

## Tax Messenger

### Tax Edition



## Key Amendments to the Tax Code - a Brief Summary

*International Tax Review* ranked EY Russia Tax & Law practice as a leading tax firm (Tier 1) in Russia in its annual World Tax guide for 2018.

Federal Law No. 325-FZ "On Amendments to Parts One and Two of the Tax Code of the Russian Federation" ("the Law") was published on 29 September. The law in its draft stage<sup>1</sup> was the subject of an [EY alert](#) published on 25 June 2019.

The Law has undergone significant changes compared with the original bill:

#### Tax Administration

1. A requirement is introduced for companies to inform the tax authorities of means of transport and/or plots of land owned by them which are subject to transport tax or land tax respectively in the event that they do not receive notices from the tax authorities of amounts of those taxes calculated on the assets in question for the period of ownership (clause 2.2 of Article 23 of the Tax Code as amended by the Law).

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<sup>1</sup> Bill No. [720839-7](#).

2. New rules are laid down for changing the time limits for the payment of taxes, levies, insurance contributions, penalties and fines imposed on a taxpayer as a result of a tax audit where a taxpayer is unable to pay them all at once within the deadline specified in the tax authority's demand (subsection 7 of clause 2 of Article 64 of the Tax Code):
  - ▶ The bodies with the authority to make decisions on changes to the time limits for payment are (clause 1.1 of Article 63 of the Tax Code as amended by the Law):
    - ▶ The local tax authority of the person concerned - where an instalment plan is granted for up to one year
    - ▶ The Federal Tax Service - where an instalment plan is granted for up to three years
  - ▶ An instalment plan will be granted (paragraphs 15-16 of clause 5.1 of Article 63 of the Tax Code as amended by the Law):
    - ▶ For up to one year if additional charges imposed as a result of the tax audit amount to less than 30 per cent of revenue from sales of goods, work and services for the year preceding the year in which the audit decision enters into force
    - ▶ For up to three years if the additional charges imposed as a result of the tax audit amount to 30 per cent or more of revenue from sales of goods, work and services for the year preceding the year in which the audit decision enters into force
  - ▶ Interest on the indebtedness for which an instalment plan is granted will be charged based on the Central Bank refinancing rate in effect in the instalment plan period, unless otherwise provided by Eurasian Economic Union law or Russian customs law in relation to taxes payable in connection with the movement of goods across the customs border of the Eurasian Economic Union (clause 4 of Article 64 of the Tax Code as amended by the Law).
3. Information on protective measures adopted by the tax authorities (such as pledges and attachments of assets) and on the assets in relation to which those measures have been taken to secure the fulfilment of tax payment obligations will be published on the Federal Tax Service's official website (clause 4 of Article 72 of the Tax Code as amended by the Law).
4. Upon the entry into force of a tax audit decision which is secured by a prohibition on the alienation (pledging) of the taxpayer's assets without the tax authority's consent, the assets in question are deemed to be under pledge to the tax authority by force of law. A similar rule applies to assets attached for the purpose of securing compliance with a decision on the recovery of tax arrears if the taxpayer fails to pay what is owed within one month (clause 2.1 of Article 73 as amended by the Law).
5. Rules are laid down for determining the time period within which a tax authority must decide whether to grant a credit (refund) of overpaid tax when conducting an in-house tax audit (clause 8.1 of Article 78 of the Tax Code as amended by the Law):
  - ▶ If the in-house audit reveals no violations, the time limit for deciding whether to grant a credit (refund) begins to run 10 days after the date of completion of the audit
  - ▶ If the tax authority discovers violations as a result of the in-house audit, the time limit for deciding whether to grant a credit (refund) runs from the day after the entry into force of the tax authority's decision based on the audit
6. New rules are introduced for the tax registration of foreign citizens (stateless persons) who are not private entrepreneurs and do not have immovable property or means of transport in Russia. Such persons must be tax registered at the location of the organization or entrepreneur which is the source of income paid to the person concerned on the basis of information supplied by that organization or

entrepreneur. The tax authority must register the person concerned within 15 days of receiving that information (clause 7.4 of Article 83 and clause 2.1 of Article 84 of the Tax Code as amended by the Law).

### Transfer Pricing

7. A change is made regarding the determination of the market price range using information on prices registered on commodity exchanges. Specifically, the market price range will be determined as the interval between the lowest and highest prices of transactions on an exchange in a similar period under comparable conditions. Under the current wording of the Tax Code, the market range is determined as the interval between the lowest and highest transaction prices registered by an exchange as at the date of the transactions.
8. The list of risks taken into account when conducting a comparative analysis for a controlled transaction (clause 7 of Article 105.5 of the Tax Code) is extended to include the risk of loss of business reputation owing to goods losing their quality and other characteristics for reasons outside the control of the parties to a transaction.

### Mutual Agreement Procedure

9. The detailed provisions concerning the conduct of mutual agreement procedures relating to tax matters in accordance with double taxation treaties have been all but omitted from the final text of the Law. Now, the regulation of mutual agreement procedures at Tax Code level is effectively limited to a number of reference clauses to the effect that the conduct of mutual agreement procedures is governed by the provisions of the relevant double taxation treaty, while the procedure and time limits for the submission of a MAP request are prescribed by the Ministry of Finance (Article 142.7 to 142.8 of the Tax Code as amended by the Law).

### VAT and Excise Duties

10. Changes are made to the rules on documents required to support the application of 0% VAT in the case of the

transport of stores out of Russia and in cases where goods are sent by international mail or where goods for which an express cargo declaration is used for customs clearance purposes are delivered by a carrier as express cargo (Article 165 of the Tax Code as amended by the Law).

11. There are modifications to the rules regarding the restoration of deducted VAT on goods (work and services) where an organization (or its legal successor) adopts a special tax regime (Article 170 of the Tax Code as amended by the Law).
12. Provisions are established regarding the right to deduct VAT incurred in acquiring goods (work, services) and property rights in connection with the creation of intangible assets (clause 6 of Article 171 and clause 1 of Article 172 of the Tax Code as amended by the Law).
13. The previously proposed amendments relating to excise duties were eliminated from the text of the bill by the second reading stage.

### Personal Income Tax

14. The Law provides that income of an individual who is not a tax resident of Russia in the form of winnings from games of chance played in casinos and slot machine arcades will not be classified as Russian-source income (clause 2 of Article 208 of the Tax Code as amended by the Law).
15. The provisions of Article 214.2 of the Tax Code are to be taken into account in determining the tax base for interest income received not only on savings deposits, but also on account balances.
16. Changes are made to the rules for the determination of the tax base for personal income tax and the calculation and payment of tax where income is received in the form of winnings on games of chance (Article 214.7 of the Tax Code as amended by the Law).
17. The Law introduces new provisions on the determination of personal income tax in relation to income from the sale of immovable property and income in the form of immovable property received as a gift

- (Article 214.10 of the Tax Code as amended by the Law).
18. The list of taxpayers who must calculate and pay personal income tax (clause 1 of Article 228 of the Tax Code) is extended to include foreign citizens and stateless persons who are registered in accordance with clause 7.4 of Article 83 of the Tax Code (inserted by the Law) and receive income from companies or entrepreneurs which make payments to those foreign citizens or stateless persons without withholding tax.
  19. The Law makes amendments to clause 2 of Article 230 of the Tax Code regarding the time limits within which tax agents must submit personal income tax returns (statements of personal income tax calculated and withheld by a tax agent, information on individuals' income for a tax period). According to the bill, the information in question must be submitted by 1 March of the year following the tax period that has ended (as opposed to 1 April under the current wording of the Tax Code). It is also proposed that, with effect from 2021, the statement of amounts of personal income tax calculated and withheld by a tax agent should be accompanied by a document containing information on income received by individuals in the tax period that has ended and amounts of tax calculated, withheld and paid to the budget.
- ### **Profits Tax**
20. The Law modifies the definition of income from participating interests in other companies which is treated as non-sale income for profits tax purposes. Such income will now include income paid by a foreign company to a Russian company which is a shareholder (participant) in that foreign company by way of the distribution of post-tax profits, regardless of how the payment is treated for tax purposes in a foreign state (clause 1 of Article 250 of the Tax Code as amended by the Law).
  21. The Law extends the scope of clause 1 of Article 260 ("Expenses for the Repair of Fixed Assets") of the Tax Code to include expenses for the repair of other assets.
  22. A modification is made to the list of cases in which a debt obligation to a bank is not classed as controlled indebtedness in accordance with Article 269 of the Tax Code. Under the Law, the term "bank" will also include an international organization which is recognised as a bank under an international agreement to which Russia is a party.
  23. An earlier proposed provision which would have prohibited tax from being recalculated in the current period in connection with overpayments resulting from prior year errors if more than three years had passed since the tax payment deadline for the period in which the error occurred was dropped from the bill by the second reading stage (clause 22 of Article 274 of the Tax Code as amended by the first version of the bill).
  24. The limit on the carry-forward of losses under clause 2.1 of Article 283 of the Tax Code is extended by a year until 31 December 2021 (more detail on this can be found in a special [EY alert](#)).
  25. There is a change to the limitation on the recognition of losses in the event of re-organization. Under the original version of the bill, the successor company resulting from a re-organization in the form of an acquisition or merger would only have been allowed to recognise losses made by the acquired company/re-organized entities in tax periods in which the successor company and the re-organized entities/all the re-organized entities were related entities on the first day of the period. The final version contains a milder restriction whereby losses may not be recognised if a tax inspection finds that the main purpose of the re-organization was to reduce the successor company's tax base by amounts of losses made by the re-organized entities prior to the re-organization (Article 283 of the Tax Code as amended by the Law).
  26. The Law modifies the tax rules relating to profits of controlled foreign companies (CFCs) as far as the adjustment for profit (loss) from disposals of financial assets is concerned. In the event of the sale or other disposal of equity interests in an

organization, costs associated with the sale or other disposal of financial assets will also now include CFC expenses in the form of amounts contributed to the assets (capital) of the organization in question in the financial year that commenced in 2015 or in any subsequent financial year if those expenses alter the value of the equity interests in the organization according to the CFC's accounting data (clause 3.1 of Article 309.1 of the Tax Code as amended by the Law).

27. The Law updates Article 312 of the Tax Code with special provisions for international organizations established in accordance with international agreements to which Russia is a party. Under the new rules, such organizations will not be subject to the requirement to provide confirmation of residence. For the purposes of Article 312, such international organizations must submit confirmation that they are the beneficial owners of income received.

## Regional Investment Projects

28. The amendments to the tax rules relating to regional investment projects (RIPs) now include a provision to the effect that the requirement for products made under an RIP to be produced in the territory of one constituent region of Russia is deemed to be met if the RIP involves the extraction of precious metals and provides for the refinement of those metals to be carried out by specialized organizations listed in the Federal Law "Concerning Precious Metals and Precious Stones" (subsection 3 of clause 2 of Article 25.8 of the Tax Code as amended by the Law).

29. Under a modification made to the bill by its second reading, an alternative tax relief option is provided for participants in RIPs. In similar fashion to the amendments already adopted for special investment contracts (see Federal Law No. 269-FZ of 2 August 2019), it is proposed that, where the criterion of the receipt of 90% of revenue from RIPs is not met, the relief may be applied to the tax base generated from RIP activities provided that separate records are

maintained of RIP-related income/expenses and income/expenses relating to other activities (Articles 284.3, 284.3-1 of the Tax Code as amended by the Law).

## Assets Tax

30. Under the reworded provisions on the object of taxation for assets tax (Article 374 of the Tax Code), the following are deemed taxable for both Russian and foreign organizations:

- ▶ Immovable property (including property placed under temporary possession, use, disposal or fiduciary management, contributed to joint activity or received under a concession agreement) which is recorded on an organization's balance sheet as fixed assets in accordance with statutory accounting rules, if the tax base for that property is defined as the average annual value of the property, unless otherwise provided by Articles 378 and 378.1 of the Tax Code
- ▶ Immovable property situated in the territory of Russia which is possessed by companies on the basis of ownership or economic jurisdiction or was received under a concession agreement, if the tax base for the property in question is defined as its cadastral value, unless otherwise provided by Articles 378 and 378.1 of the Tax Code.

31. In addition, the Law extends the list of assets for which the assets tax base is defined as cadastral value (Article 378.2 of the Tax Code). The provision concerning the inclusion in that list of dwelling houses and dwellings not recorded on the balance sheet as fixed assets under statutory accounting rules (subsection 4 of clause 1 of Article 378.2) is replaced by an open list of items of immovable property which are taxable in accordance with Chapter 32 (Personal Income Tax) of the Tax Code.

*Authors:*

*Dmitri Babiner  
Lyusine Satiyan  
Arseniy Arakelyan*

For more information, contact the authors of this publication:

**Dmitry Babiner**  
+7 (812) 703 7839  
[Dmitri.Babiner@ru.ey.com](mailto:Dmitri.Babiner@ru.ey.com)

**Lyusine Satiyan**  
+7 (495) 664 7887  
[Lyusine.Satiyan@ru.ey.com](mailto:Lyusine.Satiyan@ru.ey.com)

**Inquiries may be directed to one of the following executives:**

## **Moscow**

CIS Tax & Law Leader	
Irina Bykhovskaya	+7 (495) 755 9886
Oil & Gas, Power & Utilities	
Alexei Ryabov	+7 (495) 641 2913
Marina Belyakova	+7 (495) 755 9948
Financial Services	
Alexei Kuznetsov	+7 (495) 755 9687
Maria Frolova	+7 (495) 641 2997
Ivan Sychev	+7 (495) 755 9795
Industrial Products	
Andrei Sulin	+7 (495) 755 9743
Consumer Products & Retail, Life Sciences & Healthcare	
Dmitry Khalilov	+7 (495) 755 9757
Real Estate, Hospitality & Construction, Infrastructure, Transportation	
Anna Strelnichenko	+7 (495) 705 9744
Technology, Telecommunications, Media & Entertainment;	
Tax Performance Advisory	
Ivan Rodionov	+7 (495) 755 9719
Tax Technology	
Sergey Saraev	+7 (495) 664 7862
People Advisory Services	
Ekaterina Ukhova	+7 (495) 641 2932
Gueladjo Dicko	+7 (495) 755 9961
Sergei Makeev	+7 (495) 755 9707
Private Client Services	
Anton Ionov	+7 (495) 755 9747
Customs & Indirect Tax	
Vadim Ilyin	+7 (495) 648 9670
Transaction Tax	
Yuri Nechuyatov	+7 (495) 664 7884

## **Cross Border Tax Advisory**

Vladimir Zheltonogov	+7 (495) 705 9737
Andrey Vostokov	+7 (495) 755 9708

## **Transfer Pricing and Operating Model Effectiveness**

Evgenia Veter	+7 (495) 660 4880
Maxim Maximov	+7 (495) 662 9317

## **Tax Policy & Controversy**

Alexandra Lobova	+7 (495) 705 9730
Alexei Nesterenko	+7 (495) 622 9319

## **Global Compliance and Reporting**

Yulia Timonina	+7 (495) 755 9838
Alexei Malenkin	+7 (495) 755 9898

## **Law**

Georgy Kovalenko	+7 (495) 287 6511
Alexey Markov	+7 (495) 641 2965

## **St. Petersburg**

Dmitri Babiner	+7 (812) 703 7839
----------------	-------------------

## **Vladivostok**

Alexey Erokhin	+7 (914) 727 1174
----------------	-------------------

## **Ekaterinburg**

Irina Borodina	+7 (343) 378 4900
----------------	-------------------

## **Krasnodar**

Alexei Malenkin	+7 (495) 755 9898
-----------------	-------------------

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### Contacts

Almaty	Novosibirsk
+7 (727) 258 5960	+7 (383) 211 9007
Atyrau	Nur-Sultan
+7 (7122) 55 2100	+7 (7172) 58 0400
Baku	Rostov-on-Don
+994 (12) 490 7020	+7 (863) 261 8400
Bishkek	St. Petersburg
+996 (312) 665 997	+7 (812) 703 7800
Ekaterinburg	Tashkent
+7 (343) 378 4900	+998 (78) 140 6482
Kazan	Tbilisi
+7 (843) 567 3333	+995 (32) 215 8811
Kyiv	Togliatti
+380 (44) 490 3000	+7 (8482) 99 9777
Krasnodar	Vladivostok
+7 (861) 210 1212	+7 (423) 265 8383
Minsk	Yerevan
+375 (17) 240 4242	+374 (10) 500 790
Moscow	
+7 (495) 755 9700	

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