

Recent changes made in Russia to taxation of financial lease arrangements

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On 29 November 2021, Russia adopted [Federal Law No. 382*](#) (the “Law”), which amends the Russian Tax Code (the “RTC”) in line with the [“Key directions of budgetary, tax and customs-tariff policy for 2022 and the planning period of 2023 and 2024”*](#).

Among other changes to the RTC, the Law defines the rules of taxation of financial lease arrangements, aiming to resolve previously existing uncertainties created by new accounting rules in Russia.

Background

As a result of Federal Accounting Standard FSBU 25/2018 “Lease Accounting” (“FSBU 25/2018”), obligatory from 2022 (or voluntarily applicable from 2019), ambiguity arose in certain cases as to which party in a lease arrangement (the lessor or the lessee) should pay the property tax.

Under FSBU 25/2018, for financial lease arrangements, the leased property is not recognised as a “fixed asset” by either party of the arrangement. Instead, the lessor accounts for the leased assets as a net investment in a lease (based on the nominal value of the lease payments due, costs incurred by the lessor and additional coefficients). The lessee reflects leasing operations as its right to use the assets. However, under Article 374 of the RTC, the property tax obligations arise for the party recognising the disputable property as fixed assets in the taxpayer’s books.

Previously, Russian tax authorities issued explanations stating that property tax obligations may arise either for the lessee or the lessor, depending on the type and conditions of the lease arrangement, as well as the accounting rules applied by the parties. The Law changes this approach, establishing unified property and corporate tax rules for financial lease arrangements.

Property tax

The Law stipulates that the leased assets must always be taxed at the level of the lessor, irrespective of the type and conditions of the lease arrangement.

This amendment, although resolving an ambiguity of which party bears the property tax obligations, still leaves certain questions unanswered. Most importantly, it is unclear how taxpayers will define the taxable base for property items taxed at their average annual value, since under FSBU 25/2018 the lessor does not determine the average annual value of the property, but rather the net value of the investment in a lease.

According to the Law, the new tax and accounting rules will not apply to financial lease arrangements formalised by the parties prior to the Law’s entry into force. This means that parties will enjoy the old rules until the historical lease arrangements expire. This may result in the taxpayer having to apply different rules of accounting and taxation to different lease arrangements (i.e. those signed before and after the Law’s entry into force), which can only complicate the tax and financial accounting for such a taxpayer.

Corporate profits tax

Depreciation rules

According to the new rules, only the lessor can depreciate leased assets. The Law thus excludes the previously existing possibility for the lessee to depreciate leased assets in cases when they were reflected as fixed assets in the books.

Similarly, the Law prohibits the possibility for the lessee to apply accelerated depreciation. Under the new rules, the right to use increased depreciation rates is provided only to the lessor as the legal owner of the leased asset.

Deductibility of lease payments

The Law includes provisions for the RTC to govern the deductibility of the lease payments paid by the lessee. From 2022, a lessee can recognise lease payments including the redemption value of the leased asset as other expenses minus such redemption value, provided that the leased assets are transferred to the ownership of the lessee upon termination of the lease term. The Law, however, does not define a mechanism to determine the redemption value.

Comments

Companies engaged in financial lease activities or contemplating their initiation, should assess whether this Law may influence their tax obligations under existing and planned lease arrangements.

More specifically, these companies must determine whether they should change their tax and financial accounting beginning 2022, and in certain cases introduce a separate accounting system for existing and newly signed lease arrangements.

In parallel, the business community is anticipating more clarifications from the Russian tax authorities on the application of the new rules, specifically on the determination of the property tax base for leased assets taxed at their average annual value. Our tax experts are closely monitoring developments and will keep you updated on changes.

For further information, please email the authors or your usual contact at CMS Russia.

* *In Russian*

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