

RUSSIAN TAX AUTHORITIES CLARIFY APPLICATION OF VAT TO B2B SUPPLIES OF E-SERVICES

As we anticipated in our December 2018 [alert](#), following extension of the B2C e-services VAT regime to B2B supplies with effect from 1 January 2019, concerns regarding application of the new rules have been raised by Russian businesses.

After holding consultations with the business community, the Russian Federal Tax Service ("FTS") issued clarifications in its letter No. SD-4-3/7937 @ of 25 April 2019.

Some of the positions taken by the FTS are rather controversial, and their consistency with the Russian Tax Code is questionable. Below we briefly summarise the FTS's position as stated in the clarification letter:

- all foreign companies supplying e-services on a B2B basis are required to register with Russian tax authorities, without exception. Failure to register may lead to a fine of 10% of the income received from the activities conducted without registration;
- foreign persons registered with the Russian tax authorities for the purposes of VAT on e-services must also pay VAT on all other (non-electronic) supplies in Russia;
- Russian taxpayers have no legal obligation to withhold VAT in connection with any supply of e-services. There is also no obligation to withhold VAT where a foreign counterparty is registered in Russia for e-services but makes supplies that are not subject to the e-services VAT regime;

- where, however, a Russian buyer has calculated, withheld and paid VAT to the Russian tax authorities, the registered foreign supplier is not obliged to pay VAT once again. The Russian buyer will be able to claim back or offset such VAT;
- where the only supplies made by a registered foreign company are those in which their Russian buyers have acted as tax agents, a 'zero' VAT return should be filed by the foreign company; and
- the FTS agrees that amendments need to be made to the Russian Tax Code to fine-tune the existing VAT regime for B2B e-services.

Foreign e-services suppliers that are considering relying on the above clarifications should take into account that the Russian Ministry of Finance, which is the body authorised to clarify the tax legislation and positions of local tax authorities, may take a different view such issues compared to the FTS, and the current VAT regime for B2B supplies of e-services is likely to undergo changes in the nearest future. It is also important to ensure that Russian buyers making VAT withholdings continue to be compliant with their VAT obligations as withholding agents.

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