



CHANGES IN TAXATION OF DIGITAL ECONOMY IN RUSSIA

Arseny Seidov

Partner, Baker McKenzie

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VAT regime on ESS - Current rules

- Current VAT regime on electronically supplied services (“**ESS**”) applies since **January 1, 2017**
- List of ESS rendered through the Internet
- Place of supply is determined at **customer location**
- Criteria for determining customer location
 - Place of residence
 - Residence of bank or e-payment operator
 - IP address
 - Phone number
- **No VAT registration** for foreign B2B suppliers, but **VAT registration** for B2C suppliers
- **For B2B supplies** Russian companies, including individual entrepreneurs are required to act as tax agents, i.e. withhold VAT on a reverse-charge basis
- **For B2C supplies** foreign suppliers of ESS calculate and pay VAT themselves



VAT regime on ESS - New rules

- New regime on ESS comes into effect on **January 1, 2019**
- Elimination of the reverse-charge mechanism for **B2B** supplies
- Tax agents: Russian and foreign intermediaries operating under agency or similar and making settlements **directly** with customers
- For **B2B** supplies and **B2C** supplies foreign suppliers (including foreign intermediaries) are required to:
 - calculate VAT at the rate of 15.25%
 - submit VAT returns
 - pay VAT on a quarterly basis
- **Tax registration** for both **B2C** suppliers and **B2B** suppliers
- Documents required for **input VAT recovery**
 - document confirming payment to the foreign company (with a VAT amount indicated as a separate line item)
 - agreement with indicated VAT amount, TIN and KPP of the foreign company
- National payment system operators (money transfer operators, payment agents and etc.) are not considered tax agents (change effective as of January 1, 2018)



VAT regime on ESS – Impact on Suppliers

- Foreign suppliers of electronic services in B2B market (not registered in Russia for B2C supplies) will be required to tax register in Russia by **February 15, 2019**
- Foreign suppliers will be required to (i) collect, report and pay VAT on all their sales to Russian customers, and (ii) maintain information on the locations of such customers
- Foreign companies **with just one ESS transaction** to a Russian consumer will be formally required to register, calculate and pay VAT
- Same extends to **recharge of HQ (ESS) costs** to Russian affiliates (e.g. costs on global software licenses)
- No turnover threshold for Russian tax registration
- What if the transaction is VAT-exempt (e.g. software use license / sublicense)?
- What if transaction provides for both ESS and regular services for a bundled fee?
- Tax registration under the VAT regime may increase long-term exposure to general tax audit and virtual permanent establishment risks

VAT regime on ESS – Impact on Customers



- **Input VAT recovery - criteria**
 - Foreign supplier is tax registered in Russia
 - Necessary documents (e.g. contact with TIN and KPP of the foreign supplier)
- **Due diligence**
 - Does the customer have to check whether the foreign supplier is tax registered in Russia for purposes of VAT regime on ESS?
 - Should it request any supporting documents?
 - Role of “defense file” and burden of proof
- **No voluntary mechanism for Russian companies to act as tax agents**
 - If the supplier lacks Russian tax registration and/or has no supporting documents, should the Russian customer:
 - pay VAT to the foreign supplier and claim VAT for recovery or
 - withhold and pay VAT to the budget and recover the VAT?



Current trends (1) - VAT on online cross-border sale of goods

- The Draft Law was prepared in March 2017, but has been neither published for official discussion, nor introduced into the Russian State Duma
- Currently, the Russian Finance Ministry considers two initiatives:
 - to **reduce the threshold for duty-free import** by individual persons via international mailings (Main Directions for Budget, Tax and Customs Policy in 2018 and planned period of 2019-2020 years)
 - to **introduce Russian VAT** on online retail trade
- Draft Law is still undergoing **intragovernmental approval** (several ministries involved)
- In December 2017, some market players appealed to the Russian Prime Minister with a request to continue work on the initiative



Current trends (2) - Digital Economy project

- In **December 2017** the Russian Government approved the action plan for developing tax incentives to implement the **Digital Economy project** (the “**Plan**”) and make the Russian tax system more competitive
- The Plan provides for several initiatives to be enacted in **Dec 2018 – Jan 2019**
 - 1) R&D and Patent Box**
 - Reduced tax rate for disposal of IP rights
 - Multiplying ratio to the expenses for R&D
 - 2) Tax incentives for “business angels”**
 - Personal income tax deduction for individuals investing in a high-risk venture market
 - 3) Tax residency rules for highly qualified specialists**
 - Possible criteria: minimum level of the annual income, qualification requirements and the number of days of actual stay in Russia
 - 4) VAT on electronic services**
 - Input VAT recovery for export of digital and IT services
 - Favorable tax treatment for Russian online retailers

Current trends (3) – Cryptocurrency taxation



- In late March **3 draft laws** concerning digital economy were introduced to the Russian State Duma:
 - draft law introducing the concept of digital rights and digital money in civil law
 - draft law on digital financial assets (cryptocurrency and token)
 - draft law on alternative methods of attracting investments (crowdfunding)
- Under civil regulation **digital money** can be considered as a legal tender **only** if it is established by special legislation. However, **cryptocurrency** and **token** are **not considered as a means of payment** under draft law on digital financial assets
- Transactions involving exchange of **tokens** for rubles or foreign currency may take place only through a digital financial asset exchange operator. The Bank of Russia is to establish a list of other possible transactions with digital financial assets
- The Russian Ministry of Finance confirms that the legal regime of the cryptocurrency is still **uncertain**. However, any income from profit-making activity (except explicitly excluded from taxation) is **subject** to taxation (*Letters of the Russian Ministry of Finance No. 03-03-06/1/8061, dated February 9, 2018 on cryptocurrencies and No. 03-04-05/66994, dated October 13, 2018 on Bitcoins*).
- **VAT aspects** of transfer of digital assets



Association
of European
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Arseny Seidov

Partner

Moscow | Russia

T: +7 495 787 2700

arseny.seidov@bakermckenzie.com

Q&A