

## client alert

TAX | RUSSIA |

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## RECENT KEY CHANGES TO TAX, CURRENCY AND CUSTOMS LEGISLATION

### TAX CODE

Numerous amendments introduced to the Tax Code of the RF (the “**TC RF**”) came into force from 1 January 2018, subject to certain exceptions. They were introduced by: Federal Laws No. 303-FZ and No. 304-FZ, all dated 30 October 2017, Federal Laws No. 305-FZ, No. 322-FZ and No. 323-Ф3, all dated 14 November 2017, Federal Laws No. 340-FZ, No. 316-FZ, No. 333-FZ, No. 334-FZ, No. 335-FZ, No. 339-FZ, No. 341-FZ, No. 342-FZ, No. 344-FZ, No. 346-FZ, No. 348-FZ, No. 349-FZ, No. 350-FZ, No. 351-FZ, No. 352-FZ, No. 353-FZ, No. 354-FZ, No. 361-FZ, all dated 27 November 2017, Federal Laws No. 430-Ф3 and No. 436-FZ, all dated 28 December 2017, as well as by Federal Law No. 466-Ф3 dated 29 December 2017<sup>1</sup>.

The main amendments to the TC RF are as follows:

- Russian taxpayers who are members of multinational groups of companies (subject to certain exceptions), in addition to the transfer pricing documentation listed in Article 15.15 of the Tax Code, are obliged to submit to the Federal Tax Service, in respect of financial years starting from the financial year 2017 (subject to certain exceptions), a notification related to participation in a multinational group of companies, as well as the following documentation on transfer pricing: (i) a country-by-country report; (ii) global documentation; (iii) national documentation.
- if a region of the Russian Federation adopts a provision in the regional legislation related to investment tax deduction, taxpayers in that region may apply either general depreciation mechanism or the investment tax deduction (the deduction of respective expenses within certain limits from the amount of regional part of the profit tax), subject to certain limitations;
- a “tax-free” regulation was adopted in the Russian Federation (the VAT on goods purchased on the territory of the Russian Federation can be reimbursed to non-Eurasian Economic Union individuals-residents, subject to certain limitations);
- starting from 1 January 2019, a foreign legal entity must be registered for VAT purposes in Russia and pay Russian VAT if they provide the electronic services listed in point 1 of Article 174.2 of the Tax Code, not only to individuals, but also to legal entities and individual entrepreneurs (currently the obligation exists only in the case of selling such services to individuals);
- the application of a 0% VAT rate to the re-export sales of certain goods (in particular, goods produced under the customs processing procedure on the customs territory);

<sup>1</sup> Please see our Flash Tax Report dated October 2017 in respect of the main amendments introduced to the TC RF by Federal Laws No 56-FZ, No 57-FZ and No 58-FZ, all dated 3 April 2017, as well as Federal Laws No 25-FZ dated 7 March 2017, No 163-FZ dated 18 July 2017, No 254-FZ dated 29 July 2017 and Federal Law No 286-FZ dated 30 September 2017, which also came into force from 1 January 2018, subject to certain exceptions.

- the taxpayers can waive the application of the 0% VAT in respect of closed list of sales (in particular, the export of goods, international transportation services, etc.) by submitting an application to the tax authority within terms set out in the Tax Code, subject to certain limitations;
- a limitation in respect of the application of a “5% VAT rule” is adopted, i.e. input VAT on expenses directly related to non-VATable activity cannot be offset, regardless of whether the “5% VAT rule” is met;
- starting from 2018, the tax concessions set out in Article 381.25 of the Tax Code in respect of movable property, apply only in the regions of the Russian Federation that have adopted a respective regional law.

## CONTRIBUTIONS TO NON-BUDGETARY STATE FUNDS

According to the Regulation of the Government of the Russian Federation dated 15 November 2017, No. 1378, the ceilings for calculating contributions to the pension fund and social insurance fund have been increased as follows, starting from 1 January 2018:

- gross remuneration not exceeding RUB 1,021,000 (rather than RUB 876,000) per year per employee in respect of contributions to the pension fund at the rate of 22%, and a 10% rate applies to the amount exceeding the ceiling (i.e. exceeding RUB 1,021,000); and
- gross remuneration not exceeding RUB 815,000 (rather than RUB 755,000) per year per employee in respect of contributions to the social insurance fund.

## CURRENCY REGULATION

### Currency Law

Numerous amendments introduced to the Federal Law of the Russian Federation No. 173-FZ dated 10 December 2003 (the “**Currency Law**”) came into force from 1 January 2018, subject to certain exceptions. They were introduced by Federal Laws No. 176-FZ dated 18 July 2017, No. 325-FZ dated 14 November 2017, No. 427-FZ dated 28 December 2017 and No. 470-FZ dated 29 December 2017.

The main amendments of the Currency Law are as follows:

- starting from 14 May 2018, foreign trade contracts signed between residents and non-residents should include the terms of performing of obligations of the parties to the contracts;
- starting from 14 May 2018, residents must provide an authorised Russian bank (the “**ARB**”) with the following information related to foreign trade contracts signed between residents and non-residents:
  - the terms (instead of expected maximum terms) of receiving monetary funds from non-residents to the resident’s accounts in the ARB, for the resident’s obligations performed under a foreign trade contact;
  - the terms (instead of expected maximum terms) of performing a non-resident’s obligations under foreign trade contracts in consideration for advance payments received from the residents;
- starting from 14 May 2018, ARBs will refuse to process currency operations not only in the event of a violation of the respective provision of the Currency Law, but also the ARB client fails to provide all the documents required by the Currency Law, or submits false documents or documents that are not in line with the requirements of the Currency Law;

- the definition of residency for individuals who are citizens of the Russian Federation has been changed for purposes of the Currency Law, i.e. all Russian citizens are residents for the purposes of the Currency Law;
- the requirements of Article 12 of the Currency Law related to opening (closing) bank accounts in banks outside of the Russian Federation and requiring the provision of cash flow statements on such accounts, do not apply to individuals-Russian residents who are outside of the Russian Federation for more than 183 days during a calendar year (the “**Exempted Individuals**”). This means that the Exempted Individuals do not have an obligation to provide the tax authorities with information related to their foreign bank accounts;
- currency operations carried out outside of the Russian Federation between Exempted Individuals are not prohibited;
- there are no limitations on currency operations of individuals-residents in respect of using funds on bank accounts in banks outside of the Russian Federation (except for prohibited currency operations between residents), provided that such funds were received on such accounts in accordance with the Currency Law;
- the list of cases when monetary funds from non-residents may be deposited in individuals-residents’ bank accounts in banks located in foreign states that are the members of the OECD or the FATF has been extended in respect of the following cases:
  - monetary funds from the sale to non-residents of transport vehicles that were owned by individuals-residents outside of the Russian Federation;
  - monetary funds from the sale to non-residents of immovable property, registered (located) in foreign states that are members of the OECD or the FATF, provided that the state is a member of the Multilateral Competent Authority Agreement on the Automatic Exchange of Financial Account Information (or has another international agreement with the Russian Federation related to the automatic exchange of financial information) and the account is opened in a bank located in that foreign state.

#### **Other key amendments in the currency legislation of the Russian Federation**

- *Code of Administrative Offences of the Russian Federation*

Starting from 14 May 2018, a penalty for a violation of currency legislation is established for authorised persons (currently only individual entrepreneurs are considered as authorised officials for the purpose of applying Article 15.25 of the Code of Administrative Offences of the Russian Federation). Moreover, starting from 14 May 2018, if an authorised person repeatedly commits an offence under parts 1, 4, 4.1 and 5 of Article 15.25 of the Code, then the authorized person will be disqualified for a period from 6 months to 3 years.

- *Instruction of the Bank of Russia No. 181-I, dated 16 August 2017*

According to the Direction of the CBR No 4629-Y dated 29 November 2017, the Instruction of the Bank of Russia No 181-I, dated 16 August 2017 (the “Instruction”), will enter into force on 1 March 2018 and will replace the Instruction of the Bank of Russia No. 138-I.

The key provisions of the Instruction include:

- passports of transactions and currency operation certificates will be abolished from 1 March 2018 and a procedure of recording of certain types of contracts signed between residents and non-residents will apply starting from 1 March 2018 (the types of contracts that will be subject to recording are the same as the types of contracts that are currently subject to passports of transactions under Instruction 138-I);

- passport of transactions opened before 1 March 2018 in respect of contracts will be considered closed as of 1 March 2018, and the contracts will be considered recorded by the ARB for the purposes of the Instruction under the same number as the number of the related passport of transaction, provided that such contracts are subject to recording;
- starting from 1 March 2018, a contract signed between a resident and a non-resident will be recorded by an ARB if the total amount of the contract (loan agreement) is at least:
  - RUB 3,000,000 (approx. USD 53,000) for import contracts and loan agreements; and
  - RUB 6,000,000 (approx. USD 105,000) for export contracts.
- the resident must provide the ARB with the code of operation in respect of payments in a foreign currency under contracts signed between residents and non-residents, provided the amount of obligations under the contract does not exceed RUB 200,000 (approx. USD 3,500).

## CUSTOMS CODE OF THE EURASIAN ECONOMIC UNION

The Customs Code of the Eurasian Economic Union came into force on 1 January 2018 (the "CC EAEU") and replaced the Customs Code of the Customs Union.

The CC EAEU introduced a number of key changes to the customs legislation, including the priority of electronic documentation (including electronic declarations, i.e. the submission of a declaration in paper form is allowed in exceptional cases), the submission of a customs declaration without requiring the submission of related documents to the customs authority (i.e. documents on the basis of which the declaration was prepared), the automatic release of goods (i.e. the goods will be released without involvement of the customs authorities), etc.

The entry into force of the CC EAEU requires the harmonisation of the internal customs legislation and the adoption of a new Federal Law "On Customs Regulation in the Russian Federation". Please note that, according to amendments introduced by the Federal Law of the Russian Federation #436-FZ dated 28 December 2017 to the Federal Law of the RF dated 27 November 2010 #311-FZ "On customs regulation in the Russian Federation", once the Agreement on the CC EAEU (i.e. from 1 January 2018) comes into force, the provisions of the customs legislation of the Russian Federation apply in part which does not contradict the Agreement on the CC EAEU.

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