

The background of the slide is a vibrant, stylized illustration of St. Basil's Cathedral in Moscow. The cathedral's multiple onion-shaped domes are rendered in a variety of colors, including blue and white stripes, green, orange, and red. The building's facade is a deep red with white architectural details. The sky is a clear, bright blue. The text is overlaid on the central part of the image.

Russian and CIS Investment Forum Zurich
Investment Structuring
- NEW RULES -

on 30 September 2014
by Dr. Alexander Lindemann

Preliminary Remarks

On Swiss – Russian Friendship

- 1) Switzerland serves as Commodity Trading Center for Russia**
 - About 75% of Russian crude oil trades are executed in Switzerland

- 2) Switzerland is Wealth Management Center for Russia**
 - Around CHF 15 billion of Russian assets on Swiss banks
 - 3000-4000 Russians act in management of Swiss-based companies

- 3) 1300 Russian live officially in Switzerland**
 - Residency-Permit available based on Wealth or Business
 - 22 Oligarchs (including Gennady Timotschenko, Andrej Klischas & Victor Vekselberg)

(Source: Swiss Federal Statistic Office)

Agenda

- A. EU Sanctions & Swiss Measures
- B. New Russian CFC - Taxation
- C. Case Studies in New World
- D. Take Aways



A. EU – Sanctions against Russia

1. Prohibition of access EU capital Markets for certain Russian Banks

“The measure on capital markets consists in prohibiting EU investors from transacting in or otherwise dealing with newly issued equity, bonds or similar instruments with a maturity above 90 days issued anywhere in the world by major state-owned banks and development financing institutions established in Russia.”

2. List of around 100 selected persons (Entourage) with travel & financial restrictions (asset freeze)



**“Switzerland will not
blindly follow
EU sanctions
against Russia”**


Swiss Economy Minister Johann Schneider-Ammann on 4th August 2014

A. Swiss Anti-Circumvention Measures

1. Switzerland traditionally acts as mediator in crises and Chairman of Organization for Security and Co-operation in Europe (OSCE). Highly important for peace talks between Russia and Ukraine.
2. Swiss Economy Minister has scheduled a visit to Moscow for October 2014 to discuss bilateral economic cooperation.
3. Under EU-pressure Switzerland had to issue measures to prevent circumvention of EU-Sanctions by 27th August 2014
 - a. Access of 5 Russian state-owned banks to Swiss capital market limited to per-crises level by SECO-authorization process (Exemption: Swiss based bank subsidiaries)
 - b. Prohibition of new business relationship (directly or indirectly) with around 100 entourage-members on EU-list
 - c. Notification to SECO of existing business relationships with around 100 entourage members on EU-list

B. New Russian CFC-Tax

„ Fight of Offshorisation “



1. Fight of Offshorisation of Russian capital: Russian tax payers shall be taxed on income of Off-Shore structures

2. Implementation by 1st January 2015

3. First Draft Act dated 15th March 2014 and Second Draft Act dated 27th June 2014. Analysis revealed that rules were “over the top”

4. Revised Kremlin-Draft dated 2nd September 2014 after talks with Russian economy is now fair and in line with international standards

LINDEMANN RECHTSANWÄLTE

LAW, TAX & AUDIT in ASSET MANAGEMENT

B. Place-of-effective-Management Concept

Foreign companies managed in Russia shall be taxable as Russian companies if:

- (1) Meetings of the board of directors > 50% per year held in Russia
- (2) High-level executive management is predominantly performed in Russia
- (3) CEOs operate predominantly in Russia
- (4) Supplementary Criteria: location of accounting and management records, company's records, administrative as well as day-to-day personal management

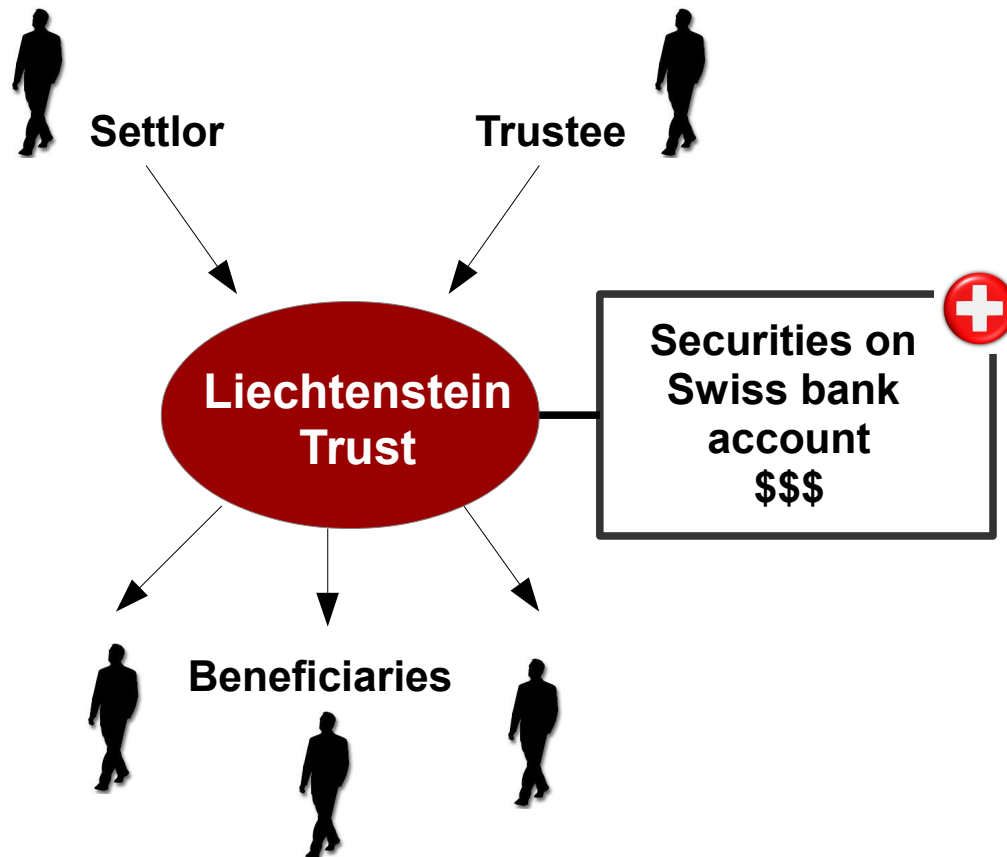
B. Concept of Control of Foreign Companies

- Foreign company (Out-of-Scope: listed with stock exchange; Eurasian Economic Union; White List (Tax Information Exchange + 15% effective tax))
 - Controlled by Russian residents e.g. 25%-ownership of Russian resident including family or 10%-ownership + 50%-Russian-owned
- => Share of Profit of Foreign Company is to be taxed in Russia
- Reporting duty to Russian Tax Authority for participations > 10%-participation in Foreign Company
 - 2-year transition period with relaxed rules; fully effective on 1.January 2017

NOTE: Tax Information Request under Russian Double Tax Treaty with Switzerland possible, if structure is not compliant with Russian CFC-Tax

C. Case Studies Swiss Asset Protection

Case Study 1: Trust Structure of 230mio- Oligarch



- Out of scope of Draft-CFC-rules because irrevocable trust & founder has no right to income?

- Place of Management in Russia?

- Control by settlor or beneficiary? Protector?

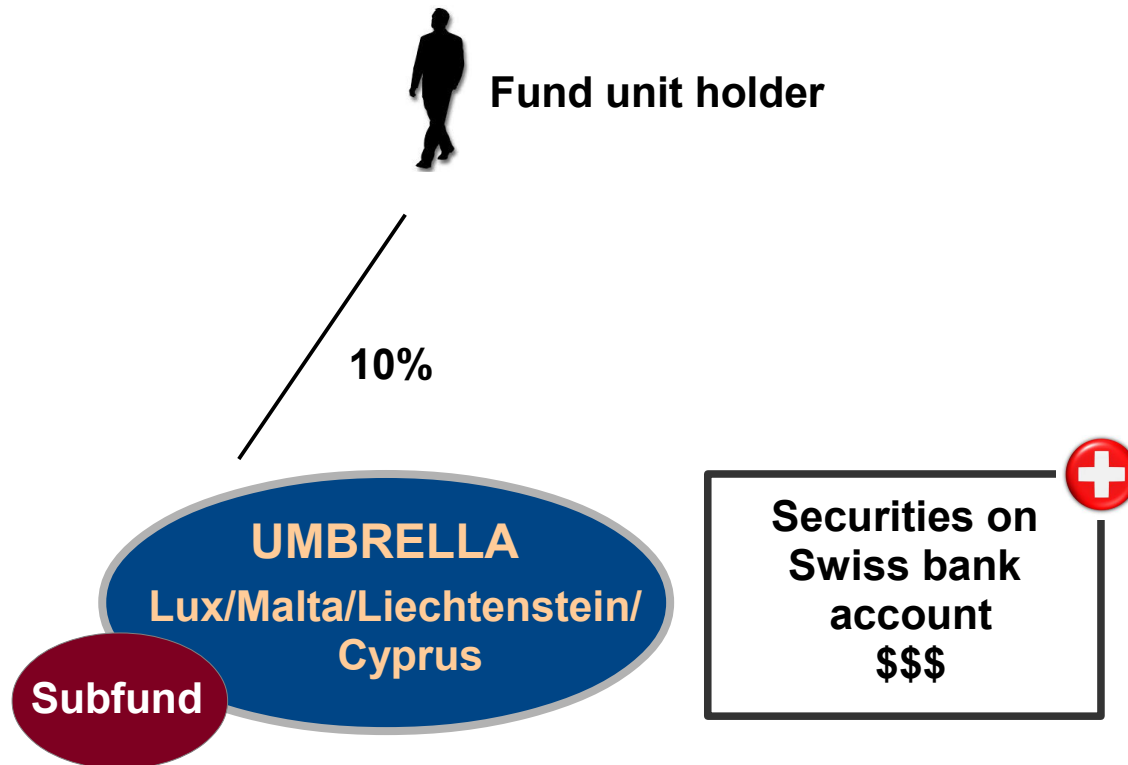
- 25% or 10%/50% - participation?

- Duty to Report to Tax authority if founder has de facto right to income?

=> Private Trust Structures face considerable CFC-Tax Risks

C. Case Studies Swiss Asset Protection

Case Study2: Fund Structure for 2 Entrepreneurs & 20mio



- Solid corporate governance may prevent “control” by unit holder?

- Participation not above 10%?

- Additional safeguard via listing?

- Duty to pay Russian Tax under CFC-Act ? Tax Info Request?

- Duty to report under CFC-Act ?

=> Fund solutions can be structured to comply with Russian CFC-tax

D. Take Aways



1. EU-sanctions (as well as Swiss circumvention-measures) are targeted at selected persons of Russian Entourage. They shall not effect Russian entrepreneurs and high net worth individuals in general.
2. Current 3. CFC-Draft Act dated 2. September 2014 has been liberalized considerably according to international standards (see *Germany, France, US*). Generally CFC-approved solutions in Luxembourg/Malta/Liechtenstein/Cyprus should work for Russian CFC-law as well – however, careful structuring is required (!).
3. We recommend to review Your investment structures as-soon-as-possible in order to make them compliant with the new requirements; the earlier you start to do your homework the better;-)!

Many Thanks!

Locations and Website

LINDEMANN RECHTSANWÄLTE

Office SWITZERLAND

Dufourstrasse 22
CH-8008 Zurich
+41 44 256 7350

Office LUXEMBOURG

16 Avenue de la Liberté
LU-1930 Luxembourg
+352 264 834 03

www.lindemannlaw.ch

***Email your questions to speaker via:
alexander.lindemann@lindemannlaw.ch***