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## Capital Transferring to Foreign Jurisdictions: Risk of Criminal Proceedings in Russia

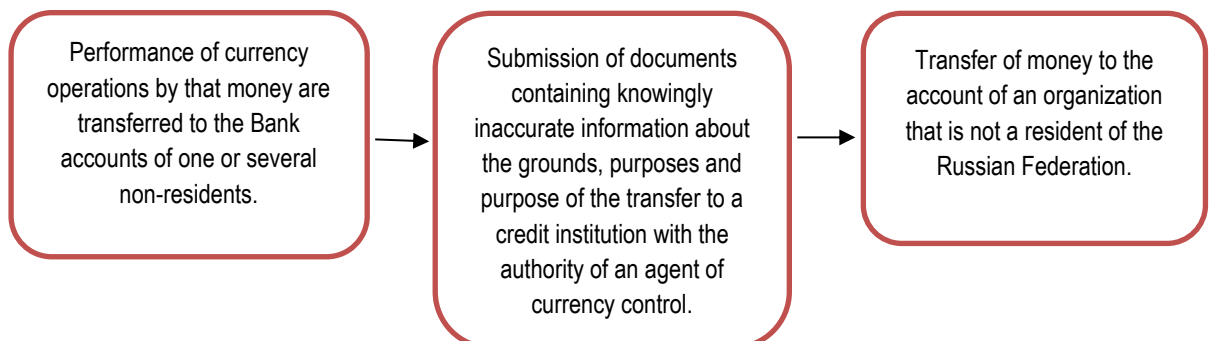
The Russian media is increasingly aware of the news about the initiation of criminal prosecution by enforcement agencies against the top management of large companies due to the qualification of their actions of transferring capital to foreign jurisdictions as illegal (especially in countries with special conditions for doing business for foreign companies).

More often, crimes are committed by making a deal with a related foreign company and are formalized as foreign economic contracts. At the same time, despite the production of payment under the contract to the account of a company, that is not a tax resident of the Russian Federation; the terms of the contract are not fully executed or not executed at all. **Coming into force of such actions gives the law enforcement authorities a reason to initiate criminal proceedings on several elements of crimes provided by the current legislation.**

- I. First of all, the risks of criminal proceedings under article **193.1** of the criminal code of the Russian Federation (foreign currency transactions on transfer of funds in foreign currency or the currency of the Russian Federation to the accounts of non-residents using false documents) should be noted for organizations that, using the right to optimize their tax burden, preferred to transfer their funds to offshore jurisdictions.

As the actual judicial-investigative practice shows, practically all such criminal proceedings are revealed by the results of the actions carried out by the customs authorities within the work of currency control or by the results of consideration of cases on administrative offences under article 15.25 of the administrative Code (violation of the currency legislation of the Russian Federation and acts of currency regulation bodies). Much less, currency and financial control bodies, credit organizations and banks or law enforcement agencies on their own detect crimes under article 193.1 of the criminal code.

To qualify acts as a crime under Art. 193.1 of the criminal code, the following conditions must be met:



**NB!** The crime under article 193.1 of the criminal code is a formal one, which means that criminal liability does not require the presence of consequences in the form of damage in material terms.



Nowadays, law enforcement agencies are increasingly initiating criminal proceedings based on an assessment of the nature of the transaction and the recognition of its imaginary or feigned. In this case, the practice of **tax optimization** can play to the detriment of the company's interests, because the fine line between it and criminal tax evasion has not yet found its consolidation in Russian legislation, and the transaction with a related foreign company with the subsequent transfer of funds to a foreign jurisdiction with preferential taxation can be regarded as committing illegal acts. It is important to remember that in case of identifying the commission of foreign currency transactions to the accounts of non-residents for the last 3 financial years, the supervisory authority transmits this information to law enforcement. At the same time, the criminal code establishes independent terms for criminal prosecution, which can significantly exceed 3 years:

Article of Criminal Code	Transaction amount	Maximum sentence	Crime category	Limitation of liability
Part 1 of article 193.1	Up to 9 mil. Rub.	3 years of imprisonment	Low severity (misdemeanor)	2 years
Part 2 of article 193.1	9 mil. Rub -45 mil. Rub.	5 years of imprisonment	Medium severity	6 years
Part 3 of article 193.1	From 45 mil. Rub.	10 years of imprisonment	Grave crime (felony)	10 years

II. Currently these crimes, as a rule, receive a severe qualification by law enforcement agencies. The continued existence of the companies and a significant number of employees involved in its business, economic and organizational activities of persons allow law enforcement agencies not only to qualify the conclusion of the disputed transaction, as a crime committed by a group of persons by prior conspiracy (paragraph "b" of part 2 of article 193.1 of the criminal code) or as part of an organized group (p. "b" part 3 of Art. 193.1 of the criminal code), but also impute suspected persons of article 210 of the criminal code (organization of a criminal community (criminal organization) in conjunction with the above composition. This circumstance is extremely important, since the criminal procedure law significantly limits the application of preventive measures in the form of detention to persons accused of committing a crime under article 193.1 of the criminal code, and in relation to article 210 of the criminal code there are no such restrictions.

**NB!** The criminal code does not set a criminal threshold for the amount of money, starting from criminal liability under article 193.1 of the criminal code exists. **This means that the transfer of funds to the account of a company that is not a resident of the Russian Federation, using documents containing obviously inaccurate information, may lead to criminal prosecution regardless of the amount of the transaction.**

Currently, the uncertainty of the category of "false information" in the illegal actions of the counterparty or running business with a related foreign company, as a rule, increases the risk of imposing on a Russian company the burden of proving the reality of the transaction under the threat of criminal liability for the withdrawal of funds to foreign jurisdiction. Thus, transfers of funds in the form of dividends or purchase of securities (shares) may be unreasonably qualified as a crime under article 193.1 of the criminal code, only on the basis of the assessment by law enforcement agencies of these transactions imaginary, and the risk of falling into the field of view of law enforcement agencies increases significantly for all organizations engaged in foreign economic activity or performing tax optimization using preferential regimes of foreign jurisdictions.

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