



Amendments to corporate income tax, VAT, personal income tax and other taxes

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In brief

Lawmakers have introduced several targeted amendments. The relevant draft law is pending approval by the Russian President.¹ Let's discuss the details.

In detail

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Key amendments to corporate income tax

❖ Loss carry-forward

Under current rules, tax losses may be carried forward until fully recognised. In any given year, however, only half of the profit for the current period may be reduced by prior year losses. For example, if a company had a loss of RUB 100 for 2020 and profit of RUB 40 in 2021, it would be eligible to reduce the profit by RUB 20 (and would pay 20% on the remaining RUB 20) and carry forward the remaining loss of RUB 80. **This restriction has been extended through 2024.**

❖ IP rights

A new sub-clause has been introduced to Article 284 of the Russian Tax Code, according to which regions will be able to reduce (down to zero) their part of the income tax in respect of taxpayers who gain profit from granting the rights to use intellectual property registered in Russia in their name. The type of IP box, the specific rate and additional conditions will be determined by regional law. Thus, under a favourable scenario, royalties from IP rights will be taxed at only 3% (the federal part of the corporate income tax rate). To use the exemption, the taxpayer will have to maintain separate accounts.

The introduction of the IP box concept has been discussed many times in various forums and included in measures aimed to support business and stimulate the use of Russian jurisdictions for the creation of IP rights libraries. The adoption of this norm is an important step forward in this area. However, assigning the issue to the regional level could significantly reduce the effect of the initiative. Depending on the provisions of regional legislation, the regime could turn out to be much more profitable than similar regimes in the EU.

❖ Reduction of charter capital

A reduction of charter capital will not be recognised as income if the value of the charter capital is larger than the value of the company's net assets at the year end. Currently, this exception is available only when charter capital is reduced in accordance with Russian legislation. Therefore, non-taxable situations will include any voluntary reduction of charter capital (for example, for the

¹ https://sozd.duma.gov.ru/bill/1170972-7#bh_histras

purpose of covering losses). Relevant amendments have been made to Article 251.1.17 of the Russian Tax Code. The amendments apply to relations arising after 1 January 2021.

❖ Safe range of interest rates

In connection with the phasing out of LIBOR and EURIBOR rates, technical amendments have been made to Article 269 of the Russian Tax Code. References to LIBOR and EURIBOR have been replaced by references to SONIA, SARON, €STR, TONAR and SOFR. The relevant amendments will be effective from 2022. It has not been specified whether the new safe corridors will apply to old contracts. Most likely, the answer is no, but it is worth following the explanations of the fiscal authorities in this regard. If the topic of switching to other indicators (not only for tax purposes) is relevant for your business, you can find more details and contacts here.²

❖ Other amendments to corporate income tax

Article 309 of the RTC has been amended to clarify the application of withholding tax on interest paid to foreign entities by the permanent establishment of another foreign entity in Russia.

Amendments have also been made to Articles 286 and 309 of the Russian Tax Code, according to which an individual entrepreneur who pays passive income abroad (including interest on debt obligations) can act as a tax agent withholding tax at the source in Russia.

Amendments have been made to Article 270 of the Russian Tax Code, according to which the costs of compensation for damage to the budget will not be deducted. For example, in the event of environmental disasters, compensation will be made from the company's net profit (i.e. at the expense of its shareholders).

The document contains several amendments related to business support measures. For example, the list of debts that banks will be able to recognise as hopeless (for loans in 2021) has expanded, while the list of non-taxable income has been supplemented with services gratuitously received from state authorities in support of small and medium-sized businesses.

Amendments concerning VAT

The draft law introduces a number of amendments to VAT. In our view, the following amendments are the most significant:

❖ VAT benefit for public food service facilities

The draft law establishes the right to VAT exemptions for food service facilities if the entity (individual entrepreneur) meets several conditions, including:

- total income for the prior year is below RUB 2 billion;
- the prior year income from food services accounted for at least 70% of total income;
- average monthly payments to employees are not lower than the average monthly salary in each Russian region where the company submits insurance contribution calculations to the tax authorities.

The benefit will take effect on 1 January 2022.

❖ VAT payment by tax agents

Under the amended Article 161 of the RTC, the buyer must pay VAT as a tax agent if it acquires goods (work, services) from foreign entities registered with the Russian tax authorities, in the following circumstances:

- the foreign entity was registered under the "simplified" procedure, namely, in connection with the opening of a bank account or in connection with the presence of property or vehicles in Russia;

² <https://www.pwc.com/gx/en/industries/financial-services/publications/libor-reference-rate-reform.html>

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- the foreign entity has a separate Russian subdivision that is not involved in the sale of the respective goods (work, services).

We highlight that the draft law does not provide for the possibility of VAT being paid by a tax agent when services are purchased from foreign suppliers registered with the Russian tax authorities and related to the provision of electronic services. In this regard, there is still some uncertainty about the VAT payment procedure in such circumstances.

If the draft law is adopted and published soon, the amendments will come into force from 1 October 2021.

❖ VAT deduction on property contributed to a mutual investment fund

Articles 170 and 171 of the Russian Tax Code have been amended to allow management companies of mutual investment funds to deduct VAT amounts recovered by participants (unit holders) when contributing property to mutual investment funds.

If the draft law is adopted and published soon, the changes will come into force from 1 October 2021.

Amendments concerning excise tax

The draft law provides for several amendments to excise tax, including:

- indexation of excise rates for 2024;
- clarification on conditions for applying the right to reverse excise tax on ethane and liquefied petroleum gases from 1 January 2022;
- clarification on the procedure for applying excise tax deduction on grapes;
- individual amendments in terms of adjusting the damping mechanism used in determining the excise tax deduction on crude oil.

Amendments concerning personal income tax

In recent clarifications, the tax authorities announced that they will proceed from the fact that when an individual contributes non-monetary funds as payment for shares placed by the issuer, the individual may receive a material benefit for the difference between the historical value of the contributed property (property rights) and the market value of the shares received (see, for example, Russian Ministry of Finance Letter No. 03-04-06/25549 of 7 April 2021). The question naturally arises of how to treat (for the purpose of determining material benefits in such circumstances) the value of shares and units in a limited liability company, income from the sale (redemption) of which was exempt from taxation for the term of ownership on the basis of Article 217.17.2 of the Russian Tax Code. If we proceed from the assumption that a material benefit that exists when there is a positive difference between the market value of the shares received and the historical value of the shares (units) transferred, then it seems quite logical to add to Article 212.4 of the RTC a provision under which the tax base in the form of a material benefit (arising when the issuer is transferred privileges shares (units) as per Article 217.17.2 of the RTC in payment for the placed shares) should be determined as an excess of the market value of the acquired shares over the market value of the transferred shares (units). However, this addition does not resolve the issue of material benefits arising when other property is transferred as payment for shares placed and proceeds from the sale of which are exempt from taxation in accordance with Article 217 of the RTC.

Many more questions about the intentions of lawmakers arise in connection with the innovation in Article 226.1 of the RTC, which prescribes tax agents to not assess and not withhold personal income tax from interest income on Russian government securities, government securities of Russian regions and municipal securities. As a reminder, from 2021, there is no tax exemption for such income. In fact, according to Article 228.1.4 of the RTC, non-resident individuals are obliged to independently assess the tax amount payable and submit their tax returns to the tax authorities. This change in the tax regime for non-residents looks rather unusual.

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Other amendments

Effective from 1 January 2023, taxpayers are no longer be required to report on their properties using the cadastral value as the tax base. The tax will be paid based on data in the Federal Service for State Registration, the Cadastre, and Cartography (Rosreestr) and in accordance with the procedure similar to that for transport and land taxes.

A number of proposed amendments concern the mineral resources extraction tax (MRET).

The takeaway

Most of the income tax amendments are technical in nature. Such initiatives as the introduction of a preferential taxation regime for royalties (if the relevant Russian region takes such a step), as well as the extension of the restriction on loss carry forward (for all corporate taxpayers with tax losses) stand out among the other initiatives. Therefore, for some taxpayers, the amendments are like to be favourable outcomes.

The amendments to VAT payment procedures for tax agents will eliminate a number of ambiguities regarding the obligation to pay VAT when purchasing services from foreign suppliers registered under the “simplified” procedure or having subdivisions in Russia.

We would be happy to answer any questions you may have.

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