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# Law passed allowing Russian financial institutions to participate in FATCA

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## Overview

Federal Law No. 173-FZ of 28 June 2014 “On Specifics in Conducting Financial Transactions with Foreign Nationals and Legal Entities, on Amendments to the Russian Administrative Offences Code and Invalidation of Certain Provisions of Russian Legislative Acts” (hereinafter, the “**Law**”), which was developed to allow Russian financial institutions to participate in FATCA, came into effect on 30 June 2014.

Many Russian financial institutions longed to see the Law passed, especially after it was reported that an intergovernmental agreement between Russia and the USA would not be signed. Nonetheless, please note that the Law does not exempt Russian financial institutions from compliance with FATCA obligations.

As before, in order to be FATCA-compliant, Russian financial institutions must enter into FFI Agreements directly with the US Internal Revenue Service (IRS) and perform the obligations under such agreements. Otherwise, the IRS may impose sanctions.

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## Details

### Reporting on US taxpayers

According to the Law, Russian financial institutions may provide the IRS with information on US taxpayers if they observe certain requirements such as obtaining client consent.

However, the Law does not cover all the categories of the clients whose information can be provided and imposes certain restrictions on information exchange with the IRS.

### FATCA withholding

The Law does not deal with the issue of FATCA withholding. Hence, it does not permit Russian financial institutions to withhold FATCA tax. Thus, although passed, the Law

does not resolve the issue of active withholdings, i.e. the obligation of a Russian financial institution to withhold FATCA tax from payments of its clients, a process that still cannot be fulfilled under Russian law.

As there is a legal loophole concerning this issue, we recommend that financial institutions pay strong attention to transaction structuring in order to avoid the situations in which they may have to withhold FATCA tax.

### Additional obligations of financial institutions to Russian authorities

According to the Law Russian financial institutions must follow new obligations with respect to the Russian authorities. Specifically, Russian financial institutions must notify the competent Russian authorities about their registration with the IRS website no later than

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within three business days after registration or within ten business days after the Law came into effect if a financial institution had already registered before the Law was passed.

Moreover, Russian financial institutions must publish US indicia to identify account holders as US taxpayers on their official websites and perform all the other acts and deeds as prescribed by the Law.

### ***How can we help?***

As stated above, the Law does not exempt financial institutions from obligations under FATCA, nor does it alter the nature of such

obligations. Please note that financial institutions should comply with certain FATCA obligations as early as of 1 July 2014.

We have gained extensive consulting expertise on FATCA issues, ranging from implementing turn-key FATCA-compliance procedures to addressing specific issues faced by our clients. We would be glad to advise you on the main obligations under FATCA, as well as on developing an approach that would ensure compliance of your financial institution with FATCA requirements while also give due consideration to the new Law.

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## **Contacts**

We will be happy to answer your questions and enquiries.

### **FATCA TEAM**

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