2007 the following SME types are excluded:

    - Credit and insurance institutions (including non-banking credit institutions), investment funds, non-state pension fund, securities traders, pawnbrokers;
    - Parties to production sharing agreements;
    - Gambling organisations;
    - Enterprises manufacturing and selling excisable goods, natural resources (with the exception of common commercial minerals);
    - Non-residents of the Russian Federation.

- The total share of an enumerated category of shareholders in the capital does not exceed 25 per cent (this includes the Russian state, foreign legal entities, foreign citizens, non-profit and religious organisations, charity funds, as well as one or several large enterprises).

*Tax law*

189. Article 19 of the Tax Code defines a taxpayer as entities and individuals subject to an obligation to pay taxes, and notes that branches and other separate subdivisions of Russian entities shall pay tax in the location of those branches or other separate subdivision**.** Taxpayers will not include trusts, except to the extent that the trustee or beneficiaries are subject to tax in Russia.

190. Taxpayers, which encompasses persons (entities or individuals) resident in Russia, including trustees, as well as foreign entities with a permanent establishment in Russia, will be subject to the account record-keeping obligations described in the Tax Code. Taxpayers must (article 23, Tax Code):

> 3) keep records of their income (expenses) and taxable items in accordance with the established procedure, if the legislation on taxes and fees provides for such an obligation;
>
> (5) present to the tax authority at the place of residence of an individual businessman, private notary or solicitor/barrister who has founded solicitor's studies the registers of receipts, expenditures and economic transactions by request of the tax authorities; to present to the tax authority at the location of an organisation accounting report documents in compliance with the requirements established by the Federal Law on Accounting, except for the cases when entities under the said Federal Law are not obliged to keep accounts or are relieved of keeping account.
>
> (6) submit to the tax authorities and to their officials in the cases and in the procedure provided for by this Code, the documents required to calculate and pay taxes.

191. In addition, the simplified tax system regime exists which has the status of a federal tax and provides exemptions from certain federal, regional and local taxes, and also applies separate record-keeping requirements (chapter 26.2 of the Tax Code).

192. Whilst the criteria for falling within the STS are complex (articles 346.11-346.13, Tax Code), in brief the STS will apply if in the 9 months prior to the entity's application to join the STS system, their turnover has not exceeded RUB 45 million. There are some exceptions to this rule however, and entities carrying out certain types of activities are required to follow the

"common" tax system, even if their turnover is less than RUB 45 million. The list of excepted persons includes banks, investment funds, professional securities market makers, solicitors and notaries. In 2012, there were 2.4 million STS taxpayers, which make up less than 1.5% from more than 144 million taxpayers in Russia. In terms of revenue, in 2011 STS taxpayers contributed 0.76% of the total tax revenue assessed.

193. An STS taxpayer may elect for the tax base to be determined either on an "income only" basis which will be taxed at 6%, or on "income minus outlays" basis, which will be taxed at between 5-15% (articles 346.14 and 346.18, Tax Code). Permissible outlays are set out in article 346.16 of the Tax Code.

194. For STS taxpayers, article 346.24 of the Tax Code requires (for profit tax purposes):

> Taxpayers are obligated to keep record of incomes and expenses for the purpose of tax base calculation in the book of incomes and expenses of entities and individual entrepreneurs that practice the simplified taxation system, with the form and fill-in procedure for it being approved by the Ministry of Finance of the Russian Federation.

195. For STS taxpayers who elect to apply the "income only" basis to determine their tax base, there is only a clear requirement to keep tax records in respect of income. Only those STS taxpayers who elect not to deduct expenses would fall within this group. Furthermore, it is only the records on expenses which they are not under a requirement to keep. As of 1 January 2013 this potential gap in respect of STS taxpayers has narrowed further since the introduction of the 2013 Federal Law, while only individuals availing of the exemption under article 6(2) may potentially qualify for the STS basis and that entities that could have qualified under the STS basis may now only qualify for simplified accounting rules under article 20 in the new Federal law.

### Underlying documentation requirements under the Tax Code

196. The Tax Code obligations in respect of underlying documentation apply to both "common" and STS taxpayers. Article 313 is the general provision on tax records which describes comprehensively the necessary recording system. The opening paragraph of article 313 states that

> The taxpayers shall calculate the tax base by the results of every reporting (tax) period on the grounds of the data of the tax records.

> Tax recording shall be seen as the system for summing up information for defining the tax base for tax on the grounds of the data from the basic documents grouped in accordance with the procedure stipulated by the present Code.

197. In addition, there are also specific provisions which deal for example with how income and expenses are to be determined which also refer to the documentation obligation. For example, article 248 of the Tax Code states *inter alia*:

> The incomes shall be defined on the basis of the initial documents and other documents confirming that the taxpayer has received incomes, and of tax recording documents.

198. All expenses must be justified and documented as described in article 252(1) of the Tax Code. Articles 248, 252 and 313 are applicable to STS taxpayers by virtue of articles 346.12(2.1) and 346.16(2) of the Tax Code.

### Five year minimum retention requirement under the Tax Code

199. With respect to the length of time for which tax records must be kept, article 23(8) of the Tax Code which applies to both common and STS taxpayers states:

> (8) ensure safekeeping, over the course of four years, of bookkeeping and tax records, as well as of other documents required for the calculation and payment of taxes and fees, including the documents confirming income earned and expenses incurred (for entities and individual entrepreneurs) and paid (withheld) taxes.

200. In addition, article 23(5) of the Tax Code which applies to taxpayers except individuals availing of the exemption under article 6(2) of the Law on accounting incorporates the obligations of the Law on Accounting which establishes a 5 year retention requirement.

201. In addition, Russia has advised that pursuant to Federal Law No. 125 FZ on Archive Activity of 22 October 2004 which applies to all persons in Russia, and an Order issued under article 6(3) of that Law,[14] the maintenance

14. Pursuant to article 6(3) of the Federal Law on Archive Activity, the Ministry of Culture issued Order No. 558 of 25 August 2010 on Endorsing a List of the Model Managerial Archival Documents Produced in the Course of Operation of State Bodies, Local Self-Government Bodies and Organisations with an Indication of Storage Periods. That Order was not provided to the assessment team, however Russia advised that it states the most common time period for the maintenance of accounting records is not less than 10 years, and 5 years for business correspondence.

of all business correspondence for a minimum period of 5 years from their date of creation, as well as the maintenance of accounting records for not less than 10 years, is recommended.

202. Therefore, for STS taxpayers, the minimum 4 year retention period is established and in addition, accounting records may also be covered by the obligations in the Federal Law on Archive Activity. As stated, as of 1 January 2013 this potential gap in respect of STS taxpayers has narrowed further since the introduction of the 2013 Federal Law on Accounting, while only individuals availing of the exemption under article 6(2) may potentially qualify for the STS basis and entities that could have qualified under the STS basis may now only qualify for simplified accounting rules under the article 20 in the new Federal law on Accounting.

### Enforcement measures under the Tax Code

203. Penalties for non-compliance with the Tax Code obligations arise under the Tax Code and the Code on Administrative Offences. Article 120 of the Tax Code describes the penalties for gross violations of its record-keeping obligations. Penalties range between RUB 10 000-30 000, or are calculated as a percentage of the tax due if the violation has resulted in an underpayment of tax. A gross violation means:

> absence of primary [detailed] documents, or absence of invoices, or absence of book-keeping or tax registers, repeated (twice and more times during a calendar year) untimely or incorrect coverage of business transactions, monetary funds, tangible assets, intangible assets and financial investments of the taxpayer in the balance sheet accounts, in tax registers and in reporting.

204. Article 15.11 of the Code on Administrative Offences (which also applies to the accounting record obligations in the Law on Accounting and the Civil Code), provide for an administrative fine of RUB 2 000-3 000 where there is a gross violation of the "rules of bookkeeping and of submitting statements of accounts, as well as of a procedure and terms of keeping accounting documents". In this context, "gross violation" means:

> distorting amounts of charged taxes and fees at least 10 per cent; or distorting any item (line) of an accounting form by at least 10 per cent.

205. In summary, the Tax Code establishes requirements to keep all relevant accounting records, including underlying documentation for all taxpayers in line with the international standard. A minimum 5-year retention period of those accounting records is clearly established for most taxpayers.

### *Civil Code*

206. In addition to the application of the Tax Code and Law on Accounting, members and partners in commercial entities formed under Russian law have a right to be informed on the activity of the partnership or company and to be acquainted with its accounting books and other documentation in conformity with the procedure laid down by the constituent documents (article 67(1), Civil Code). There are no express obligations under the Civil Code for entities formed under Russian Law to keep such accounting books, or other accounting information, and the obligation under article 67 would not meet the international standard concerning accounting information.

### *Anti-money laundering regime*

207. The AML regime creates obligations for all AML Service Providers to keep certain accounting records in respect of their clients. The monetary value at which the record-keeping obligations commence, are higher than the threshold for client identity information under the AML regime. Account record keeping information must be maintained if the operation is subject to "compulsory control" as described in article 6 of the AML Law (broadly, for operations involving money or movable property, where the operation value meets or exceeds a specified monetary value – in most cases RUB 600 000; or for immovable property, where the operation value exceeds RUB 3 000 000), or those subject to "obligatory control" (where money laundering or financing of terrorism is suspected) pursuant to article 6(1) and (1.1) of the AML Law.

208. The accounting records which must be kept by all AML Service Providers are described in article 7(1)(4) of the AML Law, with the AML Service Provider to "keep documentary records" on matters including:

- the type of the transaction and the grounds for the accomplishment of the transaction;
- the date of the transaction in amounts of money or other assets and the amount of the transaction;

209. Further, under article 7(5) of the AML Law, the AML Service Provider must provide Rosfinmonitoring with any additional information which is available to it about the clients' transactions, if required to by written request. Rosfinmonitoring is not entitled to demand information relating to transactions concluded prior to the AML Law entering into force, except where such documents and information are required to be provided by Russia under one of its international treaties.

210. In sum, where an entity is carrying out an operation through an AML Service Provider, accounting records relating to that operation will be required to be kept where the monetary value thresholds for the operations are met. Those records will be required to be kept for a 5 year minimum period. However, these obligations will only be complementary to other account record-keeping obligations under Russian law as they do not by themselves ensure that all the required records, including underlying documentation, are maintained in line with the international standard. This is particularly the case as trust service providers as such are not covered by the AML regime, and where there is no obligation for any particular type of entity to engage or carry out operations through an AML Service Provider.

### *Investment and Business Partnerships*

211. There are also specific accounting requirements relating to Investment Partnerships and Business Partnerships.

212. Article 24(1)(5) of the Tax Code provides that the managing partner of an IP must:

> present to the agreement's participants a copy of an estimate of the financial result of the investment partnership and data on the share of profit (loss) of the investment partnership falling on each of them in the procedure and at the time which are established by the agreement of investment partnership but at latest fifteen days before the end time of filing with the tax authority tax declarations (estimates) for tax on entities' profits fixed by this Code.

213. Under article 4(4) of the Law on IPs, the managing partner must provide certain information to each partner, such as the amount of the outlays or current rate of the share of the partnership which falls to that partner. At the time of entering into any contract on behalf of the IP, the managing partner must be in a position to include in the contract, the following information (article 14):

> (1) data on the total cost of the partners' common property as of the time of concluding the cited agreement and on the rate of paid shares in the common property of the partners which are not managing partners;
>
> (2) the condition as to the limitation of the liability of the partners which are not managing partners in proportion to the cost of the paid shares in the partners' common property possessed by them as of the time of raising claims for the discharge of obligations;

214. For BPs, article 5 of the Law on BPs provides that:

> (1) Partnership members have the right: …
>
> 2. to receive information on the partnership's activity and to get acquainted with its accountancy reports and other documentation in accordance with the procedure, laid down in the present Federal Law and in an agreement on the partnership's management;
>
> (4) Every participant in a partnership has the right to get acquainted with its entire documentation. The refusal from this right or its restriction, including by an agreement with the partnership's management, is nil and void.

215. These requirements for IPs and BPs will be complementary to other account record-keeping obligations under Russian law, and do not by themselves ensure that all the required accounting information, including underlying documentation, are maintained in line with the international standard.

216. Regarding partnerships regulation No. 20 regarding "Acting Report on Participation in Common Activities" applies. This regulation puts the managing partner of an IP in charge of accounting reporting and requires him to provide this information to the other partners.

217. Individuals may be parties to the investment partnership agreement (partners) only provided that they are registered as individual entrepreneurs in accordance with Russian legislation.

218. As stated above, under the Law on Accounting an individual entrepreneur has an accounting reporting requirement. There is a requirement to maintain accounting information, but there is no requirement to file this information with the annual tax return. However, pursuant to article 23 (1) 5 of the Tax Code taxpayers are obliged to present upon the tax authority's request, a journal of income and expenses and economic operations. In addition, this provision incorporates the obligations of the Law on Accounting which establishes a 5 year retention requirement.

### *Investment Funds*

219. Funds formed under the Investment Funds Law can take the form of a JSC or an IUT and have specific accounting requirements. Investment funds must engage an external auditor, to perform an annual audit which must cover at minimum the items described in article 50(2) of the Investment Funds Law, which include: the bookkeeping system, accounting and reporting relating to the property owned by the fund, and the transactions with such property, the composition and structure of assets, a calculation of the net assets, ad an appraisal of their value. The audit report must be filed annually

by the fund with the FSMM. The fund is also obliged to provide at the request of any "persons concerned" the information described in article 52, including the balance sheet and profit and loss account of the fund, and a statement of the change in the value of the fund since the last audit. The JSC and the management company which is the trustee of an IUT will also be subject to the record keeping requirements under the Law on Accounting and the Tax Code.

### *Conclusion on availability of accounting information*

220. The Tax Code establishes requirements to keep all relevant accounting records, including underlying documentation in line with the international standard. These obligations will apply to all persons subject to tax in Russia, which encompasses persons resident in Russia, including trustees, as well as foreign entities with a permanent establishment in Russia. A minimum 5-year retention period of those accounting records is clearly established for "common" taxpayers. A 4-year minimum retention period is clearly established for accounting records of STS taxpayers (individuals) who may elect to keep accounting records relating to income and expenses, or income only. Obligations under other laws, including the AML regime, the Civil Code and specific laws on investment funds, IPs and BPs provide additional obligations but will not ensure that all relevant accounting records are maintained.

### *In Practice*

221. The availability of accounting information is mainly ensured in accordance with the tax laws. Under the Law on Accounting a minimum 5-year retention period of accounting records as well as underlying documentation is established for most tax payers. In addition, the Tax Code establishes requirements to keep all relevant accounting records, including underlying documentation for all taxpayers in line with the international standard. In this respect article 23 (8) requires the tax payer to ensure a retention period of four years of financial and tax information. Pursuant to article 23(5) financial statements should be filed with the tax authorities no longer than three months after the reporting year. Furthermore, all entities must file returns either as regular tax accounting or STS. In this context Russian authorities highlight that in 2013 81.3 % of all legal entities and 76 % of all individual entrepreneurs filed their annual tax return and accounting information (financial statements) electronically.

222. All filed information is registered and kept by FTS for a period of at least five years, but as Russian authorities state in practice most probably longer, or even without any fixed term ("indefinitely"). In accordance with paragraph 5 article 23 of the Tax Code statements should be provided annually.

223. Audit and enforcement of accounting rules are based on Chapter 14 (Tax control), art 87-105 of the Tax Code. These provisions apply both to common as well as STS taxpayers.

224. Article 82 of the Tax Code authorises the tax authorities to carry out tax audits "checking accounting and reporting data". Tax audit takes place based on article 87 Tax Code, while article 93 gives the possibility to request documents from the "audited person" when performing a tax audit and also sets penalties in case of refusals.

225. With regard to monitoring and enforcement, monitoring is done based on a risk analysis on 12 publicly available ratios. However, this (automated) risk analysis does not cross check the information in the tax return against information available in other databases. More in general, regarding oversight of compliance of taxpayer's obligations, Russian authorities state that this primarily involves audit and analytical work of the tax authorities in order to timely detect risks of tax offenses by taxpayers and to encourage them to voluntarily comply with their tax obligations. According to the results of audit and analytical work in 2013 there were 140 thousand revised tax returns filed, increasing the tax liabilities by RUB 47 billion in total in 2013. According to Russian statistics in 2012 this amounted to an increase of RUB 44 billion, while this was – RUB 49 billion in 2011 and RUB 48.5 billion in 2010.

226. As noted above, certain taxpayers are entitled to employ simplified accounting rules.

227. Statistics provided by the Russian authorities show that there were 2.4 million STS taxpayers in 2012 of which 1.6 million were taxed on "income only basis", which make up around 18 percent of the 8.7 million taxpayers in Russia that have business type of income (comprising of 4.6 million legal entities and 4.1 million individual entrepreneurs).

228. According to FTS documentation the audit coverage of taxpayers who applied for a special tax regime in 2012 stood at 0.27% (in 2011 it was 0.28%). This means that for every 1 000 taxpayers who apply special tax regimes, only 2 or 3 of them are currently audited.

229. Up until 2012 STS taxpayers were exempted under the 1996 Law on Accounting, while under tax law STS taxpayers who elected to apply the "income only" basis to determine their tax base, were only required to keep tax records in respect of income. In this situation no clear requirement existed to keep records on expenses.

230. However, as of 1 January 2013 the 2013 Law on Accounting took effect and STS taxpayers as such are no longer exempted from bookkeeping requirements in line with the Law on Accounting.

231. Further, as noted, article 6(2) Law on Accounting holds an exemption only for individual entrepreneurs. In these cases record keeping requirements based on the Tax Code prevail. As some of these individuals could qualify as STS taxpayers who (possibly) elected to apply the "income only" basis to determine their tax base, there could (potentially) still be situations were no clear requirement exists to keep records on expenses. However, it must be noted that these situations are now limited to individuals and individual entrepreneurs, as there's no longer an exemption for legal entities from book-keeping requirements under the 2013 Law on Accounting. Therefore, the limited gap that was reported in Russia's Phase 1 review has further diminished as of 1 January 2013.

232. As stated, the Law on Accounting introduced simplified accounting rules for small business entities (irrespective of their taxation regime), including the filing of simplified accounting statements. These simplified accounting statements consist of a simplified form of balance sheet and income statement, including information regarding assets, liabilities, income, expenses and business operations that can be considered essential for understanding an entity's financial state or financial performance.

233. Russia received a number of requests for accounting information in the period under review. Russia's EOI partners indicate that this information was provided in virtually all cases and that it was of high quality. However, one peer noted that in two cases, it has requested accounting information but the same was provided only partially and was incomplete. In particular, details of purchases, copies of invoices, expenditure on marketing expenses, details of reimbursement of expenses, etc. was not provided[15]. However, from the input it is not clear whether these requests related to STS taxpayers. This seems unlikely as Russian authorities confirm that there were no issues regarding accounting information in respect of STS taxpayers. Therefore, in practice the highlighted exception regarding STS taxpayers who (possibly) elected to apply the "income only" basis to determine their tax base did not impact the effective exchange of information. Nevertheless Russia should monitor the practical implementation of the exemption provided for in article 6(2) Law on Accounting as well as the simplified accounting system to maintain all relevant accounting records.

15. In this regard the peer noted that the cover letter was in English, but did not hold the requested information As the cover letter also did not explain what was included in the annexes, which were very extensive and in Russian only, the peer stated it cannot be ascertained whether the information in the annex held the requested information, nor whether it was useful or not.

**Determination and factors underlying recommendations**

| Phase 1 determination |
|---|
| **The element is in place.** |

| Phase 2 rating |
|---|
| **Compliant** |

## A.3. Banking information

Banking information should be available for all account-holders.

### *Record-keeping requirements* *(ToR A.3.1)*

234. Banking information should include all records pertaining to the accounts as well as to related financial and transactional information. The obligations to keep this information are imposed on financial institutions under Russia's AML regime.

235. Financial AML Service Providers must keep identity information on "a client, a representative of a client and/or a beneficiary", except where the transaction involves the receipt by the financial institution of RUB 15 000 or less (approx. USD 415), or a foreign exchange transaction of an equivalent value (article 7(1), AML Law). Also, where operations are carried out without a bank account being established, including operations involving the settlement or remittance of funds, client identity information with respect to the payer or beneficiary as relevant, must be kept for operations with a value exceeding RUB 15 000 (article7.2, AML Law). There is an obligation to update identity information on clients and beneficiaries on a regular basis (article 7(1)(3), AML Law).

236. For Financial AML Service Providers, the precise client identification obligation is further specified in the AML Regulations as well as in the AML Instructions (Instructions of the Central Bank of Russia No. 28-I of 14 September 2006, on opening and closing bank accounts and accounts for deposits). This includes the requirement to maintain the following information (reg. 2.3, AML Regulations):

- for natural persons: surname, name, date of birth, citizenship, passport details, residential address, migration card number and other such visa information where applicable.
- for legal entities: the full name, organisational structure and status, taxpayer identification number, residential address, bank's identification code, information about the registered and paid share capital,

> contact telephone number, information received for the purpose of identification of businessmen.

237. There is an obligation for Financial AML Service Providers to regularly update client identity information (article7 (2), AML Law), and all information obtained under the AML regime must be maintained by the AML Service Provider for a minimum 5 year period (article7(4), AML Law).

238. For Financial AML Service Providers, there is also an obligation in take measures to identify beneficiaries (based on information "substantiated and as available in the circumstances"), although there is no obligation to obtain beneficiary information where the client is another AML Service Provider (reg.1.3, AML Regulations). Pursuant to article 3 of the AML Law, a beneficiary is defined as:

> a person for whose benefit a client is acting, for instance under a contract of agency service and contracts of agency, commission and trust in the course of transactions in amounts of money and other property

239. Further, under article 7(5.4), a Financial AML Service Provider is specifically empowered to "demand and receive from the client, or the representative of the client, personal identification documents, constitutive documents and documents on the state registration of the legal entity or individual entrepreneur".

240. Financial AML Service Providers are also specifically prohibited from (article 7(5), AML Law):

> opening an account (deposit) for anonymous holders, i.e. without presentation by the natural or juridical person which opens the account (deposit) of the documents required to identify the person;
>
> opening an account (deposit) for natural persons without the attendance in person of the person which opens the account (deposit) or his representative;
>
> establishing and maintaining relations with non-resident banks which do not have permanent managerial bodies in the territories of the states where they are registered;
>
> concluding a bank account contract (deposit) with a client if the client or a representative of the client has defaulted on the provision of the documents required to identify the client or the representative thereof in the cases established by the present Federal Law.

241. Prior to the introduction of the client identity information requirements under Russia's AML regime which entered into effect in February 2002, it was possible for Russian financial institutions to issue savings books to bearer (bearer savings books) for which the identity of the holder would not be known. As at June 2012, Russia advised that 23 700 bearer savings accounts remained in existence, holding a total of RUB 594 000 (approx. USD 16 400. In addition, recent amendments to AML law (Federal Law of 28 June 2013 No. 134-FZ) prohibit credit institutions from not only opening anonymous accounts, but also from maintaining such accounts (AML Law, article 7(5)). This new provision in AML law does not provide any particular procedure for credit institutions to follow where they have anonymous accounts and are unable to identify the beneficial owner. However, maintaining such an account would now be a violation of the AML Law and subject to the penalties provided thereunder.

242. In practice, Russian authorities report that at present bearer savings book accounts are frozen. However, it is not clear whether steps are actually taken to enforce the prohibition to maintain such accounts, or whether the holder of a bearer savings book could still present themselves to the credit institution and carry out a transaction in respect of the account. At minimum, the customer identity information requirements would be required to be carried out upon production to the financial institution of the bearer savings book. Russia should monitor the application of this new law and the elimination of the existing bearer savings books.

243. With respect to the financial and transaction information pertaining to accounts, the Central Bank Rules (Regulations of the Central Bank No.302-P on the rules for bookkeeping at credit institutions located on the territory of the Russian Federation of 26 March 2007) establish clear requirements to keep all relevant transaction and financial records. These are complemented by the obligations of the AML regime on all Financial AML Service Providers.

244. Rule 4.28 of the Central Bank Rules describes the information to be recorded in respect of accounts held by a commercial entity. In particular:

> On second-order balance-sheet accounts "profit-making entities" shall open accounts for entities whose activities are mainly aimed at making profits…
>
> On the credit side of the accounts shall be entered the amounts received by the said entities in correspondence with correspondent accounts, accounts of entities, accounts for registration of budget and intrabank operations, for registration of credits and other accounts.

> On the debit side of the accounts shall be shown the amounts written off them in correspondence with the accounts cited in the credit side thereof.
>
> Analytical accounting shall provide for keeping accounts in respect of every organisation.

245. The rules for accounts held by individuals carrying on business, as well as non-residents are described in rule 4.30 and following, and establish requirements similar to those found in rule 4.28.

246. Under the AML regime, there are requirements to keep transaction records where the operation is subject to "compulsory control" (being, in general transactions which exceed a monetary value of RUB 600 000 (approx. USD 16 600), as defined in article 6(1), AML Law) or those subject to "obligatory control" (where money laundering or financing of terrorism is suspected).The transaction records which are to be kept by all AML Service Providers include (Article 7(4), AML Law):

- the type of the transaction and the grounds for the accomplishment of the transaction; and
- the date of the transaction in amounts of money or other assets and the amount of the transaction.

247. For Financial AML Service Providers, these transaction information requirements are further detailed in the binding 2005 Letter issued by the Central Bank of the Russian Federation on the Methodological Recommendations for Credit entities on Elaborating Internal Control Rules for the Purposes of carrying out the AML laws (AML Letter):

> 2.5. A programme of documentary recording of the information specified in Article 7 of the Federal Law on Countering the Legalisation of Incomes Received through Crime (Money Laundering) and the Financing of Terrorism.
>
> 2.5.1. The credit organisation shall record information on transactions or deals of a client so that when necessary the details of the transactions or deals (such as the amount of transaction or deal, the currency of transaction, information on the client's partner under a contract) can be retrieved.
>
> 2.5.2. The credit organisation shall record information and gather documents for the purpose of countering the legalisation of income received through crime or money laundering and the financing of terrorism so that they can be used as evidence in a criminal, civil or arbitration action.

248. All information recorded pursuant to AML regime obligations is to be maintained for a minimum 5 year period (article 5(4), AML Law).

249. An AML Service Provider who does not comply with the obligations to keep information established by the AML Law, including obligations to keep client identity information is liable to a penalty pursuant to article 15.27 of the Code on Administrative Offences. These administrative fines range from RUB 10 000 to RUB 30 000 for individuals, and for legal entities from RUB 50 000 to RUB 100 000. The amount of the fines will be greater where they concern other AML obligations such as suspicious transaction reporting.

### *Conclusion and practice*

250. The requirements imposed on financial institutions to know the identity of a customer are sufficient to meet the international standard. Although client identification obligations apply to all accounts since February 2002, bearer savings book accounts in existence before these obligations were introduced may still exist and the identity of their holders will not be known until such time as the books are presented to the bank. Recent amendments to AML law prohibits credit institutions not only from opening anonymous accounts, but also from maintaining such accounts (AML Law, article 7(5)) and any existing accounts have been frozen. However, Russia should monitor the application of this new law and the elimination of the existing bearer savings books, as it is not clear whether in practice steps are actually taken to enforce the prohibition to maintain such accounts. For transaction and financial records, the obligations of the Central Bank Rules and the AML regime establish the obligations in line with the standard for all financial institutions.

251. In Russia, banks are regulated by the Central Bank of Russia. As noted, the Central Bank rules establish clear requirements to keep all relevant transaction and financial records. These are complemented by the obligations of the AML regime on all Financial AML Service Providers.

252. An AML service provider that does not comply with the obligations to keep information established by the AML Law, including obligations to keep client identity information, is liable to a penalty pursuant to article 15.27 of the Code on Administrative Offences. In this regard, Russian authorities state that in 2011 and 2012 in 567 cases penalties were applied with regard to credit organisations.

253. Regarding AML oversight of credit institutions it can be noted that the Bank of Russia is the supervisor for credit institutions. In the context of the 2008 and 2013 FATF reviews this supervision has been evaluated. In respect of oversight it was noted that the objective of the Bank of Russia is to conduct AML/CFT inspections for all credit institutions at least once every 18 months. Statistics provided by Russian officials in this context

demonstrated that this goal is met in practice. If necessary, the bank of Russia also carries out unscheduled inspections. Overall, the evaluators concluded that the supervision carried out by the Bank of Russia works well and is effective. However, in the context of the present review, information provided regarding the oversight and enforcement of banks' obligations to maintain relevant information has been too limited to be able to clearly draw a (similar) conclusion on this point. Nevertheless it should be noted that there are no indications that the relevant information was not available in practice, reference can be made to paragraphs 255 and 259 below.

254. Russian authorities state that around 70% of all banks in Russia provide bank information (balances, flow) regarding entrepreneurs and companies to the FTS electronically. Currently all banks give the account numbers on an automatic basis.

255. As of 1 July 2014 this information will also be provided on individuals. This applies to new accounts, and also existing accounts that changed after this date. Relevant changes that would lead to a reporting of the account include a change in bank number or closure of account, a change with respect to the name of the bank, type of account or branch number as well as changes with regard to account holder identification.

256. For companies and entrepreneurs a TIN is obligatory when opening up a bank account. A TIN is not obligatory for individuals. However, Russian authorities state that in practice an individual's TIN number in combination with a bank account will already be known to the FTS in cases where the individual involved owns an apartment or a car, and when the individual is employed. In these cases this information would already be available with the FTS by other means and included in its database.

### *Requests for information*

257. Russia has received a considerable number of requests for bank information in the period under review. These requests were generally responded to satisfactorily. Where Russia was unable to provide bank information this was with respect to accounts of private individuals, as Russian authorities did not have access powers to obtain this type of bank information until 2012 (see part B.1.4. for a complete analysis of this issue).

258. Russian authorities report that within the period under review FTS of Russia received 22 requests to provide bank information with regard to individuals. In all these cases, Russian tax authorities were unable to obtain such information from banks due to the lack of a legal basis. However, Russian authorities state that in four cases the requested information was provided by individuals on a voluntary basis and was transferred to the requesting EOI partner.

259. Peer input identifies two cases where bank information in relation to individuals could not be provided because the name of the bank was unknown. Russian authorities explained that finding this information would involve an extensive request to over 900 banks in Russia. As of 1 July 2014 banks will provide the FTS with private individuals' account numbers on an automatic basis.

260. In one case, information was not provided while the account was reportedly not held in Russia. Russian authorities explained that in this situation they were able to provide the EOI partner with the name of the bank and the jurisdiction involved. In three cases, bank information was not provided although no reason was given by Russian authorities. However, Russian authorities report that these cases related all to individuals and were included in the aforementioned 22 cases.

261. Peer input further demonstrates that bank information was provided in at least five cases where it related to accounts of individual entrepreneurs and entities. Peer input did not identify any cases where Russia was unable to provide information related to accounts of individual entrepreneurs or entities.

**Determination and factors underlying recommendations**

| Phase 1 determination |
|---|
| **The element is in place.** |

| Phase 2 rating | |
|---|---|
| **Largely compliant** | |
| **Factors underlying recommendations** | **Recommendations** |
| A clear obligation that prohibits credit institutions to maintain anonymous accounts is only in force since 28 June 2013, and the transitional provisions are not defined in the law. | Russia should monitor the practical implementation including the enforcement of the recently introduced prohibition on credit institutions to maintain anonymous accounts. |
| It is unclear what oversight and enforcement there is of banks' obligations to maintain relevant information. | Russia should ensure that banks' obligations to maintain relevant information is subject to adequate enforcement and oversight. |

# B. Access to Information

## Overview

262. A variety of information may be needed in a tax enquiry and jurisdictions should have the authority to obtain all such information. This includes information held by banks and other financial institutions as well as information concerning the ownership of companies or the identity of interest holders in other persons or entities, such as partnerships and trusts, as well as accounting information in respect of all such entities. This section of the report examines whether Russia's legal and regulatory framework gives the authorities access powers that cover all relevant persons and information and whether rights and safeguards are compatible with effective exchange of information.

263. The Minister of Finance is the named competent authority under Russia's Exchange of Information (EOI) agreements, and with respect to information exchange on request, this authority is delegated to the Deputy Commissioner of the Federal Tax Service (FTS) and the Head of the Control Directorate.

264. The FTS are empowered by the domestic Tax Code to carry out tax controls, which include powers to conduct audits, attend premises and seize documents, and summons persons to give evidence. Noting the provisions of the Constitution, Civil Code and Tax Code on the relationship between international treaty obligations and domestic law, these domestic access powers can also be used for EOI purposes. There is a separate power providing access to bank information which also allows access to information as of 1 January 2013 relating to private individual's bank accounts. However, up to 2012 Russian authorities did not have any access powers to obtain bank information with respect to accounts of private individuals. During the review period this has been the case in 22 requests. In the vast majority of these cases bank information of individuals has been refused. Furthermore, information on private individuals' pensions was not obtained due to Russia's restricted interpretation that this type of information kept by pension funds cannot be accessed. As a result of these conclusions two recommendations

are made. Russian domestic law also provides protection from disclosure for "audit secrets" which are broadly defined. There is no general exception to this secrecy obligation for EOI purposes, and its scope is not consistent with the international standard. As to this a recommendation is made and element B.1 concerning access to all relevant information is found to be in place, but needing improvement. In combination with the recommendations made regarding access to private individuals' bank accounts as well as pensions element B.1. is rated partially compliant.

265. Concerning the rights and safeguards that apply to persons in Russia, the FTS is not subject to any obligation to notify any person regarding the access and exchange of information pursuant to its EOI agreements. Persons affected by a decision of a tax official, which may include a decision relating to an EOI request, do have the right of appeal to a higher authority in the tax administration. The legal framework in place in respect of appeal rights is in line with the standard and element B.2 is found to be in place and this element is rated as "compliant".

## B.1. Competent Authority's ability to obtain and provide information

Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information).

266. The Minister for Finance is the competent authority for international exchange of information for tax purposes under Russia's exchange of information (EOI) agreements). This power is delegated to the Deputy Commissioner of the FTS and the Head of the Control for the purposes of EOI on request. The Control is the main unit in the FTS with respect to the management of EOI on request under Russia's EOI agreements.

### *Bank, ownership, and identity information (ToR B.1.1) and accounting records (ToR B.1.2)*

267. Under Russian law, the FTS has powers to access information for tax control purposes, pursuant to the general power under article 82 of the Tax Code, with individual procedures described in articles 87-94. Article 99 sets out the general procedural aspects for the conduct of tax controls. Those powers include the power to undertake a tax inspection (which may be desk-based or on-site), obtain information from taxpayers, examine premises, seize documents and summon persons to give evidence. These powers permit the FTS to access relevant information, including ownership, identity and accounting information.

268. In 2013, article 93.1 of the Tax Code was amended and introduced the right for the tax authorities to request for particular documents from third parties, including banks, without an audit taking place (Federal Law of 28 June 2013 No. 134-FZ).

269. Access to bank information relies on the specific power found in article 86 of the Tax Code. On 1 July 2012, amendments to article 86 entered into force which took effect from 1 January 2013. A second amendment to article 86 will take effect from 1 July 2014. In particular, previously, the FTS could only request bank information which relates to business accounts (including those used by individual entrepreneurs), and may not access information relating to private individual bank accounts. This limitation has now been removed, and all bank information can be accessed for EOI purposes as of 1 January 2013, as discussed further below. Access will be broadened further pursuant to a second amendment that will take effect as of 1 July 2014. As of this date information relating to private individual bank accounts can also be accessed and used for domestic purposes, regardless whether a DTA applies. As of this date banks will also start providing information on new accounts opened by private individuals to the FTS electronically on an automatic basis. Consequently, access may be further facilitated while relevant bank account information will gradually be more and more available within databases of the FTS itself.

### *In Practice*

270. The Ministry of Finance is the competent authority for international exchange of information for tax purposes under all Russia's EOI agreements. The Ministry of Finance delegated this competency to the Federal Tax Service of the Russian Federation (FTS). Thus, the FTS is the competent authority for exchange of information on behalf of the Ministry of Finance.

271. The Control Directorate is the main unit in the FTS in charge of EOI on request. The Deputy Commissioner of the FTS and the Head of the Control Directorate is authorised to sign documents with respect to the EOI on request.

272. The Interregional Inspectorate of Federal Tax Service for Centralized Data Processing and Regional tax offices are also responsible for exchange of information. In their work they report to Control Directorate.

273. The Interregional Inspectorate of Federal Tax Service for Centralized Data Processing is responsible for exchange of information with Georgia and Commonwealth of Independent States (CIS) countries (excluding Kazakhstan and Belarus). The incoming requests are handled by 1 full time officer in this inspectorate.

274. Exchange of information with Kazakhstan and Belarus is delegated to the regional level. Incoming EOI requests from these countries are processed by one of the Regional Administrations of the Federal Tax Service (herein regions) and 9 Interregional Inspectorates for Large Taxpayers. At this regional level tax auditors process incoming requests themselves. Russian authorities point out that 70% of all EOI requests are related to Kazakhstan and Belarus, which made approximately 1600 requests to Russia in 2013.

275. As Russian authorities point out, in practice most requests received contain different types of questions. To prepare a reply to the request the competent authority has to use information from different sources (databases of the Federal Tax Service, Customs databases, information obtained from Federal Migration Service, banks, companies and individuals).

276. The processing of incoming requests for information is carried out according to an instruction manual which is based on the OECD Manual on Exchange of Information for Tax Purposes. Actions necessary to collect the information are determined by the type of information requested, the person or body that is likely to have the information in its possession, and the necessity and possibility of audit measures.

277. While the FTS is in charge of the three unified state registers (regarding legal entities, individual entrepreneurs as well as taxpayers) and has concluded over 60 agreements on information sharing (some on an automatic basis) with various other bodies and agencies, the FTS already has a vast amount of taxpayer relevant information at its disposal.

278. However, some information, such as tax accounting information, may be stored in local tax offices. In these cases Russian authorities need to contact the local tax office to prepare the information. Information obtained during the course of an audit may also be stored in local offices. If the tax authorities don't have the information in their possession, an audit would be conducted. Depending on the case this can either be a desk audit or a field audit. As stated above, the Tax Code was amended in 2013 and the tax authorities now can request third parties for documents concerning the taxpayer without an audit taking place (article 93.1).

279. In short, the actual processing and timelines for responding to the request are based on the location within the FTS where the request is most likely to be fully acknowledged and the requested information is most likely to be available. Depending on the request, this can in principle be either on a federal, regional or local level. However, Russian authorities indicate that in practice the majority of international EOI requests will be forwarded by the regional tax office to be processed by the local tax offices.

280. Where information needed to respond to a request is uncomplicated and already in the hands of the Control Directorate of the FTS or – in case of a EOI request from Georgia or CIS countries – the Interregional Inspectorate of Federal Tax Service for Centralized Data Processing, a reply to the request is to be prepared and sent within 30 days from the date of receipt of a request (see section C.5.1 for more detail on these requests).

281. If the information requested is not available to the Control Directorate of the FTS the request is to be translated and passed on to the lower-level tax offices (regional tax office or the administration of the Federal Tax Service for Constituent Entity), the Interregional Inspectorate for Large Taxpayers) within 30 days of receipt of the request. If the information requested is not available to the Interregional Inspectorate of Federal Tax Service for Centralized Data Processing., the request is to be passed on to the lower-level tax offices (regional tax office (the Administration of the Federal Tax Service for Constituent Entity), Interregional Inspectorates for Large Taxpayers)) within five days of receipt of the request. At this stage the competent authority may add some additional questions to the request that may assist the tax official involved in helping to find all information that's likely to be relevant for the treaty partner. The actual transfer of the request for information takes place electronically and can be done within one day.

282. If the information requested by the Control Directorate of the FTS/Interregional Inspectorate of Federal Tax Service for Centralized Data Processing is in the hands of the regional tax office, the reply is to be prepared and sent to the Control Directorate of the FTS/Interregional Inspectorate of Federal Tax Service for Centralized Data Processing within 15 days from the date of receipt of a request. If the information requested by the Control Directorate of the FTS/Interregional Inspectorate of Federal Tax Service for Centralized Data Processing is in the hands of the Interregional Inspectorate for Large Taxpayers, the reply is to be prepared and sent within 30 days from the date of receipt of the request. If the information is not available to the regional tax office/Interregional Inspectorates for Large Taxpayers, the request is to be forwarded to the local tax office. The local tax office has 28 days to process and reply to the request. The regional tax office/ Interregional Inspectorate for Large Taxpayers has 7 days to verify that the information in the reply is full and complete.

283. If the information requested concerns Kazakhstan or Belarus and the information is in the hands of the FTS Regional Departments, the reply is to be prepared and sent by them within 15 days from the date of receipt of a request. Further, requests from Kazakhstan or Belarus come directly to the regional tax office, without first going through the FTS Headquarters. If the regional tax office does not have the information requested, then the request is forwarded to the local tax office, which has 28 days to respond.

The regional tax office has 7 days to verify that the information in the reply is full and complete. If the information is in the hands of the Interregional Inspectorates for Large Taxpayers, the reply is to be prepared and sent within 30 days from the date of receipt of the request.

### *Information held by another Governmental Authority*

284. Where the information requested is held by another governmental authority, information can be requested based on over 60 agreements concluded between the FTS of Russia and different government bodies and agencies (e.g. Federal Migration service, Bank of Russia, Federal Customs Service, Pension Fund, or the Social insurance Fund of Russia). The agreements entitle the tax authorities to request and obtain information from other governmental bodies and agencies. The tax authority sends a request to the relevant state body. The deadline for a reply is set in these agreements. It is common practice that the requested agency sends a reply within one month's time. Furthermore article 85 of the tax code describes obligations of Bodies, Institutions, Organisations and Officials to Provide Information Relating to the Registration of Organisations and Physical Persons to Tax Authorities. Paragraph 11 of article 85 sets out that these bodies, institutions, organisations will (also) sent information to tax authorities in electronic form and that this shall be determined by an agreement between the interacting parties.

285. In a number of cases information from government bodies and agencies is collected and provided automatically through e-data exchange arrangements (from the Federal Customs Service, Central Bank of Russia, Federal Service for State Registration, Federal Property Management Agency). Other types of information are collected on request (e.g. assistance provided by the Federal Migration Service in collecting information about crossing the border of the Russian Federation by taxpayers, assistance provided by the Ministry of Internal Affairs in searching for a taxpayer if he/she cannot be found at the address of registration). Russian authorities state that the relationship between the FTS and other agencies is good and that the requested information has always been provided. In their turn, the Tax authorities have also provided information to other agencies, such as Treasury. Russian Authorities further state that access to treaty information is restricted and is only provided to a closed list of agencies and/or persons.

### *Information held by a taxpayer or third party*

286. As noted under element A.2., article 23(8) of the Tax Code requires taxpayers to keep tax records for a period of four years. Under accounting law a five year record keeping requirement applies for primary documents that form the basis of cash flow and income statement. These documents are

also obtainable under the amended article 93.1 of the Tax Code. Apart from this, the annual tax return including the accounting records will be filed and maintained by the FTS for at least five years and credit organisations, such as banks, are required to maintain account holders information for a period of 5 up to 10 years.

287. In cases where it is necessary to obtain the information from a taxpayer, an EOI officer can proceed in two ways. The officer can either demand the information from this taxpayer as part of a field or desk tax audit (article 93) or the officer can ask a third party (such as a service provider) for the information to be provided (based on article 93.1 of the Tax Code).

288. The right to require documents during an audit or tax control procedure is limited to information that is not already in the hands of the tax authorities. This restriction does not apply in cases where the documents were previously submitted to the tax authority in the form of originals which were returned subsequently to the audited person, as well as in cases where the documents submitted to the tax authority were lost due to *force majeure*.

289. In comparison, the variety of documents to be obtained under a field audit is broader than under a desk audit, and is not restricted to documents that are relevant for the tax return (e.g. documents attached to the tax return, documents confirming tax benefits, an increase or a tax reduction).

290. In addition, as noted, following the amendment of article 93.1 in 2013 the tax authorities can require third parties to provide the FTS with documents, without an audit taking place. Previously the requirement of an audit limited scope of this provision, while a field audit in respect of the tax payer is restricted to the three calendar years preceding the year of the tax year that's being audited.

291. In the case of a tax audit (article 93), the taxpayer must provide the information within 10 days (20 days in case of a tax audit of the consolidated group of taxpayers). If the officer requests a third party for information (article 93.1), this information must be provided within 5 days of receipt of the request of the local tax office. The term may be extended at the request of the third party. The deadline provided to third parties to provide information is the same regardless of whether an audit is carried out or not.

292. Russian authorities state that in practice an EOI request is grounds enough to start an audit. As noted, monitoring of tax assessments takes place, and an audit is initiated, based on a risk analysis based on 12 publicly available ratios. The FTS official website, www.nalog.ru, publishes regulatory and methodological materials issued by the Federal Tax Service, provides control ratios for cross-checking data entered in declarations and contains a list of common tax violations. The tax authorities published 12 publicly available

Criteria for taxpayers self-assessment against tax risks that are used in the selection of targets for tax audits.

The 12 Criteria currently are:

(1) tax burden below average level by industry branch;

(2) losses during several tax periods;

(3) significant amounts of tax deductions for definite period;

(4) expenses growth rate is outstrip sales revenue growth rate;

(5) average monthly salary below average level by economic activity type in region;

(6) approaching (but not reaching) to thresholds regularly, which allows taxpayer change to special tax regimes;

(7) expenses amount claimed by individual entrepreneur is running near to his incomes amount;

(8) doing business with sub-purchasers without economically or other justified reasons (business purpose);

(9) failure to give explanations of business operating rates mismatch;

(10) multiple «migration» from one tax authority to the another;

(11) significant deviation of profitability level from average level by industry branch;

(12) doing business with high tax risk.

Russian authorities state that this monitoring covers 100% of taxpayers who submit tax returns and is conducted automatically. According to Russian officials these ratios include information from an external source, such as an EOI request. Therefore, in practice EOI requests are also used as a source to monitor compliance with domestic tax requirements.

293. With regard to monitoring of tax assessments and the compliance rate with respect to tax obligations generally (filing rate, penalties, audit frequency, etc.) Russian authorities provided the following statistics. Russian authorities further report that audit and analytical work in 2013 resulted in the filing of 140 thousand revised tax returns and an increase of tax liabilities with an amount of RUB 47 billion (USD 1.2 billion) in total.

| Russian Federation | 2010 | 2011 | 2012 | 2013 |
|---|---|---|---|---|
| Number of field tax audits of organisations and individuals, in total, thousands | 75.5 | 67.3 | 56.0 | 41.3 |
| Effectiveness of a single field tax audit (additional assessments in 1 field tax audit that resulted in detection of violations) thousands, RUB (USD) | 4 991.6 (137.9) | 4 313.7 (119.2) | 5 620.6 (155.3) | 7 104.1 (196.3) |
| Tax penalties assessed on the results of tax audits in total (per 1 tax official, holding the positions of heads, specialists) thousands, RUB (USD) | 255.7 (7.1) | 264.1 (7.3) | 287.5 (7.9) | 300.5 (8.3) |
| Share of taxpayers submitting tax returns in relation to the total number of taxpayers registered with tax authorities, % | X* | 66.3 | 68.5 | 69.1 |

* This information is not available in respect of the year 2010.

294. The FTS are empowered by the domestic Tax Code to carry out tax controls, which include powers to summon persons and to collect testimony. Pursuant to article 128 Tax Code the non-appearance or failure to appear without good reason of a person who is summoned as a witness in connection with a case involving a tax offence shall result in a fine of the amount of one thousand roubles. In addition, an unlawful refusal by a witness to testify or the wilful giving of false testimony shall result in the recovery of a fine in the amount of three thousand roubles.

295. As elaborated further under element C.5.1. below, Russian authorities reported that in practice they experienced difficulties obtaining information in a number of cases, although these cases could not be (fully) identified based on the peer input provided by EOI partners. One of the difficulties Russian authorities reported was an inability to find witnesses for interrogation. Other factors include so called one-day-firms, and unavailability of accounting records because of the 4 year record keeping requirement under tax law. However, Russian authorities also highlight that there have been no instances in the period of review whereby information could not be obtained because the holder of the information refused to co-operate with the authorities.

### *Use of information gathering measures absent domestic tax interest (ToR B.1.3)*

296. The concept of "domestic tax interest" describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own tax purposes. The international standard requires a jurisdiction to be able to use its information gathering measures, notwithstanding that it may not need the information for its own tax purposes.

297. In Russia, the FTS' domestic compulsory access powers are applied in the context of a tax control, the rules in respect of which are described in chapter 14 of the Tax Code. Under Article 82(1) of the Tax Code, a tax control may be made for the "observance by taxpayers, tax agents and payers of fees of the legislation on taxes and fees in the procedure established by this Code". Article 19 of the Tax Code defines taxpayers and payers of fees, as "entities and individuals who are under an obligation, under this Code, to pay taxes and/or fees, respectively". Tax agents are persons who are "required under this Code to calculate, withhold from the taxpayer and remit taxes to the budget system of the Russian Federation" (article 24, Tax Code).

298. Typically, all persons with a sufficient nexus with Russia will fall within the definition of a Russian taxpayer or payer of fees. There may be a very small group of persons who do not fall within this definition. For example persons opening a bank account in Russia who are not otherwise carrying on any other activity in Russia (although their identity and bank account details are required to be notified to the FTS, and all bank information would be accessible under the amendments to article 86 of the Tax Code) or persons in receipt of Russian source passive income only.

299. These domestic powers are expanded for use for EOI purposes by the Constitution, Civil Code and Tax Code which all include specific provisions on the integration of Russia's international treaty obligations into domestic law. In particular, article 15(4) of the Constitution provides that:

> The universally-recognised norms of international law and international treaties and agreements of the Russian Federation shall be a component part of its legal system. If an international treaty or agreement of the Russian Federation fixes other rules than those envisaged by law, the rules of the international agreement shall be applied.

300. Article 7 of the Tax Code states:

> If a tax treaty of the Russian Federation, which contains provisions concerning taxation and fees, establishes rules and standards other than those provided by this Code or laws and

other regulatory legal acts on taxes and/or fees adopted in accordance with it, the rules and standards of tax treaties of the Russian Federation shall prevail.

301. There is a similar provision in article 7 of the Civil Code. Russia interprets and applies these provisions such that the general access powers may be employed for EOI purposes, even where its EOI agreements do not contain a provision equivalent to article 26(4) of the OECD Model Tax Convention.

302. In addition, the Tax Code provides for the Minister for Finance (as the named competent authority for international exchange of information for tax purposes under Russia's exchange of information (EOI) agreements) to disclose information received by the Federal Tax Service (FTS) which would otherwise be confidential, where it is disclosed pursuant to an EOI agreement (article 102, Tax Code). This provision appears to permit the exchange of information with Russia's EOI's partners where that information is already within the possession of the FTS.

303. With respect to the period under review the Competent Authority reports that they did not encounter any practical difficulties with the application of access powers employed for EOI purposes.

### ***Compulsory powers*** *(ToR B.1.4)*

#### *General access powers*

304. The general powers of Russia's tax authorities to access information for EOI purposes are derived from the interaction of its DTCs with its Constitution, and articles 7 of the Tax Code and Civil Code establishing the hierarchy of laws, which is supported by the principles confirmed by the decisions of its courts. In the context of tax information exchange, Russia's DTCs provide the legal basis for the exercise of its access powers for EOI purposes.

305. In respect of accessing information for EOI purposes, the main power exercised by the FTS is described in articles 93 and 93.1 of the Tax Code which make clear that documents or information can be requested from a taxpayer "or from other persons" that have documents or information concerning the activity of the taxpayer under investigation. As noted, in 2013 article 93.1 of the Tax Code was amended and introduced the right for the tax authorities to request for particular documents regarding particular transactions from parties to these transactions, without an audit taking place. Russian authorities state that documents can be requested for a period of four years.

306. The FTS has other compulsory powers to access information described under articles 82, 87-94 of the Tax Code, which can also be used for EOI purposes. Article 82(1) provides:

> Tax control shall be exercised by tax officials within their scope of competence by conducting tax audits, obtaining explanations from taxpayers, tax agents and payers of fees, verifying accounting and reporting data, examining premises and territories used for generating income (profit), as well as in other forms provided for in this Code.

307. The audit power is exercised through a tax inspection: either a desktop audit or an on-site inspection (article 87, Tax Code), in addition to which there is a power to summon persons to give evidence.

308. A desktop audit (article 88, Tax Code) can be conducted in the period up to three months after the date of submission by a taxpayer of the tax return. It is based on documents available to the tax authority and submitted by the taxpayer. During the desktop audit, the FTS is not entitled to obtain on demand from the taxpayer additional data and information, if not otherwise provided for or if the submission of such documents together with the tax return is not provided for by the Code (article 88(7), Tax Code).

309. In the course of an on-site inspection (article 89) tax officials have the right to examine the premises of a taxpayer, tax agent or payer of fees.

310. Article 92(1) describes the various powers that the FTS has when conducting an on-site inspection:

> In order to clarify circumstances that are of relevance for the comprehensiveness of the audit, officials of the tax authority conducting an on-site inspection shall have the right to examine grounds or premises of the taxpayer being audited, as well as documents and objects.

311. On-site audits will take place at premises which are used for generating income or at the residence of the taxpayer if permission is granted or a court order is obtained (article 91). The procedures for carrying out an on-site inspection are described in more detail in articles 92-94 of the Tax Code.

312. Onsite inspections may only relate to the period up to 3 years prior to the date of the decision to undertake the onsite tax inspection (article 89(4), Tax Code). The inspection may last only 2 months (period from the decision to undertake the inspection, to the date of rendering the report on the inspection), with an option to prolong the period to 4 or 6 months in exceptional cases (Article 89(6), Tax Code).

313. In general tax authorities are not entitled to conduct two or more on-site tax inspections in respect of the same taxes for the same period, and may not conduct more than one inspection per year except where approval is given by the head of the FTS (article 89(5), Tax Code). Where approval of the head of the FTS is granted (article 89(5), more than one inspection of a taxpayer may be conducted in any given year or for a tax period which has already been subject to control. This can include for the purposes of obtaining information relevant to an EOI request.

314. In addition to conducting tax inspections, the FTS also has the power when conducting a tax control to summon persons to give evidence (article 90). A person may be summoned if they "may have knowledge of any facts that have significance for exercising a tax control", and there is no express time limit as to when such a summons may be issued in the context of the tax control.

315. Certain persons are exempt from being summoned, including (article 90(2)):

> 1) persons who by reason of their young age, physical and psychological drawbacks are unable to correctly perceive circumstances of relevance to tax control;
>
> 2) persons who have received information needed to exercise tax control in connection with the discharge by them of their professional duties, and similar information shall refer to the professional secret of these persons, in particular a lawyer and an auditor.

Peer input did not identify cases where any of these exemptions influenced or impacted EOI in practice.

316. Enforcement measures are provided for under the Tax Code where a person does not meet their obligations under the Code, including in respect of providing information. A taxpayer who fails to provide to the FTS the documents or information requested within the time period fixed by the FTS, shall be liable to a fine of RUB 200 for each document not presented (article 126(1), Tax Code). A legal entity which refuses or avoids providing documents or information regarding a taxpayer, or provides false information, shall be liable to a fine of RUB 10 000 (article 126(2)). A person who is summoned to give evidence and fails or refuses to appear is liable to a fine of between RUB 1 000 and RUB 3 000 (article 128, Tax Code). There is a general penalty provision under article 129.1 of the Tax Code for other instances of the non-provision or untimely provision of information required by the FTS, including most notably pursuant to article 93.1, in the amount of RUB 5 000 or for the second offence within a calendar year, the amount of RUB 20 000.

### *Powers to access bank information*

317. For accessing bank information, the FTS is empowered by article 86 of the Tax Code, which concerns the duties of banks with regard to taxpayer registration. Article 86 was amended by legislation which entered into force on 1 July 2012 to also permit access to bank information on private individual's bank accounts. This legislation took effect 1 January 2013. Further, in 2013 article 86 was amended a second time by legislation to also permit access to bank information on private individual's bank accounts for domestic tax reasons, either in the course of an audit of the taxpayer or a following a request to a third party (bank) under article 93.1 Tax Code. This legislation will take effect from 1 July 2014 and also contemplates EOI requests for such information that relate to a prior period be permitted from that date (Federal Law of 28 June 2013 No. 134-FZ).

318. Until 1 January 2013, the powers to access bank information were equivalent under both domestic law and for EOI purposes. Access to bank information was limited to information with respect to bank accounts of legal entities and individual entrepreneurs. It was not possible to access information with respect to private individuals' bank accounts. Further, in order to access bank information regarding private individuals' bank accounts the FTS needed to make a request to the relevant bank on the basis of a "motivated tax request". Russia interprets "motivated" to include cases where the information was sought in response to an EOI request.

319. Article 86 as amended in 2012 provides the FTS with powers to access bank information which are specific for EOI purposes:

> 86(2) … Tax authorities may request notices of bank accounts and deposits held and (or) balances of monetary resources in accounts and deposits, statements of operations on bank accounts and deposits of organisations, private entrepreneurs and individuals, who are not private entrepreneurs and of balances of electronic money and electronic money transfers of organisations, private entrepreneurs and individuals, who are not private entrepreneurs, by request of an authorised agency of a foreign country in the cases envisaged by international treaties of the Russian Federation.

320. The exchange of bank information is generally contemplated under EOI agreements, regardless of whether a specific provision similar to article 26(5) of the OECD Model Tax Convention is included. Further, Russia has confirmed that "cases envisaged by international treaties" will include all of its EOI agreements, regardless of whether they contain a provision equivalent to article 26(5) of the Model Tax Convention.

321. Access will be broadened further pursuant to a second amendment to article 86 that will take effect as of 1 July 2014 (Federal Law of 28 June 2013 No. 134-FZ).

322. The amended article 86 provides the FTS with additional powers to access bank information on private individual's bank accounts for domestic tax reasons, either in the course of an audit of the taxpayer or a following a request under article 93.1 Tax Code:

> 86(2) … statements of accounts and holdings (deposits) held and (or) of balances of monetary resources in accounts and holdings (deposits), statements of operations on accounts and holdings (deposits) natural persons not being individual entrepreneurs, statements on the balance of electronic money and transfers of electronic money may be requested by tax authorities if there's the consent of the head of a higher tax body or head (deputy head) of the federal executive governmental body in charge of control and supervision in the field of taxes and fees in cases when tax inspections are carried out in respect of these persons or when documents (information) are requested from them in accordance with item 1 of article 93.1 of this Code.

323. As of this date information relating to private individual bank accounts can also be accessed and used for domestic purposes.

324. Regarding these amendments the following can be noted.

325. Regarding the first amendment of article 86 that entered into force on 1 January 2013, it is not fully clear whether the new provision in practice permits access to all bank information in cases where the EOI agreements lacks a provision equivalent to article 26(5).

326. While Russian officials from the Ministry of Finance confirm that a provision equivalent to article 26(5) of the Model Tax Convention is not necessary to allow the FTS to access bank information as well as exchange this information under all of its EOI agreements, officials in the FTS are less certain about this view. Currently, the access powers for bank information are different for entrepreneurs as they are for private accounts and so the FTS has to justify the validity of the power. Their view is that this will be difficult to justify where the treaty is not specific as to the requirement to exchange bank information, although they stated that they will make requests to banks in respect of requests for information that are based on EOI agreements without paragraph 5. While no banks refused completely – FTS officials report that there have been no instances in the period of review whereby information could not be obtained because the holder of the information refused to co-operate with the authorities – FTS officials report that there were cases where banks did not provide *all* the information as

requested, and would doubt whether the FTS had the power to request access. However, FTS officials also point out that, once they have access to bank information for domestic purposes the issue will cease to have any practical significance, since they would no longer need to validate the specific access power. As mentioned there access is broadened further pursuant to the second amendment to article 86 that took effect as of 1 July 2014 (Federal Law of 28 June 2013 No. 134-FZ). As the amended article 86 provides the FTS with additional powers to access bank information on private individual's bank accounts also for domestic tax reasons, the issue regarding the provision equivalent to article 26(5) ceases to have any practical significance for requests made after this date. The ambiguity therefore had significance between 1 January 2013 and 1 July 2014.

327. A similar ambiguity was found regarding the question of whether information in respect of a private individual's bank account can be obtained if it relates to a period prior to the entry into force of the amendments of article 86. The international standard requires such information to be available and obtainable in some cases. While Russian officials from the Ministry of Finance confirm that such a request is permitted and state that information can also be obtained that relates to a period prior to the entry into force of this legislation, officials in the FTS are (again) less certain about this view, and basically question whether the amendments to article 86 of the Tax Code which took effect on 1 January 2013 and 1 July 2014 will enable them to obtain information regarding private individual bank accounts that relate to a period prior to the entry into force of the Article 86 revisions. Their view is that this will be difficult to justify where the law is not specific as to the requirement to provide this type of information. Russian officials from Ministry of Finance point out that there is nothing in the highlighted provisions that would impede obtaining bank information that would relate to a period prior to the entry into force of both provisions.

328. The Ministry of Finance issues interpretation and offers guidance on the application of its laws to the FTS in particular circumstances, but this has not been done with respect to recent changes in access to bank information in article 86 of the Tax Code. Considering the ambiguities as outlined above, it is recommended that the Ministry of Finance make sure that the scope and content of the access powers are clearly stated and communicated to relevant stakeholders. Given the recentness of the legislative changes it's further recommended that the Russia closely monitors the implementation of the amended article 86 of the Tax Code for information to be exchanged in line with the standard.

329. Information from a bank is obtained by a request from the field officers of the tax authority directly to the relevant bank. In addition, banks are required to notify the FTS of certain information including "the opening or

closure of an account or of changes to the details of an account" of a legal entities or individual entrepreneurs, within 3 days of the relevant event (article 86(1), Tax Code).

330. Moreover, as of 1 July 2014 article 86(1) has been modified, requiring banks to notify the FTS regarding accounts of individuals, also within 3 days of the relevant event. This follows from an amendment of article 86(1) that will take effect as of 1 July 2014 (Federal Law of 28 June 2013 No. 134-FZ).

331. Banks which fail to submit information requested to the FTS, or which submit information late or information that is unreliable, are liable to a fine in the amount of RUB 20 000, under article 135.1 of the Tax Code. A special protocol applies and the fine would be applied on the person representing the bank. In case of a fine, recovery takes place in accordance with procedures laid down in the Tax Code for the recovery of sanctions for tax offences (article 136 Tax Code).

### *Compulsory Powers in Practice*

332. Enforcement measures are provided for under the Tax Code where a person does not meet their obligations under the Code, including in respect of providing information. A taxpayer who fails to provide to the FTS the documents or information requested within the time period fixed by the FTS, shall be liable to a fine of RUB 200 for each document not presented (article 126(1), Tax Code). A legal entity which refuses or avoids providing documents or information regarding a taxpayer, or provides false information, shall be liable to a fine of RUB 10 000 (article 126(2)). There is a general penalty provision under article 129.1 of the Tax Code for other instances of the non-provision or untimely provision of information required by the FTS, including most notably pursuant to article 93.1, in the amount of RUB 5 000 or for the second offence within a calendar year, the amount of RUB 20 000.

333. If information is required from the taxpayer in respect of whom the tax audit is being conducted, and the taxpayer fails or refuses to provide the information voluntarily within the established time limits, the seizure of documents and items can take place according to Article 94 of the Tax Code of the Russian Federation (article 93 (4) Tax Code). At the same time, the taxpayer shall be liable to a fine for failure to present this information to the Tax Authority (article 126(1), Tax Code).

334. According to article 94, a tax authority official who is performing a tax audit shall carry out the seizure of the necessary documents.

335. Furthermore, where officials carrying out an on-site tax audit have grounds to believe that documents that provide evidence of the commission of offences might be destroyed, concealed, altered or replaced, those documents

shall be seized in accordance with the procedure envisaged by Article 94 of the Tax Code (article 89 (9) 4 Tax Code).

336. Pursuant to article 94 (4) Tax Code, the tax authority official shall request the person whose documents and items are to be seized to hand them over voluntarily; in the event of a refusal, the seizure shall be carried out compulsorily.

337. A counterparty of the taxpayer can be called to account in accordance with clause 2 of Article 126 of the Tax Code of the Russian Federation (if documents are required) and/or article 129.1 of the Tax Code of the Russian Federation (if information is required).

338. Search and seizure may also be applied if an audit is being conducted and the person required to be in possession or control of the information asserts that he or she is not in possession or control of it, e.g. because it is located outside of the jurisdiction. As noted above, for failure to present this information and or documents to the Tax Authority the taxpayer and/or third-party shall be liable to the fines described above under articles 126 and 129.1 of the Tax Code.

339. Where the information is not required to be kept, but a third party who is not required to keep the information has or is able to obtain the information requested, the third party can be requested for documents according to article 93.1 of the Tax Code stating that documents or information can be requested from a taxpayer "or from other persons" that have documents or information concerning the activity of a taxpayer. Pursuant to article 93.1(6) of the Tax Code a refusal to produce documents requested in the context of the performance of a tax audit or failure to produce them within the established time limit shall be deemed to be a tax offence and shall result in the liability which is envisaged by Article 129.1 of this Code.

340. Where information is required to be kept but the record retention period has expired information in principle cannot be obtained. However, as stated article 93.1 Tax Code provides for documents or information to be requested from a taxpayer "or from other persons" that have documents or information concerning the activity of a taxpayer.

341. In other cases where information is required to be kept, but the record keeper refuses to comply with the request the seizure of documents and items can take place according to article 94 of the Tax Code of the Russian Federation (article 93 (4) Tax Code). A counterparty of the taxpayer can be called to account in accordance with clause 2 of Article 126 of the Tax Code of the Russian Federation (if documents are required) and/or Article 129.1 of the Tax Code of the Russian Federation (if information is required).

### *Information kept by pension fund*

342. Peer input as well as input provided by the Russian authorities identified three cases where information on pensions regarding private individuals was not obtainable due to restricted access to information kept by pension funds. However, Russian authorities add that such cases where a treaty partners requests to provide information on pensions are extremely rare, and estimate that these requests are limited to three cases in 10 years.

343. Russian authorities further explained that information regarding pensioners is contained in the database of Russian pension fund authorities. This data is covered by Law No. 152-FZ "On Personal Data".

344. There is a special agreement in place between the FTS and the Russian pension authorities (bodies) that makes transfer of certain data to the FTS on pensions of individuals possible, e.g. the type of pension, the date it is granted, and its duration. However, in line with the aforementioned law on personal data, this data can only be obtained after a request from the tax authority and with the consent of the person involved.

345. In addition, Russian authorities explained that pensions in general are not subject to income tax in Russia (paragraph 2 article 217 of the Tax Code).

346. In order to show his consent, the person involved should visit the Russian Pension Fund territorial authority at his residence; this also can be done by his duly empowered legal representatives, or heirs.

347. Russian authorities report that in practice information on individual pensions can be obtained directly from the individual on request of the tax authorities.

348. However, it seems that information regarding individual pensions can only be obtained if the taxpayer agrees to provide the information requested. As stated, in practice three cases were identified where information on pensions regarding private individuals was not obtainable and could not be exchanged to EOI partners due to this restricted access.

349. However, as Russian authorities clarified, two of these requests regarded a group of pensioners living in the requesting jurisdiction and receiving pension income from Russian pension funds. The group consisted of persons that could not be individually identified from the perspective of the requesting jurisdiction, therefore opening the question whether these requests met the standard of foreseeably relevance.

350. However, as Russian explain, they were nevertheless able to identify the individuals involved, and this (i.e. the question of foreseeably relevance) was not the reason for them not being able to respond to the request. The main reason for them was that pension data are covered by the

aforementioned Law on personal data, and that they didn't see a possibility within that legal framework to access this information that was in the hands of the pension fund.

351. However, it can be questioned whether this interpretation is not too restricted.

352. Firstly, paragraph 4 of Article 15 of the Constitution of the Russian Federation clarifies that – if an international treaty concluded by the Russian Federation establishes other rules than those, which are set by its laws, and then rules of that international treaty apply.

353. Secondly, and in line with this provision of the Constitution of the Russian Federation, paragraph 4 of the Law on Personal Data states that if international treaties entered into by the Russian Federation establish regulations different from those provided by this Federal Law, the regulations of such international treaties shall be applied.

354. Therefore, although it may be expected that taxpayers involved may appeal, it seems likely that information on private individuals' pensions in these cases was obtainable within the legal and regulatory framework, but was not obtained in practice due to a restricted interpretation that this type of information kept by pension funds can be accessed only with the consent of the individual involved.

355. Russia is therefore recommended to ensure that information on private individuals' pensions kept by pension funds can be or is accessed and exchanged in accordance with its obligation to exchange information under its EOI agreements.

### ***Secrecy provisions*** *(ToR B.1.5)*

356. Russian law provides for a number of secrecy provisions, which cover information held by banks as well as professional secrecy obligations which apply to lawyers, accountants and notaries

#### *Bank secrecy*

357. In general, banks are subject to an obligation of secrecy under article 857 of the Civil Code which defines the scope of the obligation:

> 1. The bank shall guarantee the secrecy of a bank account and a bank deposit, operations with the account and information about clients.
>
> 2. Information constituting a banking secret can be provided only to the clients themselves or their representatives, and also

> provided to credit bureaus on the grounds and in the procedure provided for by a law. Such information can be provided to State bodies and their officials only in cases and in the procedure provided for by a law.
>
> 3. In case the bank divulges information subject to bank secrecy, the client whose rights have been infringed shall have the right to demand compensation for the losses caused.

358. As article 86 of the Tax Code grants the FTS with a right of access to information held by a bank, this falls within the exception to bank secrecy for a "procedure provided for by a law" (article 857(2), Civil Code).

359. There is also a separate obligation of confidentiality in section 26 of the Federal Law on Banks and Banking Activity, However this section also includes a specific exception for disclosure of bank information relating to individuals "in the cases envisaged by international treaties of the Russian Federation" and for disclosure of bank information relating to entities and individual entrepreneurs "in the cases envisaged in legislative acts on their activities".

360. Therefore, the bank secrecy obligations in Russia's law are consistent with the international standard as they permit access to bank information when requested pursuant to one of Russia's EOI agreements.

### *Professional secrecy*

361. All of Russia's DTCs as well as the Multilateral Convention permit or will permit Russia to decline a request if responding to it would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy. This follows the international standard as described in article 26(3) of the OECD Model Tax Convention. Among the situations in which Russia is not obliged to supply information in response to a request is when the requested information would disclose communications protected by attorney-client privilege.

362. The access powers of the FTS as described in the general provision on exercising tax controls, article 82 of the Tax Code, includes the protection of professional secrets:

> (4) In the exercise of tax control no allowance shall be made for the collection, storage, use and spread of information about a taxpayer (payer of fees or tax agent), received in violation of the provisions of the Constitution of the Russian Federation, the present Code, the federal laws, and also in contravention of the principle of preserving information that constitutes a professional

> secret of other persons, in particular a legal secret or an audit secret.

363. Further, in respect of the power to summon a person to give evidence in article 90(2) of the Tax Code, there is a restriction on calling persons who have obtained information in the course of their professional duties which is subject to professional secrecy obligations:

> The following persons may not be interrogated as witnesses:
>
> … (2) persons who have received information needed to exercise tax control in connection with the discharge by them of their professional duties, and similar information shall refer to the professional secret of these persons, in particular a lawyer and an auditor.

364. That is, where information is protected by professional secrecy, including attorney-client privilege or audit secrets, the FTS may not access or rely upon such information when performing a tax control.

### Legal professionals

365. The scope of legal secrecy is defined in the Federal Law on Solicitors and Barristers Activity No. 63-FZ of 31 May 2002 (Solicitors Law), under article 8.

> (1) Any information relating to the provision of legal assistance by a solicitor/barrister to his/her client shall be deemed a solicitor's/barrister's secret.
>
> (2) The solicitor/barrister shall not be summoned and interrogated as a witness about the circumstances that have come to his/her knowledge in connection with his/her being approached and asked for legal assistance or in connection with the provision thereof.

366. The activities of a solicitor or barrister are defined in article 1 of the Solicitors Law, being "for the purpose of protecting their rights, liberties and interests and also ensuring access to justice", and does not include notarial functions, Article 2(2) describes the activities a solicitor or barrister shall carry out when providing legal assistance, such as the provision of legal advice in written or oral form, and the representation of a client in criminal or civil proceedings. The scope of legal privilege in Russia is consistent with the international standard.

## Audit Secrecy

367. Audit secrecy is defined in article 9 of the Federal Law No.307FZ on Auditing Activity, and must be protected by the audit firm, its employees, as well as any individual auditors and employees with whom employment contracts have been concluded. The secrecy obligation covers:

> Any information and documents received and/or prepared by an audit organisation or its employees and also by an individual auditor and the employees which whom he/she has concluded labour contracts while they provide the services envisaged by the present Federal Law.

368. The scope of "auditing services" and "audit associated services" is described in Article 1 of the Law on Auditing Services, and includes:

- independent verification of the bookkeeping, financial statements and reports of an person, and expressing an opinion on the reliability of such statements reports;
- establishment, restoration and keeping of accounts, preparation of financial statements, accounting consulting;
- providing tax consultations, setting up and keeping tax records, tax calculations and returns;
- analyzing the financial and economic operations of organisations and individual entrepreneurs;
- rendering legal assistance in areas related to auditing, including consulting on legal issues, representation of the interests of the trustee in civil and administrative court proceedings, in tax and customs legal relations, before the state executive authorities and local government authorities; and
- development and analysis of investment projects, and the preparation of business plans.

369. There are three important exceptions to the scope of information covered by the obligation of audit secrecy, as defined in article 9(1):

> (1) information disclosed by the person proper to which the services envisaged by the present Federal Law have been provided or on the consent of the person;
>
> (2) information on the conclusion of a compulsory audit contract with the audited person; and
>
> (3) information on the amount of payment for audit services.

370. However, there is no general exception to permit access to audit information for EOI purposes. Although Russia has advised that such information could be obtained from other sources (such as the taxpayer themselves), it is not clear that this will always be the case. Source records and underlying documentation would generally be accessed from the taxpayer as the legal owner of these documents, however certain other documents may only be in possession of the auditor, and over which the taxpayer has no claim. These could include working papers and drafts prepared in the course of performing the audit or audit related activities which might be relevant for example to establishing the purpose for which a corporate restructure is carried out. The scope of the confidentiality duty for audit information is broad, may hinder the ability of the FTS to access information necessary for the effective exchange of such information in accordance with the standard.

371. As stated above, Russian authorities report that a new law on audit secrecy is currently drafted. This draft law would consist of amendments to Article 82 of the Tax Code and Article 9 of the Federal Law "On Audit", with a view to create a general exception to permit access to audit information for EOI purposes.

### Commercial Secrets

372. Commercial secrets are protected in Russian law, under the Federal Law on Commercial Secrecy No.98-FZ of 29 July 2004 (Law on Commercial Secrecy). There is an exception which permits the confidentiality to be lifted where information subject to the Law on Commercial Secrecy is sought by government authorities on the basis of a motivated request (article 6, Law on Commercial Secrecy). This includes the FTS, and Russia has confirmed that a "motivated request" would include a request made for the purposes of responding to an EOI request. In addition, when commercial or technological secrets are obtained by the FTS, there is a specific provision of the Tax Code (article 102(2)), which confirms that tax officials must keep that information confidential. Whilst the Tax Code does not permit the disclosure of such secrets if required by Russia's international agreements (article 102(1), under the international standard, Russia is not obliged to disclose commercial secrets.

373. In summary, the scope of audit secrecy under Russia's domestic law is inconsistent with access to information for EOI purposes under the international standard and in some cases could potentially hinder the ability of the competent authority to access all relevant information for EOI purposes. However, regarding the scope of audit secret peer input did not identify any issues during the period under review. In addition, the Russian Competent Authority reports that they did not encounter any practical difficulties with the application in this respect. As stated above, a new law on audit secrecy is currently drafted. It is therefore recommended that Russia amends its legislation

to ensure the scope of audit secrecy under Russia's domestic law is consistent with access to information for EOI purposes under the international standard.

**Determination and factors underlying recommendations**

| Phase 1 determination | |
|---|---|
| **The element is in place, but with certain aspects of the legal implementation of the element needing improvement.** | |
| **Factors underlying recommendations** | **Recommendations** |
| The scope of information protected by Russia's domestic law confidentiality duty for "audit secrets" is broad, and there is no exception which would permit access to such information for EOI purposes. | Russia should ensure that access for EOI purposes is possible for all relevant information which would otherwise be protected by the domestic law on "audit secrets". |

| Phase 2 rating | |
|---|---|
| **Partially compliant** | |
| **Factors underlying recommendations** | **Recommendations** |
| Russian authorities did not have access powers to obtain bank information with respect to bank accounts of private individuals until the end of 2012. During the review period this has been the case in around 20 requests. In the vast majority of these cases this type of bank information was not obtained. Furthermore, there remains uncertainty whether the Russian Competent Authority is allowed to obtain and exchange transactional information regarding a private individuals' accounts prior to the entry into force of the 2012 amendment or, in case of a request regarding a private individuals' accounts that was made before 1 July 2014, where there was no provision in the EOI agreement equivalent to article 26(5) of the Model Tax Convention. | Russia should monitor the practical implementation of the recently introduced powers to obtain bank information with respect to accounts of private individuals. |

| Phase 2 rating | |
|---|---|
| **Partially compliant** | |
| **Factors underlying recommendations** | **Recommendations** |
| Information on private individuals' pensions was not obtained due to Russia's restricted interpretation that this this type of information kept by pension funds can be accessed only with the consent of the individual involved. | Russia should ensure that information on private individuals' pensions kept by pension funds can be or is accessed and exchanged in accordance with its obligation to exchange information under its EOI agreements. |

## B.2. Notification requirements and rights and safeguards

The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information.

### *Not unduly prevent or delay exchange of information* *(ToR B.2.1)*

374. The *Terms of Reference* provides that rights and safeguards should not unduly prevent or delay effective exchange of information. For instance, notification rules should permit exceptions from prior notification (e.g. in cases in which the information request is of a very urgent nature or the notification is likely to undermine the chance of success of the investigation conducted by the requesting jurisdiction).

375. The FTS is not obliged to inform persons that are the subjects of EOI requests of the existence of the request or to notify them prior to contacting third parties to obtain information, or to notify them prior to exchanging the information.

376. Articles 32 and 33 of the Tax Code sets out duties of tax officials including in respect of taxpayer's rights, including to act in strict compliance with the Tax Code and "treat duly and courteously taxpayers, their representatives and other participants of the relations regulated by the legislation on taxes and fees; respect their honour and dignity".

377. "Every person" has the right to appeal an action or inaction of a tax official which they believe is of a "non-normative nature" and which impinges upon their rights (article 137, Tax Code). This would include a decision of a tax official which related to the exercise of access powers for EOI purposes or other acts of tax officials which pertain to EOI matters. Since 2009, an appeal concerning a decision in respect of the imposition

of sanctions for the commission of a tax offence must in the first instance be made to a higher tax official in the FTS, although an appeal to a court remains possible at a later stage (articles 101.2 and 138, Tax Code).

378. Appeals on other matters relating to the application of the Tax Code may be made in first instance to either a higher tax official or to a court (article 138(1), Tax Code)

379. Appeals to a higher tax official must be determined within one month of receipt by the FTS, and with special authorisation that period may be extended by a maximum of 15 days (article 140(3), Tax Code). Appeals do not have suspensive effect (article 141(1), Tax Code) except in cases where there are "ample grounds" to believe that the action appealed again is not consistent with the legislation.

380. Appeals to a court, shall be made to an arbitration court when brought by an entity or individual entrepreneur, or to a court of general jurisdiction when brought by an individual (who is not a private entrepreneur), pursuant to article 183(2) of the Tax Code. These appeals are determined in accordance with the general federal laws on civil and arbitral procedure (article 142, Tax Code). Arbitration Courts in the regions are the courts of first instance for tax appeals by entities or individual entrepreneurs. The Arbitration Courts of Appeal are the courts of second instance, and decisions of that court may in turn be appealed to the Federal Arbitration Courts in the Circuits. The Supreme Arbitration Court of Russia is the final appeal court. For individuals, it is the general court to which tax appeals are made, rather than the arbitration court system. Generally, the Supreme Arbitration Court has an important role as in respect of tax disputes it may interpret legal provisions both in respect of particular cases, and also general interpretation in respect of all cases having a similar factual matrix. The purpose of such interpretations by the Supreme Arbitration Court is to ensure uniform understanding and application of legal provisions by commercial courts.

381. Russia's appeal procedures are consistent with the international standard. Further it can be noted that taxpayers are required to seek an administrative review before going to court.

When the taxpayer appealed to the revenue body the latter has a month (30 days) to review the ruling upon the results of tax audit, which either have or haven't yet come into force. However the time limit for finalising a review can be extended but not more than for 30 days more in exclusive circumstances. The maximum period of pre-trial procedure for rulings which either have or haven't yet come into force is two months from the date of appeal.

Other rulings and actions of tax authorities are reviewed within a term of 15 days. In exclusive circumstances this term can be extended by 15 days.

Thus the maximum period of pre-trial procedure for such other rulings and actions is 30 days.

382. The Competent Authority reports that no appeals were made in relation to requests for information and that they did not encounter any practical difficulties (e.g. systematic delays; unduly burdensome) with the application of rights and safeguards.

**Determination and factors underlying recommendations**

| Phase 1 determination |
|---|
| **The element is in place.** |

| Phase 2 rating |
|---|
| **Compliant** |

# C. Exchanging Information

## Overview

383. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. In Russia, the legal authority to exchange information is derived from the double taxation conventions (DTCs) as well as from domestic law. This section of the report examines whether Russia has a network of information exchange that would allow it to achieve effective exchange of information in practice.

384. Russia has signed 87 DTCs and of these, 83 agreements are currently in force. The total number of DTC's in force and in line with the standard is 57. Further, on 3 November 2011, Russia signed the multilateral Convention on Mutual Administrative Assistance in Tax Matters which Russia is committed to bringing into force. Under 25 of their DTCs, Russia will only exchange information on persons who are residents of one of the Contracting States. However, out of this list of 25 jurisdictions 12 are Parties to the Multilateral Convention. So, once Russia ratifies the Multilateral Convention, information exchange with these jurisdictions will in practice be covered, regardless of whether the person affected is a resident or national of a Party to the Multilateral Convention or of any other jurisdiction. One of the DTCs is also limited to information necessary for carrying out the provisions of the convention, although in respect of this partner an amending protocol to the DTC has been signed. As a result, elements C.1 and C.2 are found to be in place, but needing improvement.

385. Concerning confidentiality, each of Russia's EOI agreements include a provision which creates an obligation for the Parties to protect the confidentiality of information exchanged. There is also a duty of confidentiality under domestic legislation which is supported by enforcement measures. Confidentiality of information exchanged under an EOI agreement is governed primarily by the Federal law on Personal Data and the relevant provisions of the EOI agreement. In combination there is clearly an obligation to protect confidentiality of the information exchanged. Furthermore, Russia has

implemented measures to ensure that confidentiality of information received is ensured in practice.

386. In Russian domestic law there is also a protection from the obligation to disclose "audit secrets", which are broadly defined, and which may prevent the exchange of information in a manner not consistent with Russia's EOI agreements. Two recommendations have been made to address these issues, and element C.4 is found to be in place but needing improvement.

387. The Ministry of Finance is the competent authority for international exchange of information for tax purposes under all Russia's DTCs. The Ministry of Finance delegated this competency to the Federal Tax Service (the FTS). Thus, the FTS is the competent authority for EOI on behalf of the Ministry of Finance. Within the FTS the Control Directorate is the main unit in charge of EOI on request. The Deputy Commissioner of the FTS of Russia and the Head of the Control Directorate are authorised to sign documents with respect to the EOI on request. There are no legal restrictions on the ability of Russia's competent authority to respond to requests within 90 days of receipt by providing the information requested or by providing an update on the status of the request.

388. The FTS currently maintains an extensive database of ownership information. While poorly equipped in the past, at present the Federal Tax Service presents itself as one of Russia's most advanced government bodies in terms of the use of information technology.

389. Over the period of review Russia has received almost eight thousand (7945) requests for information related to both direct taxes as well as customs and VAT. Requests received are not itemised based on the type of tax they relate to. However, the FTS estimate that the percentage of direct tax requests and VAT requests is approximately equal, some of them are complex i.e. they concern direct taxes and VAT at the same time. Over the period of review requests received from CIS countries concerned both direct taxes and VAT, requests received from other countries concerned only direct. Including the time taken by the requesting jurisdiction to provide additional information, the requested information was provided within 90 days, 180 days and within one year in 87%, 93% and 94% of the time respectively[16].

390. Russia has in place appropriate organisational processes to ensure effective exchange of information. However, Russia should also provide status updates in cases where it is not in position to meet the 90 day deadline.

16. These figures are cumulative.

## C.1. Exchange-of-information mechanisms

Exchange of information mechanisms should allow for effective exchange of information.

391. Further, on EOI provisions of DTC, Russia states it always proposes the inclusion of a provision similar to Article 26 of the OECD Model Tax Convention, as it is also part of Russia's DTA-model (publicly available but only in Russian). Russia has now 87 bilateral tax agreements, including a limited special investment agreement (facilitating investments through State-owned entities) with UAE, but that agreement has a full article of EOI and is not limited to persons covered by the treaty. This agreement was signed on 7 December 2011 and entered into force on 23 June 2013. Moreover, there are new agreements with Malta (instead of the non-ratified DTC of 15 December, 2000), the Czech Republic, Luxemburg, Switzerland, and Russia is finalizing ratification of its protocols with Austria and Belgium.

392. Apart from specific requests for information, there is spontaneous exchange of information. For the last three years Russia has received more than 100 letters containing spontaneous information from 18 EOI partners. Such information was forwarded by the Control Directorate of the FTS to the lower-level tax offices for further use.

393. The results of using the spontaneous information are reflected in reports submitted by the lower-level tax offices to the Control Directorate of the FTS. If the tax offices reveal any violations of the Russian tax legislation or the information given in the letters from EOI partners is not confirmed when checking, the competent authority sends a letter with such information to the foreign partner.

394. Russian authorities further state that Russia has committed itself to provide EOI partners with spontaneous information which might be of potential use for them. For the last three years two letters containing spontaneous information were sent to two EOI partners.

### *Foreseeably relevant standard (ToR C.1.1)*

395. The international standard for exchange of information envisages information exchange upon request to the widest possible extent. Nevertheless it does not allow "fishing expeditions," i.e. speculative requests for information that have no apparent nexus to an open inquiry or investigation. The balance between these two competing considerations is captured in the standard of "foreseeable relevance" which is included in Article 26(1) of the OECD Model Tax Convention:

> The competent authorities of the contracting states shall exchange such information as is foreseeably relevant to the carrying out the

> provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the contracting states or their political subdivisions or local authorities in so far as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

396. Russia has signed 87 double tax conventions (DTCs),[17] and these agreements are generally based on the OECD Model Tax Convention and its Commentary as regards the scope of information which can be exchanged. Prior to 2005, the OECD Model Tax Convention referred to the obligation to exchange information "as is necessary" rather than "as is foreseeably relevant". The commentary to Article 26 of the OECD Model Taxation Convention recognises that "necessary" should be considered interchangeable with "foreseeably relevant" in this context, and Russia agrees with this interpretation. The majority of Russia's DTCs, whether signed prior or after 2005, refer to information "as is necessary".

397. The DTC with Austria, limits the EOI provision to information which is necessary for the carrying out of the convention, rather than also including information foreseeably relevant to the administration or enforcement of the domestic tax laws of the parties. In relation to Austria an amending protocol is in preparation and is ready to be signed. Russia has ratified an amending protocol with Switzerland, which provides for information exchange relevant to the domestic laws of the parties. The Russian-Swiss protocol was approved by the Swiss parliament in June 2012, and entered into force on 9 November 2012.

398. In addition to its network of DTCs, on 3 November 2011 Russia signed the multilateral Convention on Mutual Administrative Assistance in Tax Matters (Multilateral Convention). The Multilateral Convention, which was amended in 2010 to incorporate the internationally agreed standard for exchange of information in tax matters, is the most comprehensive multilateral instrument available for tax co-operation. As at 17 July 2014, 67 States (including Russia) had signed the Multilateral Convention, and 44 States had ratified it. In addition, the application of the Multilateral Convention has been extended to 15 jurisdictions, which are members of the Global forum or have been listed in Annex B naming a Competent Authority, pursuant to Article 29 of the Convention.

The Multilateral Convention should be considered by the committees of the Russian Duma in autumn 2014, and ratification is expected to be completed before the end of 2014. Russian authorities explain that the rather

17. Russia seceded to the double tax conventions which had been signed by the former Union of Soviet Socialist Republics, upon its dissolution in December 1991.

lengthy ratification process is mainly due to translation issues and required internal co-ordination with other ministries and federal authorities. Once the Multilateral Convention will enter into force for Russia, it will have the possibility to exchange information to each of the other Parties to it.

399. When two or more arrangements for the exchange of information for tax purposes exist between Russia and an EOI partner, the Parties may choose the most appropriate agreement under which to exchange the information.

### *In respect of all persons (ToR C.1.2)*

400. For exchange of information to be effective it is necessary that a jurisdiction's obligation to provide information is not restricted by the residence or nationality of the person to whom the information relates or by the residence or nationality of the person in possession or control of the information requested. For this reason, the international standard for exchange of information envisages that exchange of information mechanisms will provide for exchange of information in respect of all persons.

401. Twenty-five of Russia's DTCs do not specifically provide that information exchange under the convention is not limited by article 1 ("persons covered"). Russia has advised that it interprets the absence of those words to mean that these conventions only provide for exchange of information with respect to persons who are residents of one or both Contracting States. The 25 DTCs are Russia's agreements with:

| | | | | |
|---|---|---|---|---|
| Azerbaijan | Bulgaria | India | Ireland | Japan |
| Korea | Kuwait | Former Yugoslav Republic of Macedonia | Malaysia | Moldova |
| Mongolia | Poland | Qatar | Romania | Singapore |
| Slovenia | South Africa | Syrian Arab Republic | Thailand | Turkey |
| Turkmenistan | Ukraine | United Kingdom | Uzbekistan | Viet Nam |

402. Russia's interpretation that these agreements will only cover information exchange with respect to persons who are resident of one or both Contracting States means that these 25 agreements are not in line with the international standard. However, out of this list of 25 jurisdictions, 2 have signed the Multilateral Convention and 12 have completed ratification and are Parties to the Multilateral Convention. So, after ratification of the Multilateral

Convention, information exchange with these jurisdictions will in practice be covered, regardless whether the person affected is a resident or national of a Party to the Multilateral Convention or of any other jurisdiction. Russian authorities further confirmed that Russia has not received any requests relating to this issue during the review period. Peers have not reported any difficulties on this specific issue, and Russian authorities report that they have not declined any request on this basis. Therefore, it doesn't appear to be an issue that materialised in practice. However, it is recommended that Russia ratifies the Multilateral Convention expeditiously and takes steps to bring the remaining 11 agreements in line with the standard, for example by reviewing its interpretation or by concluding protocols with its partners as necessary, in order to permit information to be exchanged in respect of all persons and not just those who are resident of one or both of the Contracting States.

403. The remaining 62 DTCs – as well as the Multilateral Convention – provide for the exchange of information with respect to all persons.

### *Obligation to exchange all types of information (ToR C.1.3)*

404. Jurisdictions cannot engage in effective exchange of information if they cannot exchange information held by financial institutions, nominees or persons acting in an agency or a fiduciary capacity. The OECD Model Taxation Convention, which is an authoritative source of the standards, stipulates in its Article 26(5) that bank secrecy cannot form the basis for declining a request to provide information and that a request for information cannot be declined solely because the information is held by nominees or persons acting in an agency or fiduciary capacity or because the information relates to an ownership interest.

405. As noted in section B.1.4 of this report, Russia has amended its powers to access bank information for EOI purposes as of 2013. Russia has confirmed that those new powers will allow access to bank information for all of its EOI agreements, and that such information can also be exchanged, regardless of whether they contain a provision equivalent to article 26(5) of the Model Tax Convention. Further, nine of Russia's DTCs in force (with Armenia, the Czech Republic, Germany, Italy, Cyprus,[18] Luxembourg, Switzerland, the United Arab Emirates, Malta) include provisions equivalent to Article 26(5) of the OECD Model Tax Convention. In addition, the Multilateral Convention which Russia has signed includes such a provision.

406. As noted further in section B.1.4., in practice some ambiguities exist regarding the scope of the amendments to article 86 of the Tax Code concerning access to private individuals banking information. As noted Russian

18. See footnotes 5 and 6.

officials from the Ministry of Finance confirm that a provision equivalent to article 26(5) of the Model Tax Convention is not necessary to allow the FTS to access bank information as well as exchange this information under all of its EOI agreements, while officials in the FTS are less certain about this view. A similar ambiguity exists regarding the question whether information in respect of private individuals' bank account can be obtained if it relates to a period prior to the entry into force of the amendments of article 86.

407. As stated in section B.1.4, the Ministry of Finance issues interpretation and offers guidance on the application of its laws to the FTS in particular circumstances, but this has not been done with respect to recent changes in access to bank information in article 86 of the Tax Code. Considering the ambiguities as outlined in section B.1.4, it is recommended that the Ministry of Finance make sure that the scope and content of the access powers are clearly stated and communicated to relevant stakeholders. Given the recentness of the legislative changes it's further recommended that the Russia closely monitors the implementation of the amended article 86 of the Tax Code for information to be exchanged in line with the standard.

### *Absence of domestic tax interest* *(ToR C.1.4)*

408. The concept of "domestic tax interest" describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own tax purposes. An inability to provide information based on a domestic tax interest requirement is not consistent with the international standard. Contracting parties must use their information gathering measures even though invoked solely to obtain and provide information to the other contracting party, and this obligation is set out in Article 26(4) of the OECD Model Tax Convention.

409. As noted in section B.1.3 of the report, Russia interprets and applies its general domestic access powers such that they may be employed for EOI purposes, and that all such information may be exchanged, even where its EOI agreements do not contain a provision equivalent to article 26(4) of the OECD Model Tax Convention. Further, nine of Russia's DTCs in force (with Armenia, the Czech Republic, Germany, Italy, Cyprus,[19] Luxembourg, Switzerland, the United Arab Emirates, Malta) include provisions equivalent to Article 26(4) of the OECD Model Tax Convention. In addition, the Multilateral Convention which Russia has signed includes such a provision.

19. See footnotes 5 and 6.

*In practice*

410. As stated under section B.1.3 with respect to a domestic tax interest requirement the Competent Authority reports that they did not encounter any practical difficulties with the application of access powers employed for EOI purposes.

### ***Absence of dual criminality principles*** *(ToR C.1.5)*

411. The principle of dual criminality provides that assistance can only be provided if the conduct being investigated (and giving rise to an information request) would constitute a crime under the laws of the requested country if it had occurred in the requested country. In order to be effective, exchange of information should not be constrained by the application of the dual criminality principle.

412. There are no dual criminality requirements in Russia's DTCs or pursuant to the Multilateral Convention.

*In practice*

413. No peers have raised any issues regarding dual criminality.

### ***Exchange of information in both civil and criminal tax matters*** *(ToR C.1.6)*

414. Information exchange may be requested both for tax administration purposes and for tax prosecution purposes. The international standard is not limited to information exchange in criminal tax matters but extends to information requested for tax administration purposes (also referred to as "civil tax matters").

415. All of Russia's DTCs, as well as the Multilateral Convention provide for exchange of information in both civil and criminal tax matters.

416. Russia reports that requests regarding criminal tax matters are dealt with by Russian Police and Russia prefers to use a Mutual Legal Assistance Treaty (MLAT) in these cases, where such an instrument is in place with the relevant jurisdiction. Russian authorities confirm that in other situations an existing tax EOI agreement can be used. In practice, peers have requested information in both civil and criminal tax matters, and no issues were raised.

### *Provide information in specific form requested* *(ToR C.1.7)*

417. There are no restrictions in the exchange of information provisions in Russia's DTCs or the Multilateral Convention that would prevent Russia from providing information in a specific form, as long as this is consistent with its own administrative practices.

418. In practice, in general no particular problems were raised by peers regarding the form in which the information was exchanged. A number of peers stated clearly that they were very satisfied with the quality of the responses and service rendered by the FTS. Peer input also identified a case where Russian authorities were able to get authenticated copies of documents for one major EOI partner. While the concept of authenticated copies is not customary in the legal system in Russia, the EOI partner was happy with the service rendered. Nevertheless, peer input also demonstrated that information (underlying documents) was sent to one peer and this peer was not satisfied with the information being in Russian and not in English. More specifically, the response sent to this peer contained a cover letter providing some information in English with enclosure (in paper and on CD) in Russian. This enclosure consisted of a huge amount of pages (over two thousand pages) containing documents such as profit and loss reports, balance sheets, extract from the Unified State Register of Legal Entities, information from Customs database. In this regard the peer noted that the cover letter was in English, but did not hold the requested information As the cover letter also did not explain what was included in the annexes, which were very extensive and in Russian only, the peer stated it cannot be ascertained whether the information in the annex held the requested information, nor whether it was useful or not. As to this it can be noted that the translation of documents requested is a bilateral issue that most typically would be addressed directly in the EOI agreement itself (for instance in the context of a TIEA), or in a Memorandum of Understanding (MoU) (for instance in the context of a DTA), describing more specifically which language to be used in the written contact between Competent Authorities and what kind of information should be provided in that language in the context of exchange of information. Furthermore it could also be expected that it would contain further clarifications regarding apportionment of costs related to translation and a clear description of situations where such costs would not be allocated to the requesting jurisdiction. It is recommended that Russia contact this partner to work toward resolving any outstanding issues.

### *In force* *(ToR C.1.8)*

419. Exchange of information cannot take place unless a jurisdiction has exchange of information arrangements in force. Where exchange of information agreements have been signed, the international standard requires that jurisdictions must take all steps necessary to bring them into force expeditiously.

420. In Russia, after an EOI agreement is signed, there are a number of steps necessary to complete the process of ratification and entry into force. First, a draft law of ratification is prepared in consultation with the relevant ministries (in particular, the Ministry of Finance and the Ministry of Justice). The draft law must then be approved by the government, and is submitted to the State Duma. The law is adopted by the Duma, and submitted to the Council of the Russian Federation which must in turn adopt the law. After adoption, the law is signed by the President of Russia, and finally a diplomatic note is submitted to the treaty partner to notify that Russia's ratification procedures have been completed.

421. Eighty-three of 87 DTCs have entered into force. In addition, amending protocols have entered into force with regards to seven DTCs. Russia also signed the Multilateral Convention in November 2011 and envisages to deposit its instrument of ratification before the end of 2014.

422. Finally, Russia has DTCs with four jurisdictions which have been signed but not yet brought into force: Ethiopia (1999), Estonia (2002, ratified by Estonia), Mauritius (1995) and Oman (2001). Reasons why these agreements have not been brought into force yet include limited economic relations with a number of jurisdictions involved as well as more specific political and pragmatic reasons with others as well.

423. Russia has 57 DTCs which are in force and to the standard. However, as noted, after Russia's ratification of the Multilateral Convention information exchange with an additional 12 jurisdictions will in practice be to the standard. In order to further develop its network of in force agreements to the standard, Russia should ensure that all of its EOI agreements are brought in line with the standard and further, that it moves quickly to ratify its signed EOI agreements.

424. Russian authorities explain that any international treaty in force has priority over national legislation. This is also the case regarding national legislation that took effect after the treaty entered into force. However, ratification takes a long time. The Multilateral Convention was signed in November 2011, but the draft law was only recently submitted to government and put on its agenda on 6 December 2013. It is expected to be submitted to the Parliament (the Duma) in autumn 2014 with a view to be adopted before the end of 2014.

425. The average time for ratification of a treaty in Russia is between 6 months to 2 and a half years. This is mainly because the Ministry of Finance needs to send the enacting bill to each ministry that bears some form of responsibility in this field. With the Multilateral Convention a number of ministries would have to be consulted for their approval. Moreover, ratification of a treaty can only take place based on an official Russian translation, and this process has been very lengthy in the case of the Multilateral Convention.

### *Be given effect through domestic law* *(ToR C.1.9)*

426. For exchange of information to be effective, the contracting parties must enact any legislation necessary to comply with the terms of the agreement.

Russia has generally enacted all the legislation necessary to comply with the terms of its agreements. In particular, article 102(1) of the Tax Code expressly provides that the tax officials' obligations to maintain the confidentiality of tax information, is lifted to allow the disclosure of information necessary for the purposes of an EOI agreement. However, as noted above and elaborated further in section B.1.4, legislative changes to article 86 of the Tax Code are recent, and it's recommended that the Russia closely monitors the implementation of the amended article 86 of the Tax Code for information to be exchanged in line with the standard.

**Determination and factors underlying recommendations**

| **Phase 1 determination** | |
|---|---|
| **The element is in place, but certain aspects of the legal implementation of this element need improvement.** | |
| **Factors underlying recommendations** | **Recommendations** |
| Russia interprets the EOI provisions in DTCs relating to 11 of its EOI partners to limit information exchange to instances where the information relates to a person resident in one of the Contracting States.<br>Under the DTC with one partner, information exchange is limited to information necessary for the carrying out the provisions of the Convention. An amending protocol which will remove this limitation is ready to be signed. | Russia should ensure that all of its EOI agreements permit the exchange of information relevant to all persons and also permit exchange for the purposes of administration and enforcement of the parties' domestic laws, in line with the international standard. |
| Four of Russia's signed DTCs and the Multilateral Convention on Mutual Administrative Assistance have not been brought into force by Russia. | Russia should ensure that it takes all steps necessary for its part to bring its signed EOI agreements into force expeditiously. |

| **Phase 2 rating** |
|---|
| **Largely compliant.** |

## C.2. Exchange-of-information mechanisms with all relevant partners

The jurisdictions' network of information exchange mechanisms should cover all relevant partners.

427. Ultimately, the international standard requires that jurisdictions exchange information with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement. Agreements cannot be concluded only with counterparties without economic significance. If it appears that a jurisdiction is refusing to enter into agreements or negotiations with partners, in particular ones that have a reasonable expectation of requiring information from that jurisdiction in order to properly administer and enforce its tax laws it may indicate a lack of commitment to implement the standards.

428. Russia has signed 87 double tax conventions, as well as the Multilateral Convention which provide for exchange of information on request for tax matters, with 83 of the DTCs having entered in force. For seven of the DTCs amending protocols have been signed

429. The EOI agreements which are in force are with partners representing:

- Each of its 8 major commodities trading partners[20] (although 2 of these agreements are not to the international standard; However, these 2 jurisdictions are covered by the Multilateral Convention. So, after ratification of the Convention, information exchange with these jurisdictions will in practice be covered and to the international standard);
- 9 of its 10 major investment partners[21] (although 4 of these agreements are not to the international standard. However, the 4 jurisdictions involved as well as the investment partner that does currently not have a bilateral EOI agreement with Russia are covered by the Multilateral Convention. So, after ratification of the Convention information exchange with these jurisdictions will in practice be covered and to the international standard);
- 49 of the 121 Global Forum member jurisdictions; and
- All 34 of the 34 OECD Members.

20. Russia's main commodities trading partners (import and export) are, in order, China, Germany, the Netherlands, Ukraine, Italy, Belarus, Turkey and the United States.
21. Russia's main investment partners are, in order, Cyprus, the Netherlands, Luxembourg, the United Kingdom, Germany, China, the British Virgin Islands, Ireland, Japan and France.

430. At least two jurisdictions have approached Russia to indicate its interest in entering into a TIEA, although due to competing priorities, Russia has not been in a position to commence negotiations with these jurisdictions, which are not major trade or investment partners. Peer input confirms that Russia has been approached by two jurisdictions for a TIEA. However, in the meantime both jurisdictions are now covered by the Multilateral Convention. Russian authorities explain that in general TIEA's are still being considered, and that there are plans to enter into negotiations with at least six jurisdictions. Russian authorities report that there have been some contacts with jurisdictions that have shown interest in entering in a TIEA with Russia, and it's been discussed with them that Russia will be ready to enter into an agreement soon. Russian authorities further report that a quick start of TIEA negotiations was further complicated, as analyses had to be done whether a TIEA would be the most effective tool, for instance in relation with jurisdictions that have received a less favourable rating for EOI in their Global Forum peer review. However, Russian authorities state that currently a model TIEA agreement is being drafted, and that this model, which to a large degree is based on the OECD TIEA model, will be ready for use after it has been approved by Russian Government on 14 August 2014 From that moment Russia will be in a position to start negotiations with a partner that would request entering into a TIEA.

431. The wording of Russia's domestic access powers would permit access to information for the purpose of TIEAs, to the same extent as they currently do for its DTCs and the Multilateral Convention.

432. Russia has also indicated that it intends to ratify and bring into force the Multilateral Convention by the second half of 2014. This will ensure Russia has a network of EOI relationships to the standard with the other signatories, some of whom it already has a DTC containing an EOI provision.

**Determination and factors underlying recommendations**

| **Phase 1 determination** | |
|---|---|
| **The element is in place, but certain aspects of the legal implementation of this element need improvement.** | |
| **Factors underlying recommendations** | **Recommendations** |
| Russia has signed 87 double tax conventions which provide for the exchange of information, of which 83 are in force with 57 being in force and in line with the standard. It has also signed the Multilateral Convention on Mutual Administrative Assistance. | Russia should take steps to ensure that it is able to give full effect to its network of EOI agreements in line with the international standard. |

| Phase 1 determination | |
|---|---|
| **The element is in place, but certain aspects of the legal implementation of this element need improvement.** | |
| **Factors underlying recommendations** | **Recommendations** |
| Russia has been approached by at least two jurisdictions to negotiate a TIEA. In 2014 both jurisdictions are covered by the Multilateral Convention. | Russia should continue to develop its network of EOI mechanisms (regardless of their form) with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement with it. |

| Phase 2 rating |
|---|
| **Largely compliant** |

## C.3. Confidentiality

The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received.

### *Information received: disclosure, use, and safeguards* *(ToR C.3.1)*

433. Governments would not engage in information exchange without the assurance that the information provided would only be used for the purposes permitted under the exchange mechanism and that its confidentiality would be preserved. Information exchange instruments must therefore contain confidentiality provisions that spell out specifically to whom the information can be disclosed and the purposes for which the information can be used. In addition to the protections afforded by the confidentiality provisions of information exchange instruments, jurisdictions with tax systems generally impose strict confidentiality requirements on information collected for tax purposes.

434. Each of Russia's DTCs as well as the Multilateral Convention includes a provision equivalent to article 26(2) of the OECD Model Tax Convention, which covers the confidentiality of information exchanged. This establishes a duty of confidentiality which covers any information exchanged under Russia's EOI agreements, and is separate from the duty of confidentiality established by Russia's domestic law.

435. Under domestic law, article 32 of the Tax Code sets out the duties of tax officials, which includes an obligation to keep taxpayer records in accordance with established procedures, and that they observe and ensure

tax confidentiality. These obligations are further described in Article 102, and cover any information regarding a taxpayer received by the tax authority. Article 102 also provides that confidential tax information shall be subject to special storage and access arrangements. Some exceptions to the confidentiality requirement are provided for in article 102(1) of the Tax Code, in particular for information provided to tax agencies of other nations in accordance with international treaties, or other cases specifically provided for under federal law, and these exceptions are consistent with the international standard.

436. Pursuant to Article 35(1) of the Tax Code, the tax authorities are responsible for damages inflicted to taxpayers, payers of fees and tax agents as a result of unlawful actions or decisions or omission of the authority, its officials or other employees in performing their office duties. These damages are reimbursed at the expense of federal budget. Article 35(3) of the Tax Code provides that the officials or other employees who are found guilty of unlawful actions or omissions "shall bear responsibility" as provided for in Federal Laws, however it is not clear what those enforcement measures are.

437. Furthermore, the confidentiality duty in articles 32 and 102 of the Tax Code is limited to information "regarding a taxpayer", where taxpayer is defined under article 19 of the Tax Code as a taxpayer under Russian tax legislation. Although in some instances the information would relate to a person who was a taxpayer under Russian law, in other cases if the information exchanged under Russia's EOI agreements did not relate to a Russian taxpayer, it is not covered. In these situations the Federal Law on Personal Data (No. 152-FZ, 27 July 2006) would apply.

438. Article 4 (1) of the Federal Law on Personal Data clarifies that the Russian legislation on data protection is based on the Constitution of the Russian Federation and international treaties entered into by the Russian Federation and comprises this Federal Law and other federal laws which regulate particular issues related to personal data processing. In this context reference is also made to the Convention of European Council on protection of individuals whose data are being processed automatically (Strasburg, 28 January 1981). In addition, paragraph 4 further clarifies that if international treaties entered into by the Russian Federation establish regulations different from those provided by this Federal Law, the regulations of such international treaties shall be applied.

439. Therefore, while article 102 of the Tax Code refers to Tax secrets and is limited to information "regarding a taxpayer", confidentiality of information exchanged under an EOI agreement is governed primarily by the Federal law on Personal Data and the relevant provisions of the EOI agreement. Further, the Federal law as well as the treaty clearly contain an obligation to protect confidentiality of the information exchanged.

440. A breach of confidentiality is addressed primarily under the Criminal Code of the Russian Federation. However, if a breach would concern information that was received under an EOI agreement and was uploaded to the FTS database, article 183 of the Criminal Code, as well as article 102 of the Tax Code would apply.

441. For treaty information (e.g. content of the request), which is not in the FTS database, general criminal law would apply, in accordance with general criminal code principles (e.g. article 327of Criminal Code, liability for unlawful disclosure.

442. In addition there are various decrees that deal with internal violations of confidentiality/tax secrecy apply, such as the decree on "the concept of information security FTS of Russia" (Commissioner Decree of the Federal Tax Service of 13 January 2012), RF Government decree on referring to the Russian Federal Tax service critical infrastructure in the State Registry entry (ITCS on referring to the Federal Tax Service of FIAC 2011 number 01 00067), as well as a decree on the "Threat Model and offender information security at the Facility information FTS of Russia"(Commissioner Decree of the Federal Tax Service on May 23, 2011).

443. Further to this, Russia's confidentiality obligations under its EOI agreements are brought into effect in domestic law by provisions in the Constitution, the Tax Code and Civil Code, as described in Part B.1 of this report. Russia interprets and applies these provisions so that the domestic enforcement measures under the Tax Code are available with respect to the broader confidentiality duty under the treaty.

444. Therefore, whilst the international law duty of confidentiality will cover all information exchanged under Russia's EOI agreements, enforcement measures are in force in Russia to support the duty of confidentiality regarding all information which may be exchanged under an EOI agreement and, consequently, the recommendation made for Russia in this regard in Phase 1 is removed.

### *All other information exchanged (ToR C.3.2)*

445. As noted above, each of Russia's signed EOI agreements include a provision requiring the contracting parties to protect the confidentiality of information exchanged, equivalent to article 26(2) of the OECD Model Tax Convention. This duty of confidentiality is in addition to the obligations established by Russia's own domestic law.

446. The confidentiality provisions in Russia's domestic law which are also described above and which protect information provided in response to an exchange of information request, apply equally to protect the request for information itself and includes background documents provided by an

applicant State, as well as any other information relating to the request such as communications between the exchange of information partners in respect of the requests. Subject to the limitation described above, that the confidentiality duty does not clearly cover information other than information "regarding a [Russian] taxpayer", the domestic law provisions support the obligation under its EOI agreements to protect all information exchanged.

### *In practice*

447. Regarding confidentiality and the security of information (data) stored in the FTS database, Russian authorities explain that a number of different threats to information security are contemplated by different rules: deliberate acts; errors and omissions; design errors, etc. In terms of intentional conduct, according to Russian authorities such cases have occurred. However, based on this experience they report that they feel confident that these situations can be addressed within the existing framework of the procedures that are in place and possibilities to initiate a criminal procedure.

448. As Russian authorities explain it is impossible to have access to information non-intentionally; within FTS a so called matrix of access was developed, which allows FTS to track who and when accessed certain – types of – information. And FTS uses methods to see if the matrix has been conformed with. FTS further carries out passive control of its database users to see what data they have accessed, and whether this would qualify as aberrant/deviant behaviour. Russian Authorities point out that they are able to assess this behaviour, because the FTS has administrative resources where they check what access users have employed and to know if it is reasonable. Therefore, IT identifies where a tax inspector or another employee is accessing information that he or she is not supposed to. The penalty is up to 5 years in prison.

449. While ledgers and journals are maintained in respect of access and can be reviewed to determine where there have been breaches of security protocols, Russian authorities feel confident that in practice occurrences of these threats can to a large degree be revealed.

450. Authorities further explain that accreditation to the information in the database is based on the position of the employee, and for instance not based on a geographical setting. Inappropriate access is further reduced also by the use of various authentication tools.

### *Confidentiality and correspondence regarding EOI requests*

451. Further, Russia's instruction manual stipulates that the principle of confidentiality is a basis of mutual trust between the parties. Any information received shall be treated as confidential and shall be ensured by the

protection regime in accordance with requirements of the national legislation. The information received shall be used strictly for the purposes provided by the Treaties, including in cases of administrative and judicial proceedings.

452. Every letter with the information from EOI partners sent by the Russian competent authority to subordinate tax services for handling has the provision indicating that the information provided is to be used strictly in accordance with provisions contained in the "Exchange of Information" Article of the DTC between the two countries.

453. Every reply to the foreign jurisdictions contains the provision that the information is provided according to the "Exchange of Information" Article of the DTC between the two countries and is to be used or disclosed strictly in accordance with the provisions contained therein.

454. Russian authorities explain that where they ask for documents from banks under clause 2 of Article 86, they provide reasons for the request. In their request they state that it is for EOI purposes, but they do not explain the background of the case. It may be that EOI partners asks their Russian counterparts not to indicate that it is for EOI purposes, in which case they do not specify that it relates to an (international) EOI request. The local inspectorate is in charge of drafting this request and uses a specific template for this purpose.

455. In case documents are requested from a taxpayer, counterparties, other persons under article 93.1 of the Tax Code Russian authorities explain that they provide very limited information to the information holder. In practice the FTS would use a field audit of A to ask for the information from company B and simply state that "as we have a right under 93.1, please provide us with information regarding A".

456. When the information is obtained from the taxpayer or a third party and it has been transmitted to the regional office, the handling of this information is tailored to internal use and for treaty purposes only. As such, the use and storage of this material is governed by the terms of the EOI agreement.

457. Regarding the question if the taxpayer can appeal against an EOI request, Russian authorities explain that the taxpayer in practice does not really have any elements on which to appeal. The taxpayer may appeal in theory, but there are no cases in practice. Also there are no specific rights attached to an EOI request. Moreover, taxpayers would not be able to access the information concerning requests.

458. In cases where there is (possibly) a business secret involved, the taxpayer has a right not to provide the documents if he thinks this would harm the business. In that case FTS may initiate a court procedure and the FTS would have to prove that they need this information for EOI purposes. Russian authorities state that they have never been to court on this.

**Determination and factors underlying recommendations**

| Phase 1 determination |
|---|
| **The element is in place** |

| Phase 2 rating |
|---|
| **Compliant** |

## C.4. Rights and safeguards of taxpayers and third parties

The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties.

### *Exceptions to requirement to provide information (ToR C.4.1)*

459. The international standard allows requested parties not to supply information in response to a request in certain identified situations where an issue of trade, business or other secret may arise. Among other reasons, an information request can be declined where the requested information would disclose confidential communications protected by the attorney-client privilege. Attorney-client privilege is a feature of the legal systems of many jurisdictions.

460. However, communications between a client and an attorney or another admitted legal representative are, generally, only privileged to the extent that the attorney or other legal representative acts in his or her capacity as an attorney or legal representative. Where attorney-client privilege is more broadly defined, it does not provide valid grounds on which information can be declined to be provided in response to a request.

461. Each of Russia's double tax conventions, as well as the Multilateral Convention, includes a provisions equivalent to article 26(3)(c) of the OECD Model Tax Convention, which provides Contracting States with the right to decline to exchange information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public). As described in Part B.1.5 of this report, the scope of legal privilege in Russia's domestic law is consistent with the international standard in this regard, as are the domestic law provisions on commercial secrets.

462. However, Russia's domestic law creates an obligation of confidentiality with respect to "audit secrets", which is described in Part B.1.5 of this report. The duty appears to cover most information prepared by or in the possession of auditors. The duty of confidentiality has only limited exceptions, and does not include a general exception for access to such information

for EOI purposes. Therefore this confidentiality duty for audit secrets may in some cases create an inconsistency with Russia's obligations to exchange information under its EOI agreements.

463. In practice, the obligation of confidentiality with respect to "audit secrets" was not invoked during the three-year period under review. More broadly, no issues in relation to the rights and safeguards of taxpayers and third parties have been encountered in practice, nor have they been raised by any of Russia's exchange of information partners.

**Determination and factors underlying recommendations**

| Phase 1 determination | |
|---|---|
| **The element is in place, but certain aspects of the legal implementation of the element need improvement.** | |
| **Factors underlying recommendations** | **Recommendations** |
| The scope of information protected by Russia's domestic law confidentiality duty for "audit secrets" is broad, and there is no exception which would permit access for the purposes of exchange under Russia's EOI agreements. | Russia should ensure that information which would otherwise be protected by the domestic law on "audit secrecy" can be accessed and exchanged in accordance with its obligation to exchange information under its EOI agreements. |

| Phase 2 rating |
|---|
| **Largely compliant** |

## C.5. Timeliness of responses to requests for information

The jurisdiction should provide information under its network of agreements in a timely manner.

### *Responses within 90 days (ToR C.5.1)*

464. In order for exchange of information to be effective it needs to be provided in a timeframe which allows tax authorities to apply the information to the relevant cases. If a response is provided but only after a significant lapse of time the information may no longer be of use to the requesting authorities. This is particularly important in the context of international co-operation as cases in this area must be of sufficient importance to warrant making a request.

465. There are no specific legal or regulatory requirements in place which would prevent Russia responding to a request for information by providing the information requested or providing a status update within 90 days of receipt of the request.

466. The Ministry of Finance is the competent authority for international exchange of information for tax purposes under all Russia's DTCs. The Ministry of Finance delegated this competency to the Federal Tax Service (FTS). Thus, the FTS is the competent authority for exchange of information on behalf of the Ministry of Finance. In addition, the FTS is the competent authority on behalf of the Ministry of Finance under all Russia's Inter-Government Agreements on Cooperation and Mutual Assistance in Tax Compliance Matters, Inter-Government Agreements on Cooperation and Tax Information Exchange, Interagency Agreements on Cooperation and Tax Information Exchange.

467. The Control Directorate is the main unit in the FTS in charge of EOI on request. The Deputy Commissioner of the FTS and the Head of the Control Directorate are authorised to sign documents with respect to the EOI on request.

468. Incoming EOI requests received from all the countries except Georgia and CIS countries are processed in the Division for Exchange of Information with Foreign Competent Authorities, within the Control Directorate of Federal Tax Service (i.e. in the central office of the FTS). The Division is staffed by 6 full time officers working on international exchange of information. In this context the officers are responsible for management of the exchange of these information requests at all levels.

469. The Interregional Inspectorate of Federal Tax Service for Centralized Data Processing is responsible for exchange of information with Georgia and CIS countries (excluding Kazakhstan and Belarus). The incoming requests are handled by one full time officer in this inspectorate.

470. Exchange of information with Kazakhstan and Belarus is delegated to the regional level. Incoming EOI requests from these countries are processed by one or more of the Regional Administrations of the Federal Tax Service (herein regions) and nine Interregional Inspectorates for Large Taxpayers. Incoming requests are handled by divisions responsible for tax audits within each Administration. In the largest regions of Russia such as Moscow, Saint Petersburg there are two officers working full-time with international requests. And in some smaller regions there is 1 officer working full time with international requests. In the Interregional Inspectorates for Large Taxpayers and other regions, tax auditors process incoming requests themselves.

471. As Russian authorities explain the organisational structure of Russia's Tax Service was highly fragmented for many years, with a sub-division of the service present in each administrative unit of the Russian Federation in line with the country's territorial division. Over the last decade

the tax authorities have gradually evolved towards a more consolidated structure. As a result the Federal Tax Service now has around 900 inspectorates, instead of 2500 in the early 2000s. At the same time a number of new functions were transferred to the tax authorities such as the Common State Registry of legal entities and private entrepreneurs. On a federal level nine specialised interregional inspectorates are administering major taxpayers on an industry-by-industry basis. Currently there are 140 000 tax officials working in the FTS, serving a total of 144 million taxpayers.

472. The FTS documentation reports that the sheer size of the Russian territory is a great challenge to the administration of taxes generally. The strategy has been to focus on working with taxpayers to make it as easy as possible to fulfill their tax obligations. In addition, the FTS now acts as Registrar for all entities in Russia, and the FTS is building data centers, so that all information can be co-ordinated and has resolved issues related to conflicting information. Finally, there has been a big effort over the past three years to work more closely with Russia's EOI partners in accordance with OECD principles, for example in respect of transfer pricing.

473. The types of information exchanged under EOI instruments can be divided between:

- identity information
- ownership information
- accounting information
- banking information
- Transaction information.

474. As noted above in section A, the FTS maintains an extensive database of ownership information. Documentation from the FTS states that in the beginning of the 1990s the tax service was very poorly equipped in material and technical terms, having virtually no buildings, computers or office equipment of its own. This meant that many tasks were performed manually and only around 10% of work was computerised, and information exchange between inspectorates took place exclusively in paper form. In response a technological transformation of the Russian tax authorities was initiated in the period 2002-04, while at present the Federal Tax Service presents itself as one of Russia's most advanced government bodies in terms of the use of information technology.

475. Russian authorities state that the goal is to have one centralised database for the FTS that can also serve multiple purposes. With this aim a centralised computing infrastructure is created in combination with a federal central data processing centre, designed to provide centralised services

within FTS, to domestic taxpayers, other governmental agencies and EOI partners. The Centralized Data Processing Interregional Inspectorate is the responsible unit, consisting of 12 divisions and 188 employees.

476. In addition to the Federal central data processing centre, a number of additional data processing centres is being created at a regional level, geographically located across Russia. These centres will function as a sort of data reservoirs and places where all key data processing operations are organised. This is a complex structure involving a system of local and global computer networks and servers as well as a storage system designed to ensure the continuous accessibility of the information. The use of "cloud" computing enables the system to cope with dynamically changing workloads, while it also entails the availability of all data at one point.

477. Russian authorities highlight that the consolidation of databases and the utilisation of modern information technologies will greatly enhance the quality and speed of processing of tax information and services rendered. In this context it is relevant to note that a large proportion of companies (76 percent) provide accounting information (financial statements) electronically to the FTS as part of their annual tax filing requirements. This includes all companies that are subject to corporate income tax and VAT. From 2015, the FTS will require that each company provide a digest on each and every transaction for VAT purposes. So the obligation to provide information will become more specific and this information will be available within the FTS databases.

478. All banks are required to give information on the accounts of companies/entrepreneurs, and 70 percent of banks provide information on transactions, including balances, electronically. As noted in section B, before 1 January 2013, the FTS did not have access to information on the bank accounts of private individuals. Starting from 1 July 2014, banks will also provide accountholder information automatically where new accounts are opened by private individuals. This information will also be provided where there are certain changes to the account, for example, if the number of the account, BIC, name of the bank changes or if new identity information is provided (article 86(1) of the Tax Code as amended by Federal Law No. 134-FZ of 28 June 2013). Therefore, a large amount of bank information is already available within the FTS of Russia.

479. Many of Russia's EOI requests are also answered with information held by other governmental agencies. The FTS is authorised to obtain information from any other agency, however, in a number of cases other agencies provide this information on an automatic basis. For example, automobile and land registry information is provided automatically.

The table below shows the requests received by Russia in the 3 year period from 1 July 2010 to 30 June 2013. It is noted that the table shows

requests in both direct tax and VAT matters. Russia's authorities do not maintain statistics that distinguish between the types of tax involved. However, Russia estimates that, over the 3 year period, approximately 50 percent of the requests relate to direct tax.

**Response times for requests received during the three-year review period**

| | July-Dec 2010 | | 2011 | | 2012 | | Jan-Jun 2013 | | Total | Average |
|---|---|---|---|---|---|---|---|---|---|---|
| | Number | % | Number | % | Number | % | Number | % | Number | % |
| Total number of requests received* (a+b+c+d+e) | 2096 | 100 | 2640 | 100 | 2298 | 100 | 911 | 100 | 7945 | 100 |
| Full response** <=90 days | 1869 | 89.17 | 2209 | 83.67 | 2057 | 89.51 | 767 | 84.19 | 6902 | 86.87 |
| <=180 days (cumulative) | 1939 | 92.51 | 2461 | 93.22 | 2176 | 94.69 | 820 | 90.01 | 7396 | 93.09 |
| <=1 year (cumulative) (a) | 1952 | 93.13 | 2477 | 93.83 | 2226 | 96.87 | 822 | 90.23 | 7477 | 94.11 |
| 1 year + (b) | 9 | 0.43 | 0 | 0.00 | 12 | 0.52 | 0 | 0.00 | 21 | 0.26 |
| Declined for valid reasons (c) | 2 | 0.10 | 7 | 0.23 | 7 | 0.30 | 11 | 1.21 | 2 | 0.33 |
| Failure to obtain and provide information requested (d) | 106 | 5.06 | 129 | 4.89 | 25 | 1.09 | 57 | 6.26 | 317 | 3.99 |
| Requests still pending at the end of the review period (e) | 27 | 1.29 | 28 | 1.06 | 28 | 1.22 | 21 | 2.31 | 104 | 1.31 |

* Russia's method of counting requests is the following: 1 taxpayer (in respect of whom the information is requested) = 1 request. In other words if a request asks for information on 5 different companies owned by the 1 foreign taxpayer, it is counted as 5 requests.

** The time periods in this table are counted from the date of receipt of the request to the date on which the final and complete response was issued[22].

480. The Control Directorate of the FTS does not maintain detailed statistics regarding the breakdown of these requests according to type of information sought (e.g. ownership information, bank information) or by what type of procedure was required to obtain the information (e.g. tax audit, request to another governmental authority).

481. The requests that are not fulfilled within 90 days usually relate to interviewing of a taxpayer (if he/she did not come at fixed time, or he/she does nor reside at the address of registration) and require investigative measures of complex nature because different types of information are requested

22. As the Russian Competent Authority explains the dates recorded are based on final responses, i.e. when all requested items have been provided or – where there was a failure to obtain some of requested items – the other remaining items had been provided.

in one request (information and copies of confirming documents from a company, bank statements on accounts of a company from a bank, information from other state body).

Russian authorities report declining to provide information requested by EOI partners for valid reasons in 26 cases. The basis for declining to provide the requested information is listed below:

| Basis for declining | EOI partner | Frequency |
|---|---|---|
| The request concerned pensions. | Belarus, Croatia, Poland | rarely |
| The request did not have a legal basis for providing information. | Argentina, Kazakhstan | rarely |
| The request did not have tax purpose and reasons as well as name and address of a taxpayer. | Kazakhstan | rarely |
| The request concerned relationships between a Russian taxpayer and a third party (from another foreign jurisdiction). | Lithuania, | rarely |
| The Canadian tax authority asked to provide affidavit. Russian administrative practice does not foresee such type of documents. | Canada | rarely |
| There were no tax purposes in the request. | Bulgaria | rarely |
| The request was not covered by the Tax Treaty. It should have been sent to the other governmental authority. | Israel | rarely |
| Other | Kazakhstan, Belarus | rarely |

482. Russian authorities explain that the update on the status of the request is not provided because of vast number of incoming and outgoing requests and replies. In any event, a large percentage of Russia's EOI requests are answered within 90 days, and in those cases a status update is not required. Russian authorities noted they do provide status updates if specifically asked for and are in the process of setting up a system that will ensure the provision of status updates.

483. Russian authorities stated that the response is final, and includes all information that is available to the Russian competent authority. In this case any follow up question from the requesting jurisdiction will be considered and counted as a new request. Peer input indicated that some requests have been answered partially, and in some of these cases it was not clear for the EOI partner whether the request was still pending. As Russian officials explain FTS headquarters does not keep track of what responses are partial. However, a reply will be checked on completeness and this means that in such a case the FTS will mention to the partner that the information is not complete and that this is not a final response.

484. The most significant number of EOI requests to Russia came from the following partners:

- Ukraine
- Lithuania
- Belarus
- Kazakhstan
- Poland.

485. Exchange of information with CIS jurisdictions, Georgia, Germany, Latvia, Lithuania, Belarus and Kazakhstan jurisdictions is all done in the Russian language. Moreover, Kazakhstan and Belarus are members of a Customs Union with Russia, and a high level of integration and a huge volume of requests between the three jurisdictions exists.

### *Handling and processing the requests*

486. As elaborated further in Part B.5.2., within the FTS there are three branches that respond to incoming international EOI requests. In principle, international requests in general are dealt with centralised at FTS headquarters, while requests from CIS-countries and Georgia are dealt with by other units within the FTS. This is mainly due to the historic and economic ties that these jurisdictions share – there is for instance a customs union with Kazakhstan and Belarus – and the fact that all correspondence with these jurisdictions takes place in the Russian language. Incoming EOI requests from Kazakhstan and Belarus are processed and handled directly at a regional level (subordinate tax office), while all other requests are processed centralised, either through an interregional unit (CIS countries) or through FTS headquarters (all EOI requests from non CIS-countries).

487. Russian authorities point out that 70 per cent of all EOI requests are related to Kazakhstan and Belarus, which made approximately 1600 requests to Russia in 2013. As stated, the incoming EOI requests from Kazakhstan and Belarus are processed by one of the 82 Administrations of the Federal Tax Service for Constituent Entities (herein regions) or 9 Interregional Inspectorates for Large Taxpayers. On this regional level tax auditors process incoming requests themselves. If the regional tax office does not have the information requested, then they send it on to the local tax office, which has 28 days to respond. The regional tax office has 7 days to verify that the information is full and complete.

488. In principle incoming international requests for information are forwarded by the Control Directorate in the FTS headquarters in Moscow

to the regional level to be handled by divisions responsible for tax audits within each Administration. In the largest regions of Russia such as Moscow, Saint Petersburg there are two officers working full time with these international requests. And in some smaller regions there is 1 officer working full time with international requests. If the regional tax office does not have the information requested, then they send it on to the local tax office, which has 28 days to respond. The regional tax office has 7 days to verify that the information is full and complete.

*Processing and handling of incoming EOI requests by FTS headquarters (Control Directorate)*

489. After receiving the request, the first step is to check whether request is valid and complete. All steps take place within prescribed and tight timelines. In order to gain speed Russia does not send an acknowledgement to treaty partner, but focuses purely on a vigorous handling of the requests and the exchange of information.

490. If a request is not valid or complete, the competent authority sends a notification about the deficiencies to the EOI partner. As Russian authorities explain this does not happen very frequently, something that peer input also seems to confirm.

491. If the request is valid, the request is translated and FTS headquarters has thirty days to forward the request. As the transfer between offices is done electronically, this transfer can be done quickly and typically within one day.

492. At this stage the competent authority may add some additional questions to the request that may assist the tax official involved in helping to find all information that's likely to be relevant for the treaty partner. For example, one EOI partner asked certain questions about the source of funds for a loan between two individuals. In this context the request is usually limited to the question "does the lender have sufficient resources to fund such a loan". To this the FTS would add questions about salary, income, as well as moveable/immovable property.

493. As a second step the competent authority needs to identify the regional office and forward it to one or more of the 82 regional offices or one of the nine interregional inspectorates on large taxpayers. However, where information needed to respond to a request is uncomplicated and already in the hands of the Control Directorate of the FTS, a reply to the request is to be prepared and sent within 30 days from the date of receipt of a request.

494. As Russian authorities explain, they generally translate the entire request and send it to one of the offices on a regional level. However, this does not include the request itself. Russian authorities further state that

information from the request could also be relevant for domestic purposes, for instance where an EOI partner requested the Russian Competent Authority to confirm that a Russian taxpayer had been paid considerable cash amounts by a foreign taxpayer for services rendered. When processing the request the Russian tax authorities discovered that the taxpayer had not declared any income received from the foreign taxpayer. As a result, not only the response was provided to the EOI partner but also the Russian taxpayer had to file updated tax returns and pay relevant income tax to the budget of the Russian Federation. Russian authorities highlight that this information cannot be included in the database. However, the request itself is separately stored and can only be accessed by EOI officers and only be used for treaty purposes. Furthermore, requests are marked and identified and are not entered into the database. As the Russian Competent Authority further explains incoming requests are received and exist only in hardcopy. Hardcopy requests are not digitised and are not uploaded to any digital database. All incoming requests are registered by their date, reference number and sender. The unit responsible for EOI maintains a spreadsheet log, which allows tracking work progress on every request.

In accordance with strict rules and protocols all requests are stored as classified materials in a secured area. Access to these facilities is controlled and limited only to FTS officers with relevant security clearances. As further explained, all FTS officials carry personal responsibility for disclosure of confidential information as well as data that contains tax secrets.

495. Within the FTS headquarters (Control Directorate) each officer maintains an Excel spreadsheet to log and track requests received by the competent authority. The spreadsheet contains details about each request and a number of details regarding monitoring and handling of the request. While regional offices have their own spreadsheet, local offices do not. In 2014 it is planned to put into service the internal software "International Exchange of Information". This software will be relevant for inbound and outbound requests, enabling the competent authority to form requests, replies and feedbacks. Furthermore, it will give the opportunity to monitor handling of requests from lower to higher level tax offices.

496. Where the regional office already possesses the information, the reply will be sent back to the FTS headquarters within 15 days. In some regional offices with the most volume there are dedicated EOI personnel. In smaller officers there may be one person responsible where there is a history of EOI requests.

497. If the regional tax office does not have the information requested, then the regional tax office will send it on to the local tax office, which has 28 days to carry out investigative measures and respond. In this respect it uses a number of information sources to get information, such as registration

data and accounting records. Other sources of information are related to companies, banks, government agencies, or the taxpayer involved. Local officials further point out that a dynamic approach is important as FTS headquarters attaches great importance to a full and timely response to all requests.

498. Regarding CIS countries and Georgia the overall process is basically similar, except that EOI requests are dealt with by the Interregional Inspectorate of Federal Tax Service for Centralized Data Processing. As noted, all correspondence takes place in the Russian language and all incoming requests in this inspectorate are handled by one full time officer. This officer sends the request to a regional tax office. However, where information needed to respond to a request is uncomplicated and already in the hands of the Interregional Inspectorate a reply is sent within 30 days from the date of receipt of the request. If the regional tax office does not have the information requested, then the regional tax office will send it on to the local tax office, which has 28 days to respond. The regional tax office has 7 days to verify that the information is full and complete. As noted, there is no translation needed while all correspondence and underlying documentation take place in the Russian language.

499. With regard to requests from Belarus or Kazakhstan, it's noted out that these come to the regional tax office, without first going through the FTS HQ or another central point. If the regional tax office does not have the information requested, then the regional tax office will send it on to the local tax office, which has 28 days to respond. The regional tax office also has 7 days to verify that the information is full and complete.

500. Russian authorities report that the following internal (maximum) timeliness apply for providing a full response regarding EOI requests:

- from Kazakhstan and Belarus – 40 calendar days (since the exchange of information is carried out at the regional level);
- from other CIS-countries – 50 calendar days (since it does not require translation to/from English and adapting the request/response);
- from all other foreign jurisdictions: 100 calendar days.

### *Organisational process and resources* *(ToR C.5.2)*

501. Russia's legal and regulatory framework relevant to exchange of information for tax purposes is presided over by the Federal Tax Service and the Ministry of Finance. Administration of the exchange of information under Russia's treaty network is the responsibility of Russia's competent authority, namely the Ministry of Finance and the Federal Tax Service.

502. The contact details of the competent authority of the Russian Federation are posted on OECD secure website.

503. The FTS provides the EOI partners on a regular basis with information on the contact persons, with postal and e-mail addresses, phone and fax numbers of all Russian competent authorities. Besides the cover letters of each request or reply of the FTS, it contains the contact details of the person in charge.

504. The FTS has regular e-mail and/or telephone contacts with some EOI partners (e.g. from the, Canada Cyprus,[23] CIS countries, Czech Republic, Denmark Finland Greece Hungary Ireland Japan, Korea the Netherlands, Norway, Poland, Sweden, and the United States).

505. In addition, the FTS has five interagency agreements on exchange of information: with Sweden (signed on 18 September 2000), Denmark (signed on 23 January 2002), France (signed on 28. January 2004), Poland (signed on 26 April 2004), Norway (signed on 22 September 2004). In 2010 the FTS carried out simultaneous tax audits together with the tax authority of Sweden. The FTS has regular meetings with the Tax Administration of Finland on exchange of information issues within the Russian-Finnish Working Party set up in 2009. At present Russia is involved in simultaneous tax audit project with Finland. Within the frames of this project case specific exchange, simultaneous audits and automatic exchange have been developed. Concerning case specific exchange (EOI on request), Russia exchanges confidential tax information with Finland electronically using secure e-mail provided by the Finnish Tax Administration. The project working group meets at least twice a year. Peer input states that this gives a good opportunity not only to discuss developments, but also to discuss day to day matters. In between meetings contact is kept over e-mail.

506. Regarding working relationships, FTS states that it meets at least twice a year with Finland, but this will become more frequently, and that they also met with other key partners such as Cyprus, China, Sweden and the United States.

### *Procedures and processing the requests*

507. The processing of incoming requests for information is carried out according to an instruction manual which is based on the OECD Manual. Russian authorities report that the instruction manual concerns incoming and outgoing requests and responses as well as spontaneous exchange of information, including procedures applicable to the EOI staff receiving requests. Also it contains detailed instructions on search for information on the official

23. See footnotes 5 and 6.

websites of business registers of foreign countries. It can be noted that the same procedures and processes are followed by the FTS (responsible for EOI with non CIS countries), the Interregional Inspectorate of Federal Tax Service for Centralized Data Processing (responsible for EOI with CIS countries and Georgia excluding Kazakhstan and Belarus) and the regional tax offices (responsible for EO with Kazakhstan and Belarus).

508. At the level of local offices officers dealing with EOI must be familiar with the manual and participate in video conferences with HQ on specific issues. Not everyone at local office deals with EOI, only certain people manage the requests (although more people may be involved in collecting certain types of information). Out of 140 000 FTS officers, fewer than 100 are dedicated to EOI.

509. For each incoming request, the competent authority checks whether or not the request is valid and complete, that is whether or not:

- it fulfils the conditions set forth in the applicable exchange of information provision;
- it has been signed by the competent authority and includes all the necessary information to process the request;
- the information requested is of a nature which can be provided having regard to the legal instrument on which it is based and the relevant laws of the requested party;
- sufficient information is provided to identify the taxpayer;
- sufficient information is given to understand the request.

510. If the request is considered to be invalid or incomplete the competent authority sends a letter to the requesting competent authority notifying of deficiencies in the request. In cases where a request is unclear or incomplete the Russian competent authority asks the requesting competent authority to provide clarification or additional information. If the request is valid and complete the competent authority collects the information itself (if the information available to the competent authority) or forwards the request to subordinate tax offices.

511. When the competent authority obtains the requested information from the person in possession or control of it, this information is to be verified by the competent authority.

512. If the information obtained concerns imports or exports of goods to/from the Russian Federation, such information is to be verified through the Customs database.

513. If the information obtained concerns any bank transactions, the information is to be compared with the data contained in bank statements.

514. Furthermore, the competent authority checks whether the requested information is responsive to the question asked. If the answers are considered incomplete and insufficient, the competent authority requests to remove deficiencies in the answers to questions.

515. The Control Directorate of the FTS maintains an Excel spreadsheet to log and track requests received by the competent authority. The spreadsheet contains the following columns:

- requesting country;
- date of request;
- reference of request;
- name of foreign taxpayer;
- TIN of foreign taxpayer;
- address of foreign taxpayer;
- name of requested taxpayer in Russia;
- TIN of Russian taxpayer;
- address of requested taxpayer in Russia;
- date of sending the request to subordinate tax office;
- reference of request to subordinate tax office;
- date of receiving the reply from subordinate tax office,
- reference of reply from subordinate tax office;
- date of sending the reply to the requesting country;
- reference of the reply to the requesting country;
- data about transaction which is not confirmed (based on the collected information);
- data about problematic companies (based on the collected information);
- additional data;
- comments.

516. In 2014 it is planned to put into service the internal software "International Exchange of Information" which will enable the competent authority to track requests, replies and feedbacks. Furthermore, it will give

the opportunity to monitor handling of requests from lower to higher level tax offices. In addition, development of software which is based on the OECD standard transmission format STF 2.1. is planned for 2014. The software is expected to enable automatic EOI.

517. Tax authorities carrying out analysis and control work will further have access to a relevant set of information on taxpayers and all areas of the FTS activities. Furthermore, as noted above under C.3., accreditation to the information in the database takes place based on the position of the employee, and there are measures in place to curtail inappropriate access and use of the information.

*Training*

518. In the past three years the following specialist trainings on exchange of information took place:

- OECD workshop on Exchange of Information (Moscow, December 2010):

  over 100 participants (from the Control Directorate of Federal Tax Service, Interregional Inspectorate of Federal Tax Service for Centralized Data Processing, all Regional Administrations of the Federal Tax Service for Constituent Entities and 9 Interregional Inspectorates for Large Taxpayers);

- OECD workshop on Exchange of Information (Seoul, February 2011):

  1 participant from the Control Directorate of Federal Tax Service;

- OECD workshop on Exchange of Information (Budapest, December 2011):

  1 participant from the Control Directorate of Federal Tax Service;

- OECD workshop on Exchange of Information (Moscow, June 2012):

  over 100 participants (from the Control Directorate of Federal Tax Service, Interregional Inspectorate of Federal Tax Service for Centralized Data Processing, all Regional Administrations of the Federal Tax Service for Constituent Entities and 9 Interregional Inspectorates for Large Taxpayers);

- OECD workshop on Exchange of Information (Ankara, June 2012):

  1 participant from the Control Directorate of Federal Tax Service;

- all Russia remote video-conference on Exchange of Information with Competent Authorities of Foreign Countries (Moscow, July 2011):

over 10 000 participants (from the Control Directorate of Federal Tax Service, Interregional Inspectorate of Federal Tax Service for Centralized Data Processing, all Regional Administrations of the Federal Tax Service and 9 Interregional Inspectorates for Large Taxpayers, local tax offices). Topics covered in this training included exchange of Information with Competent Authorities of Foreign Countries According to the Provisions of the Russia's Instruction Manual, Preparing, Outgoing Requests and Replies to Incoming Requests (requirements, typical mistakes), Exchange of Information with Regard to Collection of Indirect Taxes on Exports and Imports of Goods, Works Executed and Services Provided in the Customs Union,

- A country wide EOI workshop is scheduled for the second half of 2014. About 300 participants (from the Control Directorate of Federal Tax Service, Interregional Inspectorate of Federal Tax Service for Centralized Data Processing, Administrations of the Federal Tax Service for Constituent Entities and 9 Interregional Inspectorates for Large Taxpayers as well as officials of local tax offices will be joining together to take part in this training).

519. The Russian competent authority does not use performance measures or indicators internally to monitor its EOI programme. The use of the internal software "International Exchange of Information" will enable the competent authority to monitor number of requests handled, response time period and quality of work starting from 2014.

520. The Russian language has been included in the new version of EU Electronic Forms for the Exchange of Information in Direct Taxation application, used as from 1 July 2013. For 2014 the application is planned to be used.

### *Absence of restrictive conditions on exchange of information (ToR C.5.3)*

521. Exchange of information assistance should not be subject to unreasonable, disproportionate or unduly restrictive conditions. There are no aspects of Russia's legal framework which would appear to impose restrictive conditions on the exchange of information under Russia's DTCs or the Multilateral Convention.

**Determination and factors underlying recommendations**

| Phase 1 determination |
| --- |
| **This element involves issues of practice that are assessed in the Phase 2 review. Accordingly no Phase 1 determination has been made.** |

| Phase 2 rating | |
|---|---|
| **Compliant** | |
| **Factors underlying recommendations** | **Recommendations** |
| In a number of cases, Russia has not provided status updates within the 90 day period. | Russia should provide status updates to its EOI partners within 90 days where relevant. |

# Summary of Determinations and Factors Underlying Recommendations

| Overall Rating |
|---|
| **LARGELY COMPLIANT** |

| Determination | Factors underlying recommendations | Recommendations |
|---|---|---|
| Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities *(ToR A.1)* | | |
| **Phase 1 determination: The element is in place, but certain aspects of the legal implementation of the element need improvement.** | There is no clear obligation for ownership and identity information to be kept on foreign entities, including foreign companies which have a sufficient nexus with Russia and foreign partnerships which are carrying on business in Russia, or have income, credits or deductions for tax purposes in Russia. | Russia should ensure that an obligation is established to ensure that up to date ownership and identity information is kept for relevant foreign entities, including companies and partnerships. |
| | Russian law does not ensure that information is available to identify the settlors, trustees and beneficiaries of foreign trusts with a Russian trustee or where the trust is administered in Russia. Certain AML Service Providers may in some cases be required to keep information on trust beneficiaries where they are engaged in respect to a trust's activities. | Russia should ensure that information identifying the settlors, trustees and beneficiaries of foreign trusts, which are administered in Russia or in respect of which a trustee is resident in Russia, is available to its competent authority in all cases. |

| Determination | Factors underlying recommendations | Recommendations |
|---|---|---|
| **Phase 2 rating: Largely compliant** | | |
| Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements *(ToR A.2)* | | |
| **Phase 1 determination: The element is in place.** | | |
| **Phase 2 rating: Compliant** | | |
| Banking information should be available for all account-holders *(ToR A.3)* | | |
| **Phase 1 determination: The element is in place** | | . |
| **Phase 2 rating: largely compliant** | A clear obligation that prohibits credit institutions to maintain anonymous accounts is only in force since 28 June 2013, and the transitional provisions are not defined in the law. | Russia should monitor the practical implementation including the enforcement of the recently introduced prohibition on credit institutions to maintain anonymous accounts. |
| | It is unclear what oversight and enforcement there is of banks' obligations to maintain relevant information. | Russia should ensure that banks' obligations to maintain relevant information is subject to adequate enforcement and oversight. |
| Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) *(ToR B.1)* | | |
| **Phase 1 determination: The element is in place, but certain aspects of the legal implementation of the element need improvement.** | The scope of information protected by Russia's domestic law confidentiality duty for "audit secrets" is broad, and there is no exception which would permit access to such information for EOI purposes. | Russia should ensure that access for EOI purposes is possible for all relevant information which would otherwise be protected by the domestic law on "audit secrets". |

| Determination | Factors underlying recommendations | Recommendations |
|---|---|---|
| **Phase 2 rating: partially compliant** | Russian authorities did not have access powers to obtain bank information with respect to bank accounts of private individuals until the end of 2012. During the review period this has been the case in around 20 requests. In the vast majority of these cases this type of bank information was not obtained.<br>Furthermore, there remains uncertainty whether the Russian Competent Authority is allowed to obtain and exchange transactional information regarding a private individuals' accounts prior to the entry into force of the 2012 amendment or, in case of a request regarding a private individuals' accounts that was made before 1 July 2014, where there was no provision in the EOI agreement equivalent to article 26(5) of the Model Tax Convention | Russia should monitor the practical implementation of the recently introduced powers to obtain bank information with respect to accounts of private individuals. |
| | Information on private individuals' pensions was not obtained due to Russia's restricted interpretation that this this type of information kept by pension funds can be accessed only with the consent of the individual. | Russia should ensure that information on private individuals' pensions kept by pension funds can be or is accessed and exchanged in accordance with its obligation to exchange information under its EOI agreements. |
| The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information *(ToR B.2)* | | |
| **Phase 1 determination: The element is in place.** | | |
| **Phase 2 rating: compliant** | | |

| Determination | Factors underlying recommendations | Recommendations |
|---|---|---|
| Exchange of information mechanisms should allow for effective exchange of information *(ToR C.1)* | | |
| **Phase 1 determination: The element is in place, but certain aspects of the legal implementation of the element need improvement.** | Russia interprets the EOI provisions in DTCs relating to 11 of its EOI partners to limit information exchange to instances where the information relates to a person resident in one of the Contracting States. Under the DTC with one partner, information exchange is limited to information necessary for the carrying out the provisions of the Convention. An amending protocol which will remove this limitation is ready to be signed. | Russia should ensure that all of its EOI agreements permit the exchange of information relevant to all persons and also permit exchange for the purposes of administration and enforcement of the parties' domestic laws, in line with the international standard. |
| | Four of Russia's signed DTCs and the Multilateral Convention on Mutual Administrative Assistance have not been brought into force by Russia. | Russia should ensure that it takes all steps necessary for its part to bring its signed EOI agreements into force expeditiously. |
| **Phase 2 rating: Largely compliant** | | |
| The jurisdictions' network of information exchange mechanisms should cover all relevant partners *(ToR C.2)* | | |
| **Phase 1 determination: The element is in place, but certain aspects of the legal implementation of the element need improvement.** | Russia has signed 87 double tax conventions which provide for the exchange of information, of which 83 are in force, with 57 being in force and in line with the standard. It has also signed the Multilateral Convention on Mutual Administrative Assistance. | Russia should take steps to ensure that it is able to give full effect to its network of EOI agreements in line with the international standard. |

| Determination | Factors underlying recommendations | Recommendations |
|---|---|---|
| | Russia has been approached by at least two jurisdictions to negotiate a TIEA. In 2014 both jurisdictions are covered by the Multilateral Convention. | Russia should continue to develop its network of EOI mechanisms (regardless of their form) with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement with it. |
| **Phase 2 rating: Largely compliant** | | |
| The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received *(ToR C.3)* | | |
| **Phase 1 determination: The element is in place** | | |
| **Phase 2 rating: Compliant** | | |
| The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties *(ToR C.4)* | | |
| **Phase 1 determination: The element is in place, but certain aspects of the legal implementation of the element need improvement.** | The scope of information protected by Russia's domestic law confidentiality duty for "audit secrets" is broad, and there is no exception which would permit access for the purposes of exchange under Russia's EOI agreements. | Russia should ensure that information which would otherwise be protected by the domestic law on "audit secrecy" can be accessed and exchanged in accordance with its obligation to exchange information under its EOI agreements. |
| **Phase 2 rating: Largely compliant** | | |

| Determination | Factors underlying recommendations | Recommendations |
|---|---|---|
| The jurisdiction should provide information under its network of agreements in a timely manner *(ToR C.5)* | | |
| **This element involves issues of practice that are assessed in the Phase 2 review. Accordingly no Phase 1 determination has been made.** | | |
| **Phase 2 rating: compliant** | In a number of cases, Russia has not provided status updates within the 90 day period. | Russia should provide status updates to its EOI partners within 90 days where relevant. |

# Annex 1: Jurisdiction's response to the review report[24]

The Russian Federation would like to thank the Secretariat of the Global Forum for Transparency and Exchange of Information for Tax Purposes and the assessment team for the very kind and excellent cooperation and guidance during the Phase 2 Peer review process as well as recommendations contained in the report. Russia also would like to express its appreciation to the Peer Review Group and member countries for their valuable input.

The Russian Federation is committed to working closely with the Global Forum as well as treaty partners from other tax jurisdictions with the aim of addressing the issues of tax avoidance and evasion.

24. This Annex presents the jurisdiction's response to the review report and shall not be deemed to represent the Global Forum's views.

# Annex 2: List of all exchange-of-information mechanisms

## Bilateral agreements

| No. | Jurisdiction | Type of EOI agreement | Date signed | Date In force |
|---|---|---|---|---|
| 1 | Albania | DTC | 11-04-1995 | 09-12-1997 |
| 2 | Algeria | DTC | 10-03-2006 | 18-12-2008 |
| 3 | Argentina | DTC | 10-10-2001 | 15-10-2012 |
| 4 | Armenia | DTC | 28-12-1996 | 17-03-1998 |
| | | Protocol to DTC | 24-10-2012 | 01-02-2013 |
| 5 | Australia | DTA | 07-09-2000 | 17-12-2003 |
| 6 | Austria | DTC | 13-04-2000 | 30-12-2002 |
| 7 | Azerbaijan | DTC | 03-07-1997 | 03-07-1998 |
| 8 | Belarus | DTC | 21-04-1995 | 20-01-1997 |
| 9 | Belgium | DTC | 16-06-1995 | 26-06-2000 |
| 10 | Botswana | DTC | 08-04-2003 | 23-12-2009 |
| 11 | Brazil | DTC | 22-11-2004 | 19-01-2009 |
| 12 | Bulgaria | DTC | 08-06-1993 | 08-12-1995 |
| 13 | Canada | DTC | 05-10-1995 | 05-05-1997 |
| 14 | Chile | DTC | 19-11-2004 | 23-03-2012 |
| 15 | China | DTC | 27-05-1994 | 10-04-1997 |
| 16 | Croatia | DTC | 02-10-1995 | 20-04-1997 |
| 17 | Cuba | DTC | 14-12-2000 | 15-11-2010 |
| 18 | Cyprus [25] | DTC | 05-12-1998 | 17-08-1999 |
| | | Protocol to DTC | 07-10-2010 | 02-04-2012 |
| 19 | Czech Republic | DTC | 17-11-1995 | 18-07-1997 |
| | | Protocol to DTC | 27-04-2007 | 17-04-2009 |

25. See footnotes 5 and 6.

| No. | Jurisdiction | Type of EOI agreement | Date signed | Date In force |
|---|---|---|---|---|
| 20 | Democratic People's Republic of Korea | DTC | 26-09-1997 | 30-05-2000 |
| 21 | Denmark | DTC | 08-02-1996 | 28-04-1997 |
| 22 | Egypt | DTC | 23-09-1997 | 06-12-2000 |
| 23 | Estonia | DTC | 05-11-2002 | |
| 24 | Ethiopia | DTC | 26-11-1999 | |
| 25 | Finland | DTC | 04-05-1996 | 14-12-2002 |
| 26 | France | DTC | 26-11-1996 | 09-02-1999 |
| 27 | Germany | DTC | 29-05-1996 | 30-12-1996 |
| | | Protocol to DTC | 15-10-2007 | 15-05-2009 |
| 28 | Greece | DTC | 26-06-2000 | 20-12-2007 |
| 29 | Hungary | DTC | 01-04-1994 | 03-11-1997 |
| 30 | Iceland | DTC | 26-11-1999 | 21-07-2003 |
| 31 | India | DTC | 25-03-1997 | 11-04-1998 |
| 32 | Indonesia | DTC | 12-03-1999 | 17-12-2002 |
| 33 | Iran | DTC | 06-03-1998 | 05-04-2002 |
| 34 | Ireland | DTC | 29-04-1994 | 07-07-1995 |
| 35 | Israel | DTC | 25-04-1994 | 07-12-2000 |
| 36 | Italy | DTC | 09-04-1996 | 30-11-1998 |
| | | Protocol to DTC | 13-06-2009 | 01-06-2012 |
| 37 | Japan | DTC | 31-07-1986 | 27-11-1986 |
| 38 | Kazakhstan | DTC | 18-10-1996 | 29-07-1997 |
| 39 | Korea | DTC | 19-11-1992 | 25-07-1995 |
| 40 | Kuwait | DTC | 09-02-1999 | 02-01-2003 |
| 41 | Kyrgyzstan | DTC | 13-01-1999 | 06-09-2000 |
| 42 | Latvia | DTC | 20-12-2010 | 06-12-2012 |
| 43 | Lebanon | DTC | 07-04-1997 | 16-06-2000 |
| 44 | Lithuania | DTC | 29-06-1999 | 29-04-2005 |
| 45 | Luxembourg | DTC | 28-06-1993 | 07-05-1997 |
| | | Protocol to DTC | 21-11-2011 | 30-12-2012 |
| 46 | Former Yugoslav Republic of Macedonia | DTC | 21-10-1997 | 14-07-2000 |
| 47 | Malaysia | DTC | 31-07-1987 | 04-07-1988 |
| 48 | Mali | DTC | 25-06-1996 | 13-09-1999 |

| No. | Jurisdiction | Type of EOI agreement | Date signed | Date In force |
|---|---|---|---|---|
| 49 | Malta | DTC | 24-04-2013 | 02-04-2014 |
| 50 | Mauritius | DTC | 24-08-1995 | |
| 51 | Mexico | DTC | 07-06-2004 | 02-04-2008 |
| 52 | Moldova | DTC | 12-04-1996 | 06-07-1997 |
| 53 | Mongolia | DTC | 05-04-1995 | 22-05-1997 |
| 54 | Montenegro | DTC (signed with Serbia and Montenegro, now applicable to both States)[26] | 12-10-1995 | 09-07-1997 |
| 55 | Morocco | DTC | 04-09-1997 | 31-08-1999 |
| 56 | Namibia | DTC | 31-03-1998 | 23-06-2000 |
| 57 | Netherlands | DTC | 16-12-1996 | 02-09-1998 |
| 58 | New Zealand | DTC | 05-09-2000 | 04-07-2003 |
| 59 | Norway | DTC | 26-03-1996 | 20-12-2002 |
| 60 | Oman | DTC | 26-11-2001 | |
| 61 | Philippines | DTC | 26-04-1995 | 12-09-1997 |
| 62 | Poland | DTC | 22-05-1992 | 22-02-1993 |
| 63 | Portugal | DTC | 29-05-2000 | 11-12-2002 |
| 64 | Qatar | DTC | 20-04-1998 | 05-09-2000 |
| 65 | Romania | DTC | 27-09-1993 | 11-08-1995 |
| 66 | Saudi Arabia | DTC | 11-02-2007 | 01-02-2010 |
| 67 | Serbia | DTC (signed with Serbia and Montenegro, now applicable to both States)[27] | 12-10-1995 | 09-07-1997 |
| 68 | Singapore | DTC | 09-09-2002 | 16-01-2009 |
| 69 | Slovak Republic | DTC | 24-06-1994 | 01-05-1997 |
| 70 | Slovenia | DTC | 29-09-1995 | 20-04-1997 |
| 71 | South Africa | DTC | 27-11-1995 | 26-06-2000 |
| 72 | Spain | DTC | 16-12-1998 | 13-06-2000 |
| 73 | Sri Lanka | DTC | 02-03-1999 | 28-11-2002 |

26. As the continuing State of "Serbia and Montenegro", Serbia is to be considered as a Party of the bilateral tax treaty concluded between Russia and "Serbia and Montenegro". For Montenegro the applicability of the treaty required an express or implicit agreement by both Russia and Montenegro.

27. See note 26.

| No. | Jurisdiction | Type of EOI agreement | Date signed | Date In force |
|---|---|---|---|---|
| 74 | Sweden | DTC | 15-06-1993 | 03-08-1995 |
| 75 | Switzerland | DTC | 15-11-1995 | 18-04-1997 |
| | | Protocol to DTC | 24-09-2011 | 09-11-2012 |
| 76 | Syrian Arab Republic | DTC | 17-09-2000 | 23-06-2003 |
| 77 | Tajikistan | DTC | 31-03-1997 | 26-04-2003 |
| 78 | Thailand | DTC | 23-09-1999 | 15-01-2009 |
| 79 | Turkey | DTC | 15-12-1997 | 31-12-1999 |
| 80 | Turkmenistan | DTC | 14-01-1998 | 10-02-1999 |
| 81 | Ukraine | DTC | 08-02-1995 | 02-08-1999 |
| 82 | United Arab Emirates | DTC | 07-12- 2011 | 23-06-2013 |
| 83 | United Kingdom | DTC | 15-02-1994 | 18-04-1997 |
| 84 | United States | DTC | 17-06-1992 | 16-12-1993 |
| 85 | Uzbekistan | DTC | 02-03-1994 | 27-07-1995 |
| 86 | Venezuela | DTC | 22-12-2003 | 19-01-2009 |
| 87 | Viet Nam | DTC | 27-05-1993 | 21-03-1996 |

## Multilateral agreements

Since 3 November 2011, Russia has been a signatory to the multilateral Convention on Mutual Administrative Assistance in Tax Matters (Convention). The status as of 17 July 2014 of the Convention including the 2010 protocol is set out in the below table. The table includes State Parties to the Convention as well as jurisdictions, which are members of the Global Forum or that, have listed a Competent Authority in Annex B, and to which the application of the Convention has been extended pursuant to Article 29 of the Convention. When two or more arrangements for the exchange of information for tax purposes exist between Russia and a treaty partner, the Parties may choose the most appropriate agreement under which to exchange the information. Consequently, and depending on the arrangements that are in force between Russia and the EOI partner, information can either be exchanged under the multilateral Convention or a bilateral instrument such as a DTC.

| Country/Jurisdiction* | Original convention | | Protocol (P) Amended convention (AC) | |
|---|---|---|---|---|
| | Signature (opened on 25-01-1988) | Entry into force | Signature (opened on 27-05-2010) | Entry into force |
| Albania | | | 01-03-2013 (AC) | 01-12-2013 |
| Andorra | | | 05-11-2013 (AC) | |
| Anguilla[28] | | | | 01-03-2014 |
| Argentina | | | 03-11-2011 (AC) | 01-01-2013 |
| Aruba[29] | | | | 01-09-2013 |
| Australia | | | 03-11-2011 (AC) | 01-12-2012 |
| Austria | | | 29-05-2013 (AC) | |
| Azerbaijan | 26-03-2003 | 01-10-2004 | | |
| Belgium | 07-02-1992 | 01-12-2000 | 04-04-2011 (P) | |
| Belize | | | 29-05-2013 (AC) | 01-09-2013 |
| Bermuda[30] | | | | 01-03-2014 |
| Brazil | | | 03-11-2011 (AC) | |
| British Virgin Islands[31] | | | | 01-03-2014 |
| Cameroon | | | 25-06-2014 (AC) | |
| Canada | 28-04-2004 | | 03-11-2011 (P) | 01-03-2014 |
| Cayman Islands[32] | | | | 01-01-2014 |
| Chile | | | 24-10-2013 (AC) | |
| China | | | 27-08-2013 (AC) | |
| Colombia | | | 23-05-2012 (AC) | 01-07-2014 |
| Costa Rica | | | 01-03-2012 (AC) | 01-08-2013 |

28. Extension by United Kingdom (receipt by Depositary on 13 November 2013 and entry into force on 1 March 2014).

29. Extension by the Netherlands (receipt by Depositary on 29 May 2013 and entry into force on 1 September 2013).

30. Extension by United Kingdom (receipt by Depositary on 13 November 2013 and entry into force on 1 March 2014).

31. Extension by United Kingdom (receipt by Depositary on 13 November 2013 and entry into force on 1 March 2014).

32. Extension by United Kingdom (receipt by Depositary on 25 September 2013 and entry into force on 1 January 2014).

| Country/Jurisdiction* | Original convention | | Protocol (P) Amended convention (AC) | |
|---|---|---|---|---|
| | Signature (opened on 25-01-1988) | Entry into force | Signature (opened on 27-05-2010) | Entry into force |
| Croatia | | | 11-10-2013 (AC) | 01-06-2014 |
| Curaçao[33] | | | | 01-09-2013 |
| Cyprus[34] | | | 10-07-2014 (P) | |
| Czech Republic | | | 26-10-2012 (AC) | 01-02-2014 |
| Denmark | 16-07-1992 | 01-04-1995 | 27-05-2010 (P) | 01-06-2011 |
| Estonia | | | 29-05-2013 (AC) | 01-11-2014 |
| Faroe Islands[35] | | | | 01 06 2011 |
| Finland | 11-12-1989 | 01-04-1995 | 27-05-2010 (P) | 01-06-2011 |
| France | 17-09-2003 | 01-09-2005 | 27-05-2010 (P) | 01-04-2012 |
| Gabon | | | 03-07-2014 (AC) | |
| Georgia | 12-10-2010 | 01-06-2011 | 03-11-2010 (P) | 01-06-2011 |
| Germany | 17-04-2008 | | 03-11-2011 (P) | |
| Ghana | | | 10-07-2012 (AC) | 01-09-2013 |
| Gibraltar[36] | | | | 01-03-2014 |
| Greece | 21-02-2012 | 01-09-2013 | 21-02-2012 (P) | 01-09-2013 |
| Greenland[37] | | | | 01-06-2011 |
| Guatemala | | | 05-12-2012 (AC) | |
| Guernsey | | | | 01-08-2014 |
| Hungary | 12-11-2013 | | 12-11-2013 (P) | |
| Iceland | 22-07-1996 | 01-11-1996 | 27-05-2010 (P) | 01-02-2012 |
| India | | | 26-01-2012 (AC) | 01-06-2012 |

33. Extension by the Netherlands (receipt by Depositary on 29 May 2013 and entry into force on 1 September 2013).

34. See notes 5 and 6.

35. Extension by Denmark (receipt by Depositary on 28 January 2011 and entry into force on 1 June 2011).

36. Extension by United Kingdom (receipt by Depositary on 13 November 2013 and entry into force on 1 March 2014).

37. Extension by Denmark (receipt by Depositary on 28 January 2011 and entry into force on 1 June 2011).

| Country/Jurisdiction* | Original convention | | Protocol (P) Amended convention (AC) | |
|---|---|---|---|---|
| | Signature (opened on 25-01-1988) | Entry into force | Signature (opened on 27-05-2010) | Entry into force |
| Indonesia | | | 03-11-2011 (AC) | |
| Ireland | | | 30-06-2011 (AC) | 01-09-2013 |
| Isle Of Man[38] | | | | 01-03-2014 |
| Italy | 31-01-2006 | 01-05-2006 | 27-05-2010 (P) | 01-05-2012 |
| Japan | 03-11-2011 | 01-10-2013 | 03-11-2011 (P) | 01-10-2013 |
| Jersey[39] | | | | 01-06-2014 |
| Kazakhstan | | | 23-12-2013 (AC) | 01-06-2014 |
| Korea | 27-05-2010 | 01-07-2012 | 27-05-2010 (P) | 01-07-2012 |
| Latvia | | | 29-05-2013 (AC) | 01-11-2014 |
| Liechtenstein | | | 21-11-2013 (AC) | |
| Lithuania | 07-03-2013 | | 07-03-2013 (P) | 01-06-2014 |
| Luxembourg | 29-05-2013 | | 29-05-2013 (P) | 01-11-2014 |
| Malta | | | 26-10-2012 (AC) | 01-09-2013 |
| Mexico | 27-05-2010 | 01-09-2012 | 27-05-2010 (P) | 01-09-2012 |
| Moldova | 27-01-2011 | 01-03-2012 | 27-01-2011 (P) | 01-03-2012 |
| Montserrat[40] | | | | 01-10-2013 |
| Morocco | | | 21-05-2013 (AC) | |
| Netherlands | 25-09-1990 | 01-02-1997 | 27-05-2010 (P) | 01-09-2013 |
| New Zealand | | | 26-10-2012 (AC) | 01-03-2014 |
| Nigeria | | | 29-05-2013 (AC) | |
| Norway | 05-05-1989 | 01-04-1995 | 27-05-2010 (P) | 01-06-2011 |
| Poland | 19-03-1996 | 01-10-1997 | 09-07-2010 (P) | 01-10-2011 |
| Portugal | 27-05-2010 | | 27-05-2010 (P) | |
| Romania | 15-10-2012 | | 15-10-2012 (P) | 01-11-2014 |

38. Extension by United Kingdom (receipt by Depositary on 21 November 2013 and entry into force on 1 March 2014).

39. Extension by United Kingdom (receipt by Depositary on 17 February and entry into force on 1 June 2014)

40. Extension by United Kingdom (receipt by Depositary on 25 June 2013 and entry into force on 1 October 2013).

| Country/Jurisdiction* | Original convention | | Protocol (P) Amended convention (AC) | |
|---|---|---|---|---|
| | Signature (opened on 25-01-1988) | Entry into force | Signature (opened on 27-05-2010) | Entry into force |
| Russia | | | 03-11-2011 (AC) | |
| San Marino | | | 21-11-2013 (AC) | |
| Saudi Arabia | | | 29-05-2013 (AC) | |
| Singapore | | | 29-05-2013 (AC) | |
| Sint Maarten[41] | | | | 01-09-2013 |
| Slovak Republic | | | 29-05-2013 (AC) | 01-03-2014 |
| Slovenia | 27-05-2010 | 01-05-2011 | 27-05-2010 (P) | 01-06-2011 |
| South Africa | | | 03-11-2011 (AC) | 01-03-2014 |
| Spain | 12-11-2009 | 01-12-2010 | 11-03-2011 (P) | 01-01-2013 |
| Sweden | 20-04-1989 | 01-04-1995 | 27-05-2010 (P) | 01-09-2011 |
| Switzerland | | | 15-10-2013 (AC) | |
| Tunisia | | | 16-07-2012 (AC) | 01-02-2014 |
| Turkey | | | 03-11-2011 (AC) | |
| Turks & Caicos Islands[42] | | | | 01-12-2013 |
| Ukraine | 20-12-2004 | 01-07-2009 | 27-05-2010 (P) | 01-09-2013 |
| United Kingdom | 24-05-2007 | 01-05-2008 | 27-05-2010 (P) | 01-10-2011 |
| United States | 28-06-1989 | 01-04-1995 | 27-05-2010 (P) | |

*This table includes State Parties to the Convention as well as jurisdictions, which are members of the Global Forum or that have been listed in Annex B naming a competent authority, to which the application of the Convention has been extended pursuant to Article 29 of the Convention.

41. Extension by the Netherlands (receipt by Depositary on 29 May 2013 and entry into force on 1 September 2013).

42. Extension by United Kingdom (receipt by Depositary on 20 August 2013 and entry into force on 1 December 2013).

# Annex 3: List of all laws, regulations and other relevant material

## Commercial Laws

Civil Code of the Russian Federation Part One No51-FZ, of 30 November 1994 (Civil Code)

Civil Code of the Russian Federation Part Two No14-FZ, of 26 January 1996 (Civil Code)

Civil Code of the Russian Federation Part Three No146-FZ, of 26 November 2001 (Civil Code)

Civil Code of the Russian Federation Part Four No230-FZ, of 18 December 2006 (Civil Code)

Decision No630 on the Uniform State Register, of 16 October 2003

Federal Law No129 on Accounting, of November 21 1996 (Law on Accounting)

Federal Law No402-FZ on Accounting, of 6 December 2011 (Law on Accounting)

Federal Law No307-FZ on Auditing Activity (Law on Auditing Services)

Federal Law No380-FZ on Business Partnerships, of 3 December 2011 (Law on BPs)

Federal Law No98-FZ on Commercial Secrecy, of 29 July 2004 (Law on Commercial Secrecy)

Federal Law No.2383_1 on Commodity Exchanges, of 20 February 1992

Federal Law No5340_1 on Chambers of Commerce Industry, of 7 July 1993

Federal Law No156-FZ on Investment Funds, of 29 November 2001

Federal Law No335-FZ on Investment Partnerships, of 28 November 2011(Law on IPs)

Federal Law No208-FZ on Joint Stock Companies, of 26 December 1995 (Law on JSCs)

Federal Law No14-FZ on Limited Liability Companies 1998 (Law on LLCs)

Federal Law No7FZ on Non-Profit Organisations, of 12 January 1996

Federal Law No41-FZ on Production Cooperatives, of May 8 1996 (Law on Productive Cooperatives)

Federal Law No82FZ on Public Associations, of 19 May 1995

Federal Law No129-FZ on the State Registration of Legal Entities and Individual Businessmen, of 8 August 2001 (Law on State Registration)

Order of the Ministry of Finance of the Russian Federation No34N on the approval of the regulations for accounting and reporting in the Russian Federation, of 29 July 1998 (Regulation on Accounting)

Rules for Storage in Uniform State Registers of Legal Entities and if Individual Businessmen of the Documents (Information) and for Handing Them Over for Permanent Storage to the State Archives (approved by the decision of the Government of the Russian Federation No630, of October 16 2003)

## Taxation Laws

Federal Law No97-FZ on amendments to Part one and Part two of the Russian Tax Code, of 6 June 2012 (Tax Code)

Order on the Tax Registration No.117N of Foreign Entities, of 30 September 2010

Order of the Federal Tax Service No. MM-3-06/178 on Approval of the Procedure for Submission of Banking Information about available bank accounts, of 30 March 2007

Tax Code of the Russian Federation Part One No146-FZ, of 31 July 1998

Tax Code of the Russian Federation Part Two No117-FZ, of 5 August 2000

## Banking Laws

Amendment to the Federal Law on Banks and Banking 2012, of 6 June 2012

Decision No.27 on the Securities Market on keeping register of state owners, of 2 October 1997

Federal Law No.395-1 on Banks and Banking Activities 1990

Federal Law on the Measures for enhancing the Stability of the Banking System in the period until December 31, 2011

Federal Law No175-FZ on the Stability of the Banking System, of October 27 2008

Federal Law No.39-FZ on the Securities Market, of 22 April 1996 (Law on the Securities Market)

Federal Law No161FZ on State and Municipal Unitary Enterprises, of 14 November 2002

Order No06_21_PZN on Financial Markets regarding the Registration of Securities, of 28 February 2006

Regulations of the Central Bank No302-P on the rules for bookkeeping at credit institutions located on the territory of the Russian Federation, of 26 March 2007 (Central Bank Rules)

## Anti-Money Laundering Laws

Federal Law No115-FZ on the Countering the Legalisation of Illegal Earnings (Money Laundering) and the Financing of Terrorism, of August 7 2001(AML Law)

Instructions of the Central Bank of Russia No28-1 on opening and closing bank accounts and accounts for deposits, of 14 September 2006 (AML Instructions)

Letter of the Central Bank of Russia No99-T on the methodological recommendations for credit entities on elaborating internal control rules for the purpose of countering the legalisation of income received through crime (money laundering) and the financing of terrorism, of 24 July 2005 (AML Letter)

Regulations of the Central Bank of Russia No262-P on the identification by credit institutions of clients and beneficiaries for the purposes of counteraction to the legalisation or laundering of incomes derived illegally and to financing terrorism, of 19 August 2004 (AML Regulations)

## Other Laws

Federal Law No134-FZ, on amending certain legislative acts of the Russian Federation in regarding the countering of illegal financial transactions, of 28 June 2013.

Federal Law No152-FZ, on Personal Data, of 27 July 2006.

Code No195FZ of Administrative Offences, of 30 December 2001

Federal Law No63-FZ on Solicitors and Barristers activity, of 31 May 2002 (Solicitors Law)

Federal Law No95FZ on Political Parties, of 11 July 2001

Federal Law No2124_1 on Mass Media, of 27 December 1991

Federal Law No.125_FZ on Freedom of Conscious and Religion, of 26 September 1997

Federal Law No.135FZ on Charitable Activities and Organisations, of 11 August 1995

The Constitution of the Russian Federation 1993

# Annex 4: Persons interviewed during the on-site visit

During the on-site visit, the assessment team met with officials and representatives of the Ministry of Finance and the Federal Tax Service, including officials and representatives from the Control Directorate of the FTS, IT security division, Taxpayers Registration and Recording Directorate, Division for Exchange of Information with Foreign Competent Tax Authorities, International Cooperation Department, Transfer Pricing and International Cooperation Directorate; Directorate for registration of taxpayers, IT Directorate, Directorate for registration of taxpayers as well as representatives of the Moscow Tax Office Department.

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**Global Forum on Transparency and Exchange of Information for Tax Purposes**

# PEER REVIEWS, PHASE 2: RUSSIAN FEDERATION

This report contains a "Phase 2: Implementation of the Standards in Practice" review, as well as revised version of the "Phase 1: Legal and Regulatory Framework review" already released for this country.

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 120 jurisdictions which participate in the work of the Global Forum on an equal footing.

The Global Forum is charged with in-depth monitoring and peer review of the implementation of the standards of transparency and exchange of information for tax purposes. These standards are primarily reflected in the 2002 *OECD Model Agreement on Exchange of Information on Tax Matters* and its commentary, and in Article 26 of the *OECD Model Tax Convention on Income and on Capital* and its commentary as updated in 2004, which has been incorporated in the *UN Model Tax Convention*.

The standards provide for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. "Fishing expeditions" are not authorised, but all foreseeably relevant information must be provided, including bank information and information held by fiduciaries, regardless of the existence of a domestic tax interest or the application of a dual criminality standard.

All members of the Global Forum, as well as jurisdictions identified by the Global Forum as relevant to its work, are being reviewed. This process is undertaken in two phases. Phase 1 reviews assess the quality of a jurisdiction's legal and regulatory framework for the exchange of information, while Phase 2 reviews look at the practical implementation of that framework. Some Global Forum members are undergoing combined – Phase 1 plus Phase 2 – reviews. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

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