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Finance Ministry Wants Foreign Banks to Help Russia Comply With FATCA

By Peter Hobson

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Finance Minister Anton Siluanov

The Finance Ministry plans to allow Russian banks to comply with FATCA, a U.S. law cracking down on tax avoidance, by farming out responsibility for levying tax on their U.S. clients to foreign financial institutions.

The Foreign Account Tax Compliance Act threatens all banks worldwide with penalties if they do not share information with the U.S. tax service about American account holders, and requires that banks withhold 30 percent on certain payments if the account holder is deemed to be a tax avoider.

The U.S. quit negotiations with Russia on an intergovernmental information sharing agreement earlier this month due to Russia's annexation of Crimea, leaving the Finance Ministry scrabbling to find other ways to allow local banks to comply with FATCA before it comes into force on July 1.

The Finance Ministry's proposed legislation would not grant Russian banks the right to levy the 30 percent tax on cash transfers, but would allow them to pass information about their U.S. account holders not only to the U.S. tax service, but to other companies with the authority to withhold taxes, Kommersant reported Friday, citing a copy of the legislation.

This means foreign banks involved in the transfer of money to Russian banks.

The solution is workable, as all payments from overseas pass through foreign financial institutions en route to Russian banks, said Tatyana Sharova, chief accountant at Nordea Bank, though "foreign banks are unlikely to provide the service for free," she added.

The Finance Ministry has been working double-speed on the legislation — banks have until May 5 to register with the U.S. tax service if they are to avoid being hit with penalties when FATCA comes into force on July 1. After that date, the United States will block 30 percent of any payments made to non-compliant banks by U.S.-based entities.

Updating a previous proposal, the legislation also allows banks to refuse clients that do not provide the information needed to transfer funds to foreign tax services or give permission to withhold foreign taxes.

"It is questionable how keen foreign banks will be to take on responsibilities on behalf of their Russian colleagues," a source in the banking industry told Kommersant. "And on top of that, the risk arises of the middleman's liability."

The legislation also contains Russia's answer to FATCA. Foreign banks with majority stakes in Russian banks will be obliged to share information with Russian authorities about their Russian clients if more than $10,000 has passed through the client's account during the financial year. This threshold would catch almost every account held by Russians abroad, banking sources said.

"If the Americans declared the goal with FATCA is to locate major U.S. investors putting money into the U.S. from overseas and avoiding paying taxes, the aim of [the Russian] regulator is not clear," said Dmitry Chistov, head of compliance at KPMG, pointing to the low threshold set by the ministry.

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