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Looking forward to changes: tax policy guidelines for 2020-22

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The Draft Law "On the Federal Budget for 2020 and the Planning Period of 2021 and 2022" was submitted to the State Duma on 30 September 2019 along with the General Guidelines for Budget, Tax and Customs Tariff Policy for 2020 and the Planning Period of 2021 and 2022 prepared by the Ministry of Finance (the Guidelines).

The Guidelines propose a number of tax initiatives to promote a competitive environment and stable fiscal conditions. These include important changes in tax law such as introducing "focus of vital interests" and a shorter stay in Russia as tax residency criteria for individuals and taxing the income of companies in the digital sector by the location of users, etc.

It has not yet been determined when these changes in tax law will take effect. Experience indicates that the changes may be introduced into law within a period of one to three years.

Following is a summary of the changes proposed in the Guidelines – the most important, in our opinion, being those affecting taxation.

1. Personal tax

Tax residency criteria

The Guidelines call for a reduction in the period that individuals must stay in Russia to be treated as tax residents from 183 to 90 days in a period of 12 consecutive months.

It is also proposed to introduce the criterion of "focus of vital interests," meaning that individuals may be regarded as tax residents even if they are in Russia for less than 90 days. The Guidelines do not clearly define this criterion, but refer to an individual's personal, social and economic ties.

Personal income tax

In addition to the new residency rules, the Guidelines envisage a 13% rate of personal income tax for nonresidents. Such income is currently taxed at a rate of 30%.

2. International tax

Changes are to be made in the approach to taxing companies in the digital sector. The Guidelines recommend that such companies' profit be taxed in the location of users. This is consistent with current international initiatives under Action 1, "Addressing the Tax Challenges of the Digital Economy," of the BEPS project (Base Erosion and Profit Shifting). The Ministry of Finance proposes to tax profits in jurisdictions where digital companies' users (clients) are located and where profit is generated as a result of the engagement, cooperation and contribution of users as well as to take intangible marketing assets into account in the relevant countries in distributing profit.

The Guidelines call for a stricter approach to tax benefits in situations where a foreign entity acknowledges that it lacks the right to income, and the beneficial owner is a Russian tax resident. In this case, the beneficial owner will retain the right to tax benefits if the foreign entity transfers the income to it within 180 days after the foreign entity receives such income from a source in Russia.

The approach to taxing mutual funds is to be clarified, and the income earned from a mutual fund by a foreign company that is a mutual fund shareholder is to be equated with dividends.

Changes are also to be made in the tax rules for selling shares of closed-end mutual funds whose assets are more than 50% real estate.

3. Profits tax

Under the Guidelines, constituent entities of the Russian Federation would be authorized to provide investment tax credits for research expenses.

The net book value of intangible assets would be calculated as for fixed assets.

4. VAT

The Guidelines do not call for any major changes in VAT, but propose that sales of precious metals in the form of bullion be VAT-exempt.

5. Excises

The Guidelines call for a 4% increase in excise rates in 2022 to compensate for inflation.

Excises are to be made deductible for manufacturers of ethane-based petrochemical products if the equipment for such production was put into use after 1 January 2022.

The Guidelines also envisage measures to secure tobacco companies' obligation to mark products, i.e. bank guarantees or a transfer of funds to the regional body of the Federal Treasury. The amount of such security is to be calculated taking into account the excise rate.

6. Corporate assets tax

The number of sites for which the cadastral value is used as the tax base is to be expanded. The Guidelines would include real estate received as collateral and liquidated damages as well as real estate that is temporarily not being used for core activities.

7. Special tax regimes

The Guidelines envisage a number of amendments to make special tax regimes even more attractive for taxpayers.

Simplified tax system (STS)

The requirement to submit tax declarations is to be eliminated for individual entrepreneurs who pay tax on income under the STS. This is because individual entrepreneurs are required to

use cash register equipment which automatically transmits fiscal data to the tax authorities.

A transition period is to apply to taxpayers that exceed the limits for the STS (maximum income and/or average headcount) so that they won't have to reconstruct the amount of tax payable.

Patent-based tax system

There are plans to make insurance payments deductible in the patent-based tax system.

Tax on professional income

According to the Guidelines, several more constituent entities of the Russian Federation may be included in the experiment to introduce a special tax regime for the self-employed. The number and list of these constituent entities is not specified.

The Guidelines would also allow the tax regime for the self-employed to be used by citizens of CIS countries that are not members of the Eurasian Economic Union, i.e. Azerbaijan, Georgia, Moldova, Tajikistan and Uzbekistan.

8. Non-tax payments

Under the Guidelines, three payments that have the characteristics of taxes and levies, but are imposed under separate regulatory acts, should be added to the Tax Code.

Recycling fee

The recycling fee is currently charged under the Federal Law "On Production and Consumption Waste."[1] Now the Tax Code is to be amended to ensure consistent collection of this fee, and taxpayers are to be given additional legal guarantees. The Guidelines propose no changes in the way the fee is collected.

Payments to the Universal Service Fund

Payments to the Universal Service Fund (USF) are regulated by the Federal Law "On Telecommunications."[2] Under Article 60 of this law, quarterly payments to the USF are made by operators of public telecommunication networks on income from telecommunication services provided to subscribers and other network users (excluding VAT). According to the Guidelines, payments to the USF will be included in the Tax Code as tax on the income of public network operators. As is the case with the recycling fee, the Guidelines envisage no changes in the list of payers or the procedure for calculating and paying this tax.

Resort fee

A special federal law permits resort fees to be charged in four constituent entities of the Russian Federation: the Republic of Crimea, Altai Territory, Stavropol Territory and Krasnodar Territory.[3] The resort fee is to be renamed a "tourist fee" and included in the Tax Code as a local fee so that it will not be limited to these constituent entities. Local government bodies will be able to introduce tourist fees from 1 January 2021. Such fees will be charged to individuals staying in hotels and other accommodations.

9. Other initiatives

According to the Guidelines, any legislative amendments that worsen the position of taxpayers and are published after 1 September should enter into force no earlier than a year later.

A unified information space is to be created to enable taxes to be collected from the shadow economy. Special attention in this initiative will be given to personal income tax and insurance payments.

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[1] *Federal Law No. 89-FZ of 24 June 1998 "On Production and Consumption Waste"*

[2] *Federal Law No. 126-FZ of 7 July 2003 "On Telecommunications"*

[3] *Federal Law No. 214-FZ of 29 July 2017 "On an Experiment to Develop Resort Infrastructure in the Republic of Crimea, Altai Territory, Krasnodar Territory and Stavropol Territory"*

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