

client alert

TAX | RUSSIA |

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RECENT CHANGES TO TAX LEGISLATION

TAX CODE

Federal Laws No. 228-FZ, No. 240-FZ, No. 242-FZ, No. 243-FZ, No. 244-FZ, No. 247-FZ and No. 249-FZ all dated 3 July 2016, as well as Federal Law No. 150-FZ dated 30 May 2016, have introduced numerous amendments to the Tax Code of the RF (the "TC RF"). The amendments come into force from 1 January 2017, subject to certain exemptions.

The main amendments of the TC RF are the following:

VAT on services provided in electronic form

Starting from 1 January 2017, services in electronic form, as listed in Article 174.2.1 of the Tax Code, in particular:

- providing rights for the use of software and databases;
- providing advertising services and advertising space on the Internet;
- providing services relating to placing proposals on the Internet for the sale of goods (works, services);
- hosting services and domain name services;
- data storage and processing¹

will be subject to Russian VAT if the purchaser of the services has a place of activity in the Russian Federation².

¹ However, for the purpose of applying the VAT chapter of the Tax Code, the services in electronic form do not include: (i) the sale of goods (works, services) ordered through the Internet but delivered without using the Internet; (ii) the sale (provision of the right to use) of software (including computer games) and databases on tangible storage media; (iii) the provision of consulting services by email; and (iv) the provision of Internet access services.

² At the same time, please note that a VAT exemption for the transfer of exclusive rights / rights to use the results of intellectual property with respect to software under a license agreement is not abolished, though this exemption could possibly be abolished before 1 January 2017.

Where a *foreign legal entity, not registered for tax* in the Russian Federation, provides VATable services in electronic form listed in Article 174.2.1 of the Tax Code to individuals that have their place of activity in Russia for Russian VAT purposes³ (the “Services”), starting from 1 January 2017 such foreign entities:

- should be registered for VAT purposes in Russia (currently there is no registration of foreign legal entities just for VAT purposes); and
- should pay Russian VAT on the Services.

Foreign legal entities that provide Services subject to VAT and are respectively registered for VAT purposes in Russia, will not have the right to offset input VAT. VAT will be reported and paid to the Russian budget by such taxpayers on a quarterly basis.

The VAT rate applied in respect of the Services will be 15.25%, and the taxable base is the gross amount of payment received for the Services, including VAT.

The exchange of documents and information between the taxpayer and the Russian tax authorities will be performed in electronic format through the taxpayer’s personal electronic office.

According to the TC RF, the provision of the Services by a foreign legal entity does not, by itself, lead to the creation of a permanent establishment of that foreign entity in Russia.

VAT on export of goods

Starting from 1 July 2016, input VAT related to the export of goods (subject to certain exemptions) can be offset without waiting until the documents listed in Article 165 of the Tax Code, confirming the applicability of the 0% VAT rate, are submitted to the tax authority. In short, a special procedure related to offsetting such input VAT is abolished from 1 July 2016.

The administration of contributions to non-budgetary state funds is transferred to the Federal Tax Service of the Russian Federation

From 1 January 2017, the tax authorities will administer insurance contributions to non-budgetary state funds, with certain exceptions (in particular, the social insurance fund will continue to be responsible for audits related to accident insurance contributions). A number of related amendments have been introduced to the Tax Code.

³ The purchaser of the Services (an individual) has a place of activity in Russia, which should be defined based on one of the following criteria:

- the individual’s place of residence is the Russian Federation;
- the individual’s bank account used to pay for the Services is in a bank in the Russian Federation, or the payment operator through which the payment for the Services is made is in the Russian Federation;
- the IP address of the individual is registered in the Russian Federation; or
- the international country code of the phone number used to ordering or pay for the Services is the Russian Federation.

We advise that you verify the situation with the non-budgetary state funds by the end of this year, and that any underpayments or overpayments to the funds are settled before 1 January 2017.

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