

# info

International Tax, Audit, Accounting and Legal News

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Liubov Stavrova, ECOVIS Audit-Advance  
Saint Petersburg, Russia



**“On January 1, 2015, regulations will change with regard to taxation of the profits of controlled foreign companies and controlling entities in Russia.”**

Liubov Stavrova, ECOVIS Saint Petersburg, Russia

RUSSIA

## Deoffshorization

On January 1, 2015, a law comes into force amending the Tax Code of the Russian Federation regarding the taxation of profits of controlled foreign companies and the income of foreign organizations.

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### // Controlled foreign company” and “Controlling entity”

A Federal Law of the Russian Federation of November 24, 2014, № 376-FZ introduced the concepts of “controlled foreign company” and “controlling entity” to the tax code. According to the law a controlled foreign company is a foreign organization that is not a resident of the Russian Federation and which is controlled by organizations or individuals who are residents of the Russian Federation. The controlling entity is a legal entity or individual holding a share of direct or indirect participation in the organization as follows: in 2015 – more than 50%, in 2016 – 25%.

For Russian residents who jointly possess more than 50% of the controlled foreign company, an individual threshold is 10%. The law also specifies specific cases when a foreign entity is not recognized as a controlled entity, for example public companies, non-profit companies, entities established under the laws of a member of the Eurasian Economic Union. Another exception is a company that is permanently located in a state which has an international agreement on taxation and ensures exchange of information with the Russian Federation for tax purposes and for which the effective rate of taxation on income is not less than 75% of the weighted average tax rate for income tax. Howev-

er, taxpayers with an interest in such organizations must submit documents to tax authorities to prove compliance with these conditions.

### Notification

Taxpayers are required to provide to tax authorities a notice of interest in foreign organizations and a notice of controlled foreign companies. A notice of interest in foreign organizations must be provided not later than one month after the date of occurrence (percentage changes). A notice of interest in foreign organizations, for which grounds for providing arose prior to the entry into force of the Law № 376-FZ, must be provided not later than April 1, 2015. Notice of controlled foreign companies must be provided not later than March 20 of the year following the tax period in which the share of profits must be accounted for by the controlling entity.

### Profit of controlled companies

Profits of a controlled foreign company must be taken into account in determining a tax base for organizations and individuals recognized as controlling entities. A share and the period of such interest should be taken into consideration as well. Together with tax returns for taxes on profits of a controlled entity, the taxpayers will need to submit the financial statements of the controlled

company and the auditor’s report if an audit of such financial statements is required.

Profits of the controlled foreign company must be taken into account when calculating the taxable base of the controlling entity, but only if the profits exceed the approved minimum amounts:

- In 2015, 50 million rubles
- In 2016, 30 million rubles
- After 2017, 10 million rubles

### Penalties

The law introduces a tax liability for controlling entities for non-compliance with new requirements. For failure to submit documents concerning the controlled company, the controlling entity will be charged a penalty in the amount of 100,000 rubles. For failure to submit a notice of interest in foreign organizations or for submission of false information, the controlling entity will be charged a penalty amounting to 50,000 rubles for each company. For failure to submit a notice of controlled foreign companies or for submission of false information the controlling entities will be charged 100,000 rubles for each company. A penalty amounting to 20% but not less than 100,000 rubles will be charged on taxes remaining fully or partially unpaid. This penalty will be applied for the tax years after 2018, but for the years 2015-2017 taxpayers can be held criminally liable if the tax not paid is not rendered in full.





“2015 will see a reform of corporate income tax, personal income tax and inheritance and donation tax in Spain, so a great many taxpayers will be affected.”

Joan Pons, ECOVIS Barcelona, Spain

SPAIN

## Tax Reform 2015

### Corporate Income Tax

On January 1, 2015, the Spanish Corporate Income Tax (CIT) reform will come into force; its most relevant changes are summarized below.

a) Positive changes of note:

- The general CIT rate will be gradually reduced from 30% to 25% (28% in 2015).
- Exemption of participations: Dividends and capital benefits derived from the transmission of shares (of both Spanish and foreign companies) are completely tax-exempt provided that the participation is at least 5% or, if not, the acquisition price surpasses 20 million euros.
- The amortization table for material assets is simplified.
- Regarding related party transactions, the scope of related enterprises is reduced and the documentation required for groups with a revenue of less than 45 million euros is simplified.
- A capitalization reserve is created allowing the deduction of 10% of the increase in the shareholders' funds from the tax base.
- An alignment reserve is created for enterprises that invoice less than 10 million euros, meaning a 10% deferral of the tax base.
- The tax consolidation scope is widened.

b) On the other hand, the new law introduces some changes which increase the taxation of enterprises, basically by enlarging the tax base:

- New non-deductible expenses

are introduced

- Impairment of material assets, property investments and intangible assets, including goodwill.
  - Interests of intra-group participating loans.
  - Expenditure with related enterprises which, due to a different tax qualification, do not generate any income or generate tax-exempt income or income subject to a nominal tax rate lower than 10% (hybrids).
  - Public relations expenses exceeding 1% of net revenue.
- The limitation for the deductibility of financial expenses is maintained (30% of EBITDA) although, if it is generated by the acquisition of participations, an additional limitation is incorporated, applicable in case of tax consolidation or merger.
  - Negative tax bases from previous exercises may be compensated by up to 70% of the positive tax base, although this limit does not apply before reaching 1 million euros.
  - Tax authorities may check the negative tax bases and discounts pending to be applied which correspond to the previous 10 exercises.
  - The international fiscal transparency system is toughened.

### Personal Income Tax, Non-Resident Income Tax and VAT

Together with this new law, the Personal Income Tax (IRPF) and the Income Tax for non-residents (IRNR) are also reformed effective

January 1, 2015, with a general reduction of said taxes as well as VAT (basically technical changes or derived from community case law).

### Inheritance and Donation tax

Finally, and as a consequence of the judgment of the European Union Court of Justice dated September 3, 2014 (case C-127/12), non-residents obliged to pay Spanish inheritance and donation tax may now benefit from the reductions and allowances regulated by their corresponding autonomous community, instead of applying the always more burdensome state regulations. Furthermore, this judgment entitles the taxpayer to solicit reimbursement of the amounts overpaid in the previous four years.

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**“India is working to improve conditions for business, launching the Make in India project to focus its efforts. The project is attracting a lot of attention.”**

Dheeraj Rathi, ECOVIS RKCA, India

INDIA

## Make in India

India Inc. is geared up for a much needed change in the business environment in which it operates. “This is where it all begins. Everything starts here, today.”

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There is growing worldwide attention focused on India, attracted by the country’s young talent pool of 800 million under the age of 35, the third-largest economy in terms of PPP, best performing stock markets in 2014, an entrepreneurial society, abundant raw materials and large internal market needs. The new government’s ambitious project called ‘Make in India’ is aimed at eradicating the tag ‘jugaad’ from the Indian manufacturing system, which is known for quick fixes, as India has a lot of catching up to do regarding the share of manufacturing in its GDP.

The project Make in India aims to boost investments and encourage innovation by creating a world-class manufacturing infrastructure and making it easier to do business in a transparent and credit-friendly environment.

India must overcome three main roadblocks to accomplish this project – regulatory hurdles, infrastructure bottlenecks and talent development. The regulatory hurdles consist of acquisition of land, obtaining permissions and complex tax structures. In the ease-of-doing-business ranking by the World Bank, India ranks at 142 out

of 189; the current government aims to bring that to 50 or better in five years by eliminating unnecessary laws and regulations, making bureaucratic processes easier and quicker, and more transparent governance that is responsive and accountable. The new Companies Act, transfer pricing regulations, labor reforms, dilution of the factory inspector raj, deregulation of diesel prices and coal-sector reforms are the primer to this regulatory revolution in the investment landscape.

To address this, the government has planned the Make in India campaign state by state, following a hub and spoke model (the hub being Delhi). Each state will be accorded a sector. The initial target is 25 industry sectors.

Further regulatory complexities can be addressed by creating FTZ, FTWZ, SEZ and Industry Parks, as these zones can be a critical part of any business strategy planning to enter India.

Make in India is an ambitious project involving multiple ministries, departments, consultants and experts. Industries have to develop their infrastructure from scratch in order to be competitive enough to launch and then go forward with investment-led infrastructure creation such as industrial corridors, smart cities and export-oriented infrastructure. The prime minister himself is conducting roadshows in overseas markets including the US and Australia to attract investments. The log-in data of Make in India’s official website shows that interest has been generated across the world, specifically in countries such as Spain, the UK, the UAE, Singapore and the US, and mostly from SMEs, which are two positive indicators.

Manufacturing multinationals can be beneficiaries of the campaign by being early adopters as they will get assets at low valuations and an initial headstart to tap the huge market, sharing best practices from their experience operating in other countries.

There has now been a confluence of factors: a decisive mandate, political will and an alignment of bureaucracy with passionate officers driving the Make in India campaign; and, finally, support from industry.





**“The Japanese Tax Authority plans to require multinational companies to submit three kinds of documents in its efforts to combat tax avoidance.”**

Yoshiaki UNO, ECOVIS XAT Tax Corporation, Japan

### Early Response to “Make in India”

Early global response is encouraging. The Japan External Trade Organization (JETRO) has been receiving a larger number of queries from Japanese companies asking about the campaign. German firms showed enthusiasm about policy initiatives taken by the new government for economic reforms, especially regarding the German electronic industry. The Chinese company Trina Solar is planning to set up a facility to make, supply and export from India. Fiat Chry-

ler has plans to invest one billion dollars in India, which includes manufacturing and exporting a premium SUV under the Jeep brand in the next 2 years. Russia is planning joint manufacturing projects in aviation and satellite navigation systems, and a multi-billion dollar start-up fund to promote nano technology.

To get updates on policy overhauls, news and regulatory announcements, ECOVIS India plans to initiate a blog.

Tip

[www.ecovisrka.com/blog/make-in-india](http://www.ecovisrka.com/blog/make-in-india)

JAPAN

## Ministry of Finance to reform taxation in accordance with BEPS

### Guidance on Transfer Pricing Documentation and Country-by-Country Reporting

On September 16, 2014, the OECD released recommendations for a coordinated international approach to combat tax avoidance by multinational enterprises (MNEs) under the OECD/G20 Base Erosion and Profit Shifting Project (“BEPS Project”), which looks at whether and why MNEs’ taxable profits are being allocated to low or no-tax locations with little or no economic activity, resulting in little or no corporate tax being paid. The project also proposes action plans to identify a series of domestic and international actions to address the problem and sets timelines for implementation.

The first recommendations address seven actions. One of them is “Guidance on Transfer Pricing Documentation and Country-by-Country Reporting (Action 13),”

which would largely affect tax administration of MNEs. MNEs would be required to prepare (a) “Master Files” for information regarding global business operations and transfer pricing policies, (b) “Local Files” for relevant related party transactions, and (c) “Country-by-country Reports,” which require MNEs to report – annually and for each tax jurisdiction in which they do business – their revenue, net profit, income tax, total employment, capital, tangible assets and business activities of each entity.

In this connection, Japan’s Ministry of Finance intends to modify the tax laws in 2016 to reflect the recommendation. The tax reform would affect MNE administration. Japanese MNEs already have a Local File equivalent. However, Master Files and Country-

by-country Reports would likely be new. MNEs would need to gather and update information regarding overseas operations every year. Therefore, each subsidiary/affiliate or each branch of Japanese MNEs in every country would be required to report tax information regularly to their HQ in Japan. In addition, subsidiaries or branches in Japan of non-Japanese MNEs might be required to provide the same information to the Japanese Tax Authority. Since other countries (at least members of OECD/G20) would require MNEs to provide the above three documents, all MNEs should investigate the policy and practice of tax authorities in every country where the MNE has a subsidiary/affiliate company or branch.

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**“The UK Government has introduced legislation to require companies to maintain a public register of persons who have significant control over the company.”**

Ute Mueller, Boodle Hatfield LLP, Law partner ECOVIS in London, UK

UNITED KINGDOM

## New Company Disclosure Requirements: Persons with Significant Control

Following its announcements at the G8 summit in June 2013 the UK Government has now introduced legislation to Parliament to require UK companies and others to maintain a publicly available register of persons who have significant control over the company. The rationale is to increase the transparency of UK corporate ownership, thereby increasing trust and confidence in UK businesses.

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### The Small Business, Enterprise and Employment Bill

The Small Business, Enterprise and Employment Bill includes amendments to the Companies Act 2006 which would:

- Prevent the creation of new bearer shares and require existing bearer shares to be surrendered to the company in exchange for registered shares;
- Prohibit the use of corporate directors by UK companies, subject to limited exceptions not stated in the Bill but to be set out in Regulations that have not yet been published; and
- Require companies to identify those persons with significant control over the company and keep a publicly available register.

### Who are “persons with significant control”?

An individual exercises “significant control” if he or she (either alone or jointly, for instance in a trustee capacity):

- holds directly or indirectly more than 25% of the shares in the company; or
- is entitled directly or indirectly to exercise (or to control the exercise of) more than 25% of the voting rights in the company; or
- is entitled, directly or indirectly, to appoint or remove a major-

ity of the board of directors of the company or to control the exercise of a right or rights to do so; or

- has the right to exercise, or actually exercises, “significant influence or control” over the company – what this actually means is not yet clear but will be spelt out in guidance.

Where there is a chain of companies an individual can only be a person with significant control in relation to one of them, so a parent company will need to be recorded as the “relevant legal entity” in its subsidiary’s register. If company shares are held by a nominee the underlying beneficial owner will be the person with significant control.

### What will companies have to do?

UK companies will need to take reasonable steps to create and keep updated a register held at their registered offices (“a PSC register”), containing the following information on persons who exercise significant control over the company:

- name
- service address
- country or state of usual residence
- nationality
- date of birth
- usual residential address

→ nature of their control over the company

- date on which they became a registrable person in relation to that company.

The company must notify the individual (or relevant legal entity) before placing them on the register; and an individual’s particulars must not be included on the register unless they have been provided or confirmed to the company by the person or with their knowledge. Private companies may, instead of keeping their own register, opt for the information to be kept on a public register at Companies House, provided that the persons with significant control do not object. New companies will be required to file a “statement of initial significant control” when making an application to register with Companies House and will then have to report any changes annually. (That statement itself will not be publicly available.)

### To whom do the details need to be disclosed?

A company’s PSC register must be available for inspection by the public, either at the registered office or by providing copies, subject to certain exclusions and controls. For instance an individual’s usual residential address and

### Legalbarometer

A detailed examination of statutory retirement pensions was done in an survey, where Ecovis asked its partners whether statutory old age pension schemes existed in their respective countries and how they are funded and designed.

Read more:  
[www.ecovis.com/pensions2014](http://www.ecovis.com/pensions2014)



their date of birth will be excluded. Anyone requesting disclosure will have to state their purpose and to whom they plan to disclose the information. If the company believes that the request is improper (or will be passed to a third party for improper purposes) it can apply to the Court within 5 days and, if the court agrees that the disclosure is not required for a "proper purpose," the company will not have to disclose. There is unfortunately little guidance now as to what would constitute a "proper purpose."

**What are the penalties for non-compliance?**

If a company fails to take reasonable steps to comply with its duties to investigate, obtain, record and keep up to date the required information, it will commit an offence and "every officer of the company who is in default" could, if convicted, face a fine or possible imprisonment. There are also provisions (including penalties for non-compliance) to ensure proactive disclosure by persons with significant control and relevant legal entities themselves where they are not otherwise known to or identified by the company.

**Will these proposals affect trusts?**

The legislation does not require trusts to keep a PSC register. However it is clear that an individual who exerts significant control over a company may do so in his or her capacity as a trustee. Therefore details of individual trustees of trusts which own companies may need to be entered into that company's PSC register. In addition, the propos-

als specifically provide that where the trustees meet the test of significant control but another individual (e.g. a protector or settlor of a trust) has the right to exercise, or actually exercises, significant influence or control over the activities of that trust, the company will also need to keep that individual's details on the PSC register. There are also some separate proposals currently before the European parliament which would require each EU member state to keep and make available a public register listing the ultimate beneficial owners of both trusts and companies. These proposals are, however, at a relatively early stage and the UK Government has indicated its opposition to the requirements for trusts.

**Next steps**

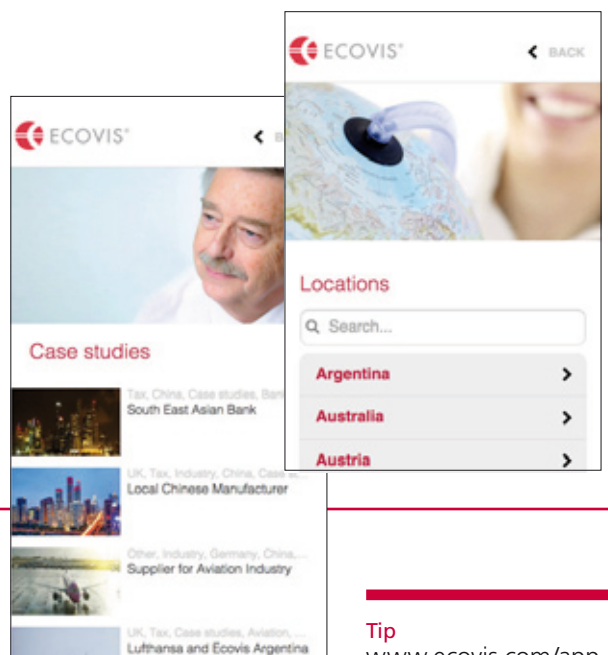
These proposals are not law yet but will come into force by Regulation at some point after the enactment of the Bill, which is now expected to take place in March 2015. The precise provisions may of course change before the legislation is finalised and the Government will be obliged to publish guidance, in particular to define and interpret key terms. However, both UK and interna-

tional directors and shareholders of UK companies should take note to ensure that their company is ready for the changes to come.



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Ecovis is a leading global consulting firm with its origins in Continental Europe. It has over 4,500 people operating in over 50 countries. Its consulting focus and core competencies lie in the areas of tax consultation, accounting, auditing and legal advice. The particular strength of Ecovis is the combination of personal advice at a local level with the general expertise of an international and interdisciplinary network of professionals. Every Ecovis office can rely on qualified specialists in the back offices as well as on the specific industrial or national know-how of all the Ecovis experts worldwide. This diversified expertise provides clients with effective support, especially in the fields of international transactions and investments – from preparation in the client’s home country to support in the target country. In its consulting work Ecovis concentrates mainly on mid-sized firms. Both nationally and internationally, its one-stop-shop concept ensures all-round support in legal, fiscal, managerial and administrative issues.

The name Ecovis, a combination of the terms economy and vision, expresses both its international character and its focus on the future and growth.

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