

# Amendments to the Russian Tax Code: what are their ramifications on businesses?

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On 2 July 2021, [Federal Law No. 305-FZ\\*](#) (the “Law”) enacting numerous changes to the Russian tax legislation was officially published. The Law is aimed at amending the Russian Tax Code in line with the “[Key directions of budgetary, tax and customs-tariff policy for 2021 and the planning period of 2022 and 2023](#)”\*. The amendments impact not only Russian companies, but also foreign taxpayers engaged in business activities in Russia.

The most notable changes, which we summarise below, relate to:

- VAT reporting and payment obligations for certain foreign companies;
- the metrics for calculation of “safe harbour” interest rates for intragroup loans;
- the tax loss carry-forward limitation; and
- withholding taxation.

## Relief from VAT reporting and payment obligations for certain foreign companies

The Law specifies the cases when foreign companies registered for tax purposes in Russia will no longer face the obligation to file VAT reporting and independently pay VAT to the Russian budget for operations performed with their Russian counterparties.

Starting the fourth quarter of 2021, foreign companies that are registered with Russian tax authorities due to technical reasons (e.g. opening a bank account in Russia, acquiring immovable property or a vehicle located in Russia) will no longer be obliged to independently pay VAT for VAT-able operations performed with the Russian customers and to file VAT reporting.

Instead, Russian customers, acting as tax agents, will have to declare and withhold the VAT due from any payments made to such foreign companies.

Similar rules will apply to foreign companies maintaining a separate subdivision in Russia, unless the latter is engaged in the provision of services to Russian customers.

Previously, Russian tax authorities applied a formal approach whereby foreign companies registered for tax purposes in Russia were to independently fulfil VAT reporting and payment obligations regardless of the grounds for their tax registration in Russia.

## Change of metrics for calculation of “safe harbour” interest rates for intragroup loans

Under the new rules, the currently applicable Interbank Offered Rates used as a benchmark for determining the “safe harbour” interest rates in intragroup loans will be replaced with the following new interbank rates starting from 2022:

- €STR instead of EURIBOR for operations denominated in EUR;
- SONIA instead of LIBOR for operations denominated in GBP;
- SARON instead of LIBOR for operations denominated in CHF;
- TONAR instead of LIBOR for operations denominated in JPY;
- SOFR instead of LIBOR for operations denominated in other currencies.

However, SHIBOR will continue to apply for the operations denominated in CNY.

## Extension of tax loss carry-forward limitation

The Law extends the currently applicable limitations on the tax loss carry-forward from 2021 until the end of 2024.

According to the applicable limitations, Russian taxpayers can only deduct losses incurred in previous periods in an amount capped at 50% of the corporate profits tax base for the current year.

## Changes in withholding taxation

According to the Law, the list of passive income taxable at source in Russia now includes interest income due under

the loan arrangements of a foreign company having a permanent establishment in Russia, provided that these loan arrangements are related to the activity of the permanent establishment. But Russian tax authorities have not yet clarified the technicalities of this rule's application.

The Law also provides that individual entrepreneurs distributing interest income abroad are to act as tax agents withholding the tax due from such income.

## Comment

Relief from VAT reporting and payment obligations for foreign companies registered in Russia for technical reasons is one of the legal changes in the tax domain most awaited by the business community, which had been lobbying for it. Indeed, the Russian tax authorities' previous position posed a number of material complexities for foreign entities engaged in VAT-able flows with Russian customers, since their limited presence in Russia (e.g. due to opening of a bank account or maintaining immovable property) did not allow them to properly fulfil their VAT reporting and payment obligations. Engaging personnel or outsourced service providers for these purposes resulted in additional costs and efforts for these foreign companies, while their failure to duly fulfil VAT obligations could jeopardise the VAT offset for their Russian customers.

Nevertheless, Russian customers performing tax agency obligations under the new rules should check whether their foreign counterparties are tax registered with the Russian tax authorities and the grounds for such tax registration, to ensure that the tax agency mechanism actually applies to operations with these foreign companies.

Unfortunately, despite the lobbying efforts of the Russian business community, this relief does not apply to VAT reporting and payment obligations for foreign entities engaged in the provision of e-services in Russia and registered with Russian tax authorities in this regard.

In their short- to mid-term tax planning, Russian taxpayers should also consider the other tax changes the Law introduces. And businesses should review their existing or planned intragroup financial arrangements in a view of potential fluctuations in the "safe harbour" interest rate ranges according to the new rules.

If you have any questions on this eAlert, do not hesitate to contact CMS Russia experts [Dominique Tissot](#), [Maria Kabanova](#), [Anna Osmakova](#) or your regular contact at CMS Russia.

*\* In Russian*

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