

Amended Russian tax system offers new opportunities for businesses

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The Russian Tax Code was recently amended by new Federal Laws No. [368-FZ*](#) ("Law 368-FZ") and No. [374-FZ*](#) ("Law 374-FZ"). As a result, businesses planning to operate in 2021 and preparing tax reporting for 2020 should take into account those changes that will significantly impact their operations.

Some of these amendments are intended to support and create a competitive tax environment for business as stated in the document "Key directions of budgetary, tax and customs-tariff policy for 2021 and the planning period of 2022 and 2023" [published*](#) by the Ministry of Finance. These amendments take into account the negative influence of the COVID-19 pandemic and material FOREX fluctuations that took place in 2020, and the increased need for the financing of Russian business.

Other changes aim at replenishing the Russian budget and toughening anti-abuse regulations in Russia.

The key changes are summarised below.

Extension of the scope of tax exemption applicable to free-of-charge provision of property between related companies (free financing)

Law 374-FZ extends the scope of the existing tax exemption applicable to the free-of-charge provision of property between companies when the 50% shareholding criterion is met (i.e. free financing).

According to the new wording of art. 251 of the Russian Tax Code, a tax exemption will now be available if the shareholding interest is equal to 50% instead of the previous "more than 50%" threshold.

This exemption will now apply both in cases of direct and indirect shareholdings between the provider and recipient of the property provided free-of-charge. This exemption materially extends the scope of the entities providing free financing.

However, Law 374-FZ restricts the exemption's application when participation in the Russian company is structured through intermediaries located in jurisdictions [black-listed*](#) by the Russian Ministry of Finance.

Finally, provision of both property and property rights is now eligible for an exemption. Previously, the exemption did not apply to the free-of-charge provision of property rights as confirmed by the numerous explanations by Russian tax authorities on the matter.

Introduced with retroactive effect, this provision applies from 1 January 2020, probably to cover the extensive need of financing for Russian businesses in 2020.

Deductibility of contributions made to the company's property

Under Law 368-FZ, taxpayers selling shares in Russian companies will now be allowed to reduce their taxable base by the amounts of monetary contributions made to the company's property. Previously, only contributions to charter capital were deductible, including those made at a premium.

The amount of the deductible contribution to the company's property is determined in proportion to the number of shares subject to sale in the total number of shares belonging to the shareholder.

Similar provisions will apply in the case of property distribution when the subsidiary is liquidated or when shareholders or participants exit the subsidiary.

Amending the scope of tax exemption for long-term shareholders

Law 374-FZ amends the rules of the 0% tax rate application to capital gains for the sale of shares or participatory interest in Russian companies held for more than five years.

Based on the new rules, a 0% tax rate will now apply to the capital gains for the sale of shares or participatory interest in both Russian and foreign companies, provided that the shareholding criterion is met. (Previously, the incentive was applicable only in the case of a sale of shares or participatory interest in Russian companies).

However, the sale of shares and participatory interest in foreign companies will be subject to an incentive, provided that such companies are not located in jurisdictions [black-listed*](#) by the Russian Ministry of Finance.

The incentive will only apply if the subsidiary does not qualify as a “property-rich” company in Russia (i.e. the immovable property located in Russia does not represent more than 50% of the company’s assets) subject to certain very limited exceptions.

Gradual cancellation of the look-through approach to payments between Russian residents

Law 374-FZ eliminates the possibility to apply a “zero” withholding tax to dividends paid by a Russian taxpayer abroad when the ultimate beneficial owner of the dividends is another Russian entity.

However, there is a transitional period introduced from 2021 to 2023 when the application of the “zero” tax rate will still be possible provided that certain conditions are met.

Previously, Russian subsidiaries could apply the look-through approach and be exempt from withholding taxes on dividend payments ultimately received by a beneficial owner located in Russia, subject to fulfilment of specific shareholding criteria.

Relaxing anti-abuse regulations for intragroup loans in 2020 – 2021

Law 374-FZ provides for a capped FOREX rate to be temporarily applicable to the calculation of the taxpayer’s controlled indebtedness and proper capital for thin capitalisation purposes in 2020 and 2021. This regulation will neutralise the negative effect of material FOREX fluctuations that took place in 2020.

Under the new rules, the amount of controlled indebtedness denominated in a foreign currency should be recalculated in Russian roubles at the FOREX rate set by the Bank of Russia at the last day of the respective reporting (tax) period, but it should not exceed the rate set on 28 February 2020.

The proper capital of the company should be determined outside of the FOREX differences taking place between 28 February 2020 and the last day of the reporting (tax) period.

In addition, “safe harbour” interest rates applicable to intragroup loans falling under the transfer pricing requirements set forth in Article 269 of the Russian Tax Code have also been extended for 2020 and 2021, having potentially taken into account the substantial fall in the Bank of Russia’s key rate in 2020.

Taxpayers can apply new extended “safe harbour” interest rates between 1 January 2020 and 31 December 2021.

Please click [here](#) to view applicable temporary rates in more detail.

Changes related to blocking taxpayer accounts

According to Law 368-FZ, tax authorities will be entitled to block the accounts of taxpayers if there is a 20-day delay in tax reporting submissions (instead of the current ten-day delay).

Also, tax authorities will have the right (but not the obligation) to give taxpayers 14-days notice before blocking their accounts.

Other changes

Law 374-FZ and Law 368-FZ represent a vast piece of new legislation, containing many other changes to the Russian Tax Code, including:

- modifications of the calculation mechanism applicable by the intermediate recipient of dividends (i.e. a Russian shareholder who distributes received dividends fully or partially to its own shareholders) acting as a tax agent. Under the current rules, the tax base represented by the amount of dividends subject to distribution by the intermediate recipient can be reduced by the amount of dividends already taxed on the level of the immediate recipient of these dividends. The law specifies cases when dividends taxed at a zero rate for an intermediate recipient do not reduce the taxable base for dividend distribution up the chain;
- numerous changes to CFC taxation, including the introduction of a fixed annual tax of approximately RUB 5m (EUR 55,428) that individuals controlling the CFCs may choose to apply voluntarily instead of the currently applicable CFC reporting and taxation rules (see our dedicated [eAlert](#));
- other technical changes (e.g. the possibility to qualify a tax return as non-submitted, the determination of the residual value for intangible assets, etc.).

Comment

The year 2020 is drawing to an end, but this is no reason for taxpayers to remove tax matters from their agenda.

The legislator continues to change the settings of the Russian tax system. On the one hand, this gives businesses new opportunities for tax planning. On the other hand, it reinforces the grounds for filling state coffers, eliminating

existing loopholes in the application criteria for certain existing tax incentives.

Given the significance of the recently introduced changes and the retroactive character of some changes applicable in 2020, taxpayers must assess the impact of the changes and the potential tax-optimisation options for the future and for tax reporting in the 2020 financial year.

For more information on this eAlert, please contact CMS Russia experts [Dominique Tissot](#), [Maria Kabanova](#) or [Anna Osmakova](#) or your regular contact at CMS Russia.

**In Russian*

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