Key changes in corporate tax law in 2021

The year 2020 was marked by the publication of a large number of regulatory acts making numerous amendments to Russian tax legislation. Below is a brief summary of what we consider to be the most significant changes in corporate taxation that take effect from 1 January 2021 (unless indicated otherwise). Although we have attempted to cover all the major changes in this review, we recommend also referring to the texts of the laws that enact the changes described.
**International taxation**

Amendments to Russia’s tax treaties with Cyprus, Malta and Luxembourg in 2020, made on the President’s initiative, saw the withholding tax rate for dividends and interest increase to 15% (Protocols dated 8 September 2020, 1 October 2020 and 6 November 2020 respectively). At the same time, a preferential 5% rate remains applicable if certain conditions are met.

An amendment made by Federal Law No. 374-FZ of 23 November 2020 to the provisions governing the transitional period removed, as from 1 January 2021, the possibility of securing a zero rate for dividends by means of the look-through approach. In another twist in the battle against tax havens, the Finance Ministry drafted amendments to subsection 50 of clause 1 of Article 251 and clause 3 of Article 284 of the Tax Code. The new rules make it even more difficult than before to use existing mechanisms for remitting payments abroad at a low rate of tax, and in particular the look-through approach that is so popular among businesses. The essence of the look-through approach is that, where the beneficial owner of dividends received from a Russian company is not the foreign company to which they are formally paid, but a Russian tax resident that at least indirectly owns no less than 50% of the capital of the company paying the dividends, a 0% rate will apply. This will now cease to be an option. However, the transitional period until 2023 inclusively remains in place where the following conditions are met:

1. the indirect interest of the Russian tax resident entity in the Russian entity paying the dividends is not less than 50%;
2. the amount of dividends payable to the Russian tax resident entity is not less than 50% of the total amount of dividends distributed;
3. the Russian tax resident entity received the amount of income in question within 180 calendar days from the date on which the dividends were paid by the Russian entity.

Federal Law No. 374-FZ of 23 November 2020 removes, from 1 January 2021, the possibility for foreign entities that have voluntarily declared themselves Russian tax residents to apply the 0% rate. Despite the changes made to Article 284 of the Tax Code, the aforementioned federal law prescribes a transitional period from 1 January 2021 to 31 December 2023 during which a foreign entity that has declared itself a tax resident of Russia would be able to apply the 0% rate to dividends received as long as the following conditions are met:

1. the foreign company has continually owned at least 50% of the capital of the entity paying the dividends for no less than a year;
2. the foreign company’s jurisdiction of registration is not on the Finance Ministry’s “blacklist”;
3. the dividends must be paid to an account held by the foreign entity with a Russian bank if the source of the dividends is a Russian entity.

**Transfer pricing**

Federal Law No. 374-FZ of 23 November 2020 broadens the interest rate ranges for rouble and foreign currency debt obligations. From 1 January 2020 to 31 December 2021, clause 1.2 of Article 269 of the Tax will look as follows:

1. for a debt obligation arranged in roubles that arose as a result of a transactions classified as controlled in accordance with clause 2 of Article 105.14 of the Tax Code, the range of threshold interest rates is set at from 0 to 180% (compared with 75 to 125% of the CBR rate previously);
2. for a debt obligation arranged in roubles that arose as a result of a transactions classified as controlled on other grounds, the range of threshold interest rates is set at from 75 to 180% (compared with 75 to 125% of the CBR rate previously);
3. for debt obligations arranged in foreign currency, the range of threshold interest rates is set at from 0% to the EURIBOR/SHIBOR/LIBOR plus 7 percentage points (previously, the range...
was from EURIBOR/SHIBOR/LIBOR plus 4 percentage points to EURIBOR/SHIBOR/LIBOR plus 7 percentage points).

**Profits tax**

Federal Law No. 368-FZ of 9 November 2020 made amendments to Article 250 of the Tax Code regarding the determination of income in connection with withdrawal from an entity. Under the changes, as from 1 January 2021 such income is reduced not only by the value of ownership interests/shares, but also by the amount of any monetary capital contribution previously made to the entity concerned (or, if some of the contribution has been returned, the part of it that was not returned before the withdrawal). A positive difference will be treated as dividends and assessed to profits tax as non-sale income. A capital contribution is likewise deductible from income from the alienation of ownership interests or shares (in proportion to the amount of the ownership interest or shareholding being alienated) or from the liquidation of an entity.

Federal Law No. 374-FZ of 23 November 2020 made amendments to Article 284.2 of the Tax Code allowing preferential tax treatment to be applied from 1 January 2021 in relation to the sale of ownership interests and shares in foreign as well as Russian entities. The provision of Article 284.2 of the Tax Code will apply to income from the sale or other disposal (including redemption) of shares or ownership interests in foreign entities, but only if the state of residence of those foreign entities is not on the Finance Ministry’s list of states and territories that provide preferential tax treatment and/or do not require the disclosure or provision of information on financial operations (offshore zones).

The redomiciliation and/or a change in the tax residence of either the taxpayer or the entities referred to in clause 1 of Article 284.2 is not deemed to interrupt the period of possession of shares or ownership interests in the entities concerned.

In the event of the sale or other disposal (including redemption) of shares/ownership interests in Russian and/or foreign entities that were received by the taxpayer as a legal successor following reorganization, the period for which the taxpayer owned those shares/ownership interests for the purposes of clause 1 of Article 284.2 of the Tax Code will be calculated from the date on which they were acquired by the reorganized entity/entities.

The provisions in question will not apply if it is established in the course of tax control measures that obtaining the reduced tax rate was the principal purpose of the reorganization.

Federal Law No. 323-FZ of 15 October 2020 increased, with effect from 1 January 2021, the write-off allowance for printed products that are found to be defective or are not sold on time. It means that producers of mass media and book products may claim deductions for losses in the form of the value of mass media and book products that they write off as defective, unsaleable or not sold within the time periods specified in subsection 44 of clause 2 of Article 264 of the Tax Code (as obsolete) within a limit of up to 30% of the value of the print run of a particular mass media or book product, as well as the cost of writing off and recycling defective, unsaleable and unsold mass media and book products. The allowance was previously 10%.

Effective from 1 January 2021, Federal Law No. 374-FZ of 23 November 2020 made changes to the rules governing the application of an investment tax deduction (ITD). The changes broaden the powers of regional authorities to establish the right to apply an ITD in relation to R&D, determine which taxpayers have the right to claim it and define specific types of expenses and limits on R&D expenditure for the purposes of an ITD.

An amendment to clause 2 of Article 256 of the Tax Code means that amortization is no longer to be charged on intangible assets created as a result of expenditure on research and/or development in relation to which the taxpayer exercised the right to apply an investment tax deduction, subject to the special considerations established by clause 7 of Article 286.1 of the Tax Code.

Under the new wording of Article 268 of the Tax Code, in the case of the sale of depreciable property (other than a fixed asset in relation to which the taxpayer has exercised the right to apply an investment tax deduction in accordance with an ITD) the tax base is calculated as the lesser of the market value of the property on the date of sale or any other date, or the value of the property's book value. However, if the property was sold for more than its book value, the tax base is limited to the book value of the property.
with Article 286.1 of the Tax Code and a tax
deduction in accordance with Article 343.6 of
this Code), the taxpayer has the right to reduce
income from such operations by the net book
value of the depreciable property as determined
in accordance with clauses 1 and 3 of Article
257 of this Code. In other words, if an ITD was
only partially applied in relation to property that
is being sold, a deduction may be claimed for the
amount of its net book value corresponding to
the historical cost not covered by the ITD.

In addition, a new clause is inserted in Article
286.1 of the Tax Code to the effect that, where
a taxpayer has exercised the right to apply an
investment tax deduction with respect to
expenses referred to in subsection 6 of clause 2
of that Article, it also has the right to reduce the
amount of tax (advance payment) due to the
federal budget by an amount equivalent to 10%
of the amount of those expenses.

The range of research and development
expenses is reduced with effect from 1 January
2021. Under subsection 3.1 of clause 2 of
Article 262, which was inserted by Federal Law
No. 166-FZ of 18 July 2017, expenses incurred
for the acquisition of exclusive rights in
inventions, utility models or industrial designs
under a contract of alienation, or of rights to use
such intellectual property under a licence, could
be claimed as deductible R&D expenses if those
rights were used exclusively in R&D projects.
That subsection has now lost force.

As part of the IT manoeuvre, Federal Law No.
265-FZ of 31 July 2020 introduced lower rates
of profits tax for Russian developers with effect
from 1 January 2021. The amendments include
the insertion in Article 284 of the Tax Code of a
new clause 1.15, according to which, for
Russian entities that operate in the field of
information technology, develop and sell their
own computer programmes and databases on
physical media or in the form of an electronic file
via communications channels, irrespective of the
type of agreement, and/or render
services/perform work involving the
development, adaptation and modification of
computer programmes and databases (computer
software and information products) and install,
test and support computer programmes and
databases, the tax rate for tax payable to the
federal budget is set at 3 per cent and the tax
rate for tax payable to a regional budget is set at
0 per cent.

At the same time, the preferential rates of
profits tax can only be applied if the company
concerned meets certain criteria, and
specifically:

1. it has an average staff size of no fewer
   than 7 persons;
2. IT activities account for no less than 90%
   its total revenue;
3. it is accredited with the Ministry of
   Communications.

The above-mentioned federal law also annuls the
force of clause 6 of Article 259 of the Tax Code,
meaning that entities operating in the field of
information technology will no longer be able to
write off computer hardware costs as a lump
sum, but will have to apply the depreciation
rules prescribed by that Article in relation to
such assets.

New profits tax reliefs are introduced in light of
the creation of the Arctic Economic Zone under
Amendments to clause 1.8 of Article 284 and
Article 284.4 of the Tax Code establish a 0% rate
of profits tax payable to the federal budget and
allow regional authorities to reduce the rate of
profits tax payable to regional budgets.

Those seeking to claim this relief must meet a
number of conditions which are set out in detail
in the Tax Code and relevant regional laws.

Value added tax (VAT)

In the context of the IT manoeuvre, Federal Law
No. 265-FZ of 31 July 2020 introduced
additional conditions, effective from 1 January
2021, for claiming VAT relief on sales of
exclusive rights to computer programmes and
databases. In accordance with subsection 26 of
clause 2 of Article 149 of the Tax Code, VAT
relief will be available only to entities whose
software has been included in the unified
register of Russian computer programmes and
databases and rights to use such programmes
and databases (including updates and additional
features), including where granted by means of
remote access via the Internet.
However, the provisions of the subsection do not apply where the rights that are transferred consist in being enabled to distribute and (or) obtain access to advertising information on the Internet, post offers to acquire (sell) goods (work, services) and property rights on the Internet, search for information on potential buyers (sellers) and (or) conclude transactions.

Government Decree No. 1643 of 9 October 2020 extended the list of goods eligible for the lower 10% VAT rate, as approved by Government Decree No. 41 of 23 January 2003, to include books associated with education, science and culture in electronic form, including in audio format, that are distributed, for instance, on magnetic media, via the Internet or through satellite communication channels. It is important to bear in mind that, according to paragraph 8 of subsection 3 of clause 2 of Article 164 of the Tax Code, the proportion of advertising in periodicals and books qualifying for 10% VAT must not exceed 45%.

Federal Law No. 320-FZ made changes effective from 1 January 2021 to the rules governing the calculation of VAT in the event of bankruptcy. All operations (not only sales of property forming part of the bankrupt estate) will now be tax-exempt under subsection 15 of clause 2 of Article 146 of the Tax Code, which means that, once a taxpayer has been declared bankrupt, it will be obliged to add back any VAT that was deducted in the ordinary course of business in relation to goods (work, services) that have yet to be sold.

Federal Law No. 368-FZ of 9 November 2020 expanded the definition of freight forwarding services. In Article 164 the definition of such services was broadened through the inclusion of references to the "preparation of documents" and "forwarding support".

Under amendments made by Federal Law No. 374-FZ of 23 November 2020 to Article 149 of the Tax Code, the sale of ownership interests in the common property of participants in an investment partnership agreement is made tax-exempt.

Under amendments made by Federal Law No. 374-FZ of 23 November 2020 to Article 147 of the Tax Code, the place of sale of aquatic biological resources harvested in Russia's exclusive economic zone will be deemed to be the territory of Russia.

Amendments made by Federal Law No. 374-FZ of 23 November 2020 to Article 170 of the Tax Code allow deductions to be claimed for advertising and marketing services used for the purpose of transferring rights referred to in subsection 26 of clause 2 of Article where those services are not deemed to be supplied in Russia.

**Corporate property tax**

Under amendments made by Federal Law No. 374-FZ of 23 November 2020 to clause 12 of Article 378.2 of the Tax Code, immovable property may be taxed based on average annual value rather than cadastral value if the property is not on the list of properties taxed on the basis of cadastral value at the beginning of the tax period or if its cadastral value is only determined during the year and had not been determined at the beginning of the year.

Amendments made by Federal Law No. 374-FZ of 23 November 2020 to clause 1 of Article 386.1 of the Tax Code require an entity to include in a tax declaration information on the average annual value of movable assets that have been recorded on its balance sheet as fixed assets in accordance with the established accounting rules. The Tax Code did not previously establish such a requirement.

**Land tax and transport tax**

Federal Law No. 63-FZ of 15 April 2019 amended the tax rules for means of transport and land parcels owned by companies. The requirement to file transport tax and land tax declarations was abolished for the 2020 tax period and subsequent tax periods.

At the same time, the rules in place from 1 January 2021 require corporate taxpayers (and their autonomous subdivisions) to send notices to tax authorities stating the calculated amount of those taxes (clauses 4 to 7 of Article 363 and clause 5 of Article 397 of the Tax Code).

During 2021 tax authorities will accept transport tax and land tax declarations (including revised declarations) only for tax periods prior to 2020 as well as revised tax declarations in cases where tax declarations
were originally filed during 2020 in connection with the reorganization of an entity.

Federal Law No. 325-FZ of 29 September 2019 set unified deadlines for the payment of transport tax and land tax. Corporate taxpayers must pay those taxes no later than 1 March of the year following a tax period and must pay advance tax payments no later than the last day of the month following a reporting period.

Federal Law No. 374-FZ of 23 November 2020 made amendments to clause 1.1 of Article 391 of the Tax Code regarding the treatment of changes in cadastral value. Under the new wording of that clause, a change in the cadastral value of a land parcel during a tax period will not be taken into account in determining the tax base in that or preceding tax periods except as otherwise provided by Russian legislation governing the conduct of state cadastral valuation and by that clause.

Where the cadastral value of a land parcel changes as a result of the establishment of its market value, information on the changed cadastral value that has been entered in the Unified State Register of Immovable Property will be used in determining the tax base beginning from the date on which information on the cadastral value that has changed began to be used for taxation purposes.

Federal Law No. 374-FZ of 23 November 2020 establishes that the requirement to calculate transport tax is terminated from the first day of the month in which a means of transport was lost or destroyed. Under the new wording of Article 362 of the Tax Code, where a taxable object has ceased to exist owing to loss or destruction, tax will cease to be calculated from the 1st of the month of the loss or destruction of the object concerned on the basis of a declaration of the loss or destruction thereof submitted to the tax authority of its choice.

Where a tax authority does not have documents confirming the loss or destruction of a taxable object, including where the taxpayer has not submitted them independently, the tax authority will request details confirming the loss or destruction of the taxable object from bodies and other persons that possess those details based on information given in the taxpayer's declaration of the loss or destruction of the taxable object.

**Unified tax on imputed income**

In accordance with Federal Law No. 97-FZ of 29 June 2020, the “unified tax on imputed income” regime expired on 31 December 2020. This means that taxpayers must either apply to switch to another taxation system (such as the licence-based or simplified taxation system) or start applying the standard taxation system from the beginning of 2021.

**Simplified taxation system**

Federal Law No. 266-FZ of 31 July 2020 made changes to the rules governing the simplified taxation system. Under amendments made to Article 346.13 of the Tax Code, as from 1 January 2021 the limit on the number of employees has been increased to 130 and the income threshold has been raised to 200 million roubles for taxpayers applying that system. If a taxpayer exceeds those limits, higher rates of 8% (if the tax base is “income”) and 20% (if the tax base is “income minus expenses”) will apply from the beginning of the quarter in which the excess occurred. If the excess occurs in the first quarter of a calendar year, the higher rates will apply for the entire tax period.

**Other changes**

Federal Law No. 5-FZ of 28 January 2020 abolished the requirement for taxpayers to submit information on the average number of employees in the form of a separate report. Instead, the information in question will be provided to the tax authorities as part of the social contribution computation. The changes apply starting with the social contribution computation for 2020, which must be filed by 1 February 2021.

Federal Law No. 374-FZ of 23 November 2020 establishes a limited range of cases in which the tax authorities have the right to refuse to accept tax declarations (computations). As from 1 July 2021 a tax declaration (computation) is deemed not to have been submitted if any of the following circumstances is discovered during an in-house tax audit in relation to the declaration (computation):
1. it is established in the course of conducting tax control measures that the tax declaration (computation) was signed by an unauthorized person;

2. the individual who signed the tax declaration (computation) was disqualified on the basis of a disqualification ruling that was made on an administrative offence case and has entered into force;

3. information in the Unified State Register of Acts of Civil Status indicates that an individual died before the date on which the tax declaration (computation) was signed with that individual's enhanced qualified electronic signature;

4. an entry has been made in the Unified State Register of Legal Entities to the effect that the details of the person who signed the tax declaration (computation) are inaccurate;

5. an entry has been made in the Unified State Register of Legal Entities to the effect that a legal entity ceased to exist before the date on which it submitted the tax declaration (computation) to the tax authority;

6. a VAT declaration has been improperly completed;

7. an insurance contribution computation contains errors.

If any of the above-mentioned circumstances occurs, the tax authority must, within five days of the circumstance being discovered, notify the taxpayer of the deemed non-submission of the tax declaration (computation) using the notification form and format approved by the Federal Tax Service.

Please feel free to contact EY advisors for further information regarding specific changes to Russian tax law that take effect from 2021.

Authors:
Yuri Nechuyatov
Bella Dzhantemirova
Alina Shevliakova

For more information, contact the author of this publication:

Yuri Nechuyatov
+7 (495) 664 7884
yuri.nechuyatov@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**
- Irina Bykhovskaya +7 (495) 755 9886
- Alexei Kuznetsov +7 (495) 755 9687
- Maria Frolova +7 (495) 641 2997
- Ivan Sychev +7 (495) 755 9795

**Advanced Manufacturing & Mobility**
- 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**
- Andrei Ignatov +7 (495) 755 9694

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

**Customs & Indirect Tax**
- Vadim Ilyin +7 (495) 648 9670

**International Tax and Transaction Services**
- Yuri Nechuyatov +7 (495) 664 7884
- Vladimir Zheltonogov +7 (495) 705 9737

**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
- Pavel Koutovoi +7 (495) 664 7899

**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
- Alexei Nesterenko +7 (495) 622 9319

For information about Foreign Countries Business centers in EY Moscow office please follow the [link](http://www.ey.com/).

This publication contains information in summary form and is therefore intended for general guidance only. It is not intended to be a substitute for detailed research or the exercise of professional judgment. Neither EYGML Limited nor any other member of the global Ernst & Young organization can accept any responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this publication. On any specific matter, reference should be made to the appropriate advisor.

© 2021 Ernst & Young Valuation and Advisory Services LLC

EY | Building a better working world

EY exists to build a better working world, helping to create long-term value for clients, people and society and build trust in the capital markets.

Enabled by data and technology, diverse EY teams in over 150 countries provide trust through assurance and help clients grow, transform and operate.

Working across assurance, consulting, law, strategy, tax and transactions, EY teams ask better questions to find new answers for the complex issues facing our world today.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. Information about how EY collects and uses personal data and a description of the rights individuals have under data protection legislation are available via ey.com/privacy. For more information about our organization, please visit ey.com.

EY works together with companies across the CIS and assists them in realizing their business goals. 5,500 professionals work at 19 CIS offices (in Moscow, Ekaterinburg, Kazan, Krasnodar, Novosibirsk, Rostov-on-Don, St. Petersburg, Togliatti, Vladivostok, Almaty, Atyrau, Nur-Sultan, Baku, Bishkek, Kyiv, Minsk, Tashkent, Tbilisi, Yerevan).

© 2021 Ernst & Young Valuation and Advisory Services LLC
ED None.

This publication contains information in summary form and is therefore intended for general guidance only. It is not intended to be a substitute for detailed research or the exercise of professional judgment. Neither EYGM Limited nor any other member of the global EY organization can accept any responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this publication. On any specific matter, reference should be made to the appropriate advisor.

ey.com/ru