



# Doing business in Russia





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# Introduction

This guide has been prepared by EY Russia to give the potential investor an insight into Russia and its economy and tax system, provide an overview of forms of business and accounting rules and answer questions that frequently arise for foreign businesses.

Russia is a fast-developing country and is committed to improving the investment climate and developing a better legal environment for doing business. On the one hand, this makes doing business in Russia an attractive prospect; on the other, it can make for difficult decisions both when starting a business and further down the line.

EY provides assurance, tax, legal, strategy, transactions and consulting services in 150 countries and employs over 300,000 professionals across the globe<sup>1</sup>, including more than 3,500 employees in 9 offices in Russia.

EY possesses extensive, in-depth knowledge of Russian realities and is always ready to come to the assistance of first-time and experienced investors alike.

This guide contains information current as at March 2021 (except where a later date is specified).

You can find more information about doing business in Russia as well as up-to-date information on developments in its legal and tax environment on our website: [www.ey.com/ru](http://www.ey.com/ru).

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<sup>1</sup> [Who we are - Builders of a better working world | EY – Global](#)







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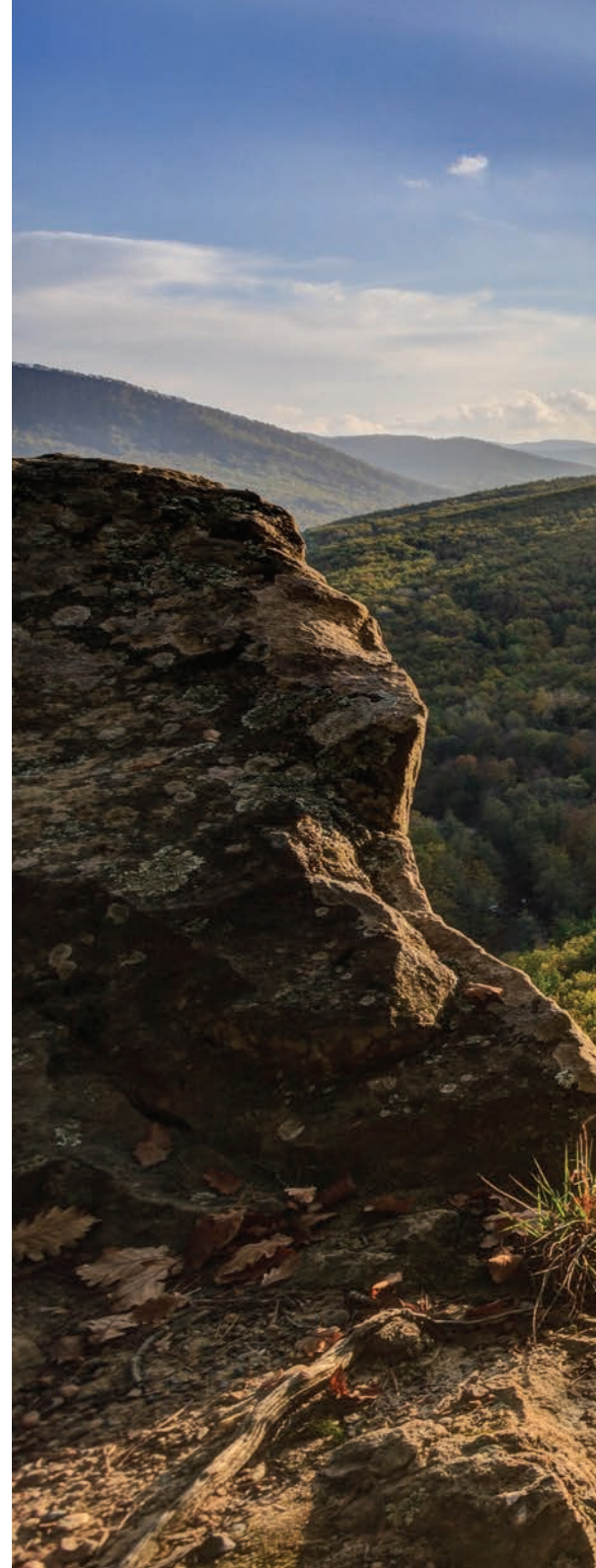
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# 1 Welcome to Russia





Like the rest of the world, Russia had to fight economic headwinds in 2020 amid the disruption caused by the Covid-19 pandemic. However, support measures taken by the government alleviated the economic impact of the crisis: Russia's GDP is expected to contract 3.9% in 2020 and projected to gain 1.9% in 2021. During the harsh second wave of the pandemic, the Russian economy showed strong resilience, and the country demonstrated both the stability of its healthcare and social systems and the robustness of its public finances.<sup>2</sup>

The consumer sector was the weakest link for Russia in 2020. Transportation, entertainment and catering companies faced lockdown restrictions in the spring of 2020 and had to lay off or furlough part of their workforce. Companies in other industries were cautious about hiring new staff. As a result, the unemployment rate in Russia climbed from 4.7% in January 2020 to 6.1% in November 2020<sup>3</sup>, which is above the 5-year average level. Increased unemployment, a competitive job market and economic uncertainty pushed consumer confidence down, with people tending to switch to saving mode, postponing non-essential spending.

Despite lower demand for goods and services, consumer prices increased 4.9% in December 2020 year-over-year<sup>4</sup>, which is the highest gain since 2017. The depreciation of the Russian rouble,

disruptions in supplies and increased food production costs drove inflation up.

In the corporate sectors, companies postponed new investment projects amid rising uncertainty. As a result, fixed capital investment declined 4.1% in the first 9 months of 2020<sup>5</sup>. The level of inward foreign direct investment also remained subdued in 2020.

Regardless of short-term fluctuations, an EY survey for the Foreign Investment Advisory Council in Russia (FIAC) confirmed the strategic importance of the Russian market for foreign investors. The pandemic, commodity price volatility and macroeconomic instability have not changed their opinion. The proportion of multinational companies that view Russia as a strategic market is consistently high and has grown compared to 2019. 53% of surveyed companies plan to increase their presence on the Russian market.

International and domestic companies have successfully coped with the restrictions of the pandemic, transferring employees to remote working and switching communications to online channels. They intend to increase investment in technology but are looking to cut down on office maintenance costs. Supporting people and organizations affected by the pandemic is an important priority for international businesses operating in Russia, EY research shows.

# 1.9%

is expected growth of Russia's GDP in 2021.

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# 53%

of surveyed companies plan to increase their presence on the Russian market.

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<sup>2</sup> Oxford Economics. Russia economic forecast, December 2020

<sup>3</sup> <https://fedstat.ru/indicator/57341>

<sup>4</sup> <http://cbr.ru/press/event/?id=9492>

<sup>5</sup> <https://rosstat.gov.ru/storage/mediabank/wahUjgZn/inv20.xls>

# 2 General Business Information



# Time

Russia has 11 time zones. It does not observe daylight saving time.

Moscow time is GMT plus 3 hours.

Time differences between Moscow and some major cities of the CIS are shown in the following table:

City	Hours ahead of or behind Moscow
Kyiv	-1/0
St. Petersburg	0
Baku	+1
Almaty	+3
Novosibirsk	+4
Vladivostok	+7

Flying times between Moscow and some major cities of the world, as well as time differences, are shown in the table below:

City	Time difference	Flying time
London	-3 or -2	3 hours 50 minutes
New York	-8 or -7	8 hours 30 minutes
Paris	-2 or -1	3 hours 45 minutes
Beijing*	+5	9 hours 45 minutes
Tokyo*	+6	10 hours 25 minutes

\* China and Japan do not observe daylight saving time.  
Source: <http://www.timeanddate.com/>

# Public holidays

The following days are non-working public holidays in Russia:

Holiday	Date
New Year holidays	1, 2, 3, 4, 5, 6 and 8 January
Russian Orthodox Christmas	7 January
Defenders of the Fatherland Day	23 February
International Women's Day	8 March
Spring and Labour Day	1 May
Victory Day	9 May
Russia Day	12 June
National Unity Day	4 November

In the event that a day of rest and a non-working public holiday coincide, the day of rest is usually carried over to the next working day after the public holiday. If a holiday falls on a Tuesday, the Monday before will serve as a bridge holiday. In this case, the following or the previous Saturday will be a regular working day, making up for the Monday bridge holiday. Those of the New Year holidays that fall on a weekend are now being carried over to later in the year.

# General facts

Russia is the largest country in the world in terms of area, covering **1/7** of the world's land surface, or **17,125,000 square kilometres**.<sup>6</sup>

It has a population of **over 146 million**.<sup>7</sup>

The capital city, **Moscow**, has a population of **12.6 million**<sup>8</sup> and is one of the **30<sup>9</sup>** largest cities in the world.

Besides Moscow, Russia has 14 other cities with populations exceeding 1 million.

Structurally, Russia is a presidential federative republic consisting of **85 administrative units**.

The President is **Vladimir Putin**.

The Prime Minister is **Mikhail Mishustin**.

The national currency is the rouble (**1 US\$ = 72.32 roubles**<sup>10</sup>).

Russia holds **11<sup>th</sup> place**<sup>11</sup> in the world in terms of nominal GDP and **6<sup>th</sup> place** in terms of GDP adjusted for purchasing power parity.

<sup>6</sup> [Information on land distribution in the Russian Federation by category of land as at 01.01.2020 \(by regional entity\)](#)

<sup>7</sup> Federal State Statistics Service ([rosstat.gov.ru](http://rosstat.gov.ru))

<sup>8</sup> <https://mosstat.gks.ru/>

<sup>9</sup> [World's largest cities by population 2020 list. Largest cities, table - www.statdata.ru - Website about countries, cities, population statistics, etc.](#)

<sup>10</sup> 2020 Average exchange rate based on Russian Central Bank figures

<sup>11</sup> [GDP, PPP \(constant 2017 international \\$\) | Data \(worldbank.org\)](#)



# The Russian legal system

## Overview

The Russian legal system is a civil law (codified) system. Unlike common law countries, the main source of law in Russia is the statutes and regulations adopted by the legislative and executive authorities.

Legislation in Russia is divided into country-wide (federal) and regional. Regional legislation is subsidiary to federal.

Federal laws are adopted by the Russian Parliament (the Federal Assembly) and are applicable throughout the territory of Russia. The core legal rules are codified into special federal laws, or “Codes” (e.g., Civil Code, Tax Code, Criminal Code, Labour Code, Administrative Offences Code, Family Code, Land Code, etc.).

Other federal laws elaborate on regulation provided by the Codes (i.e., adding specific rules to general guidelines: for instance, the Limited Liability Companies Law and the Joint Stock Companies Law establish specific rules in line with the general regulation established by the Civil Code) or provide regulation on matters not covered by the Codes (for instance, the Currency Control Law, the Competition Law, the Licensing Law, etc.).

The President of Russia adopts edicts on particular matters required for the implementation of federal laws. The

Government of Russia issues decrees and regulations which must comply with federal legislation and the President's edicts.

As the next tier of regulation, state executive authorities (federal ministries, services and agencies) issue regulations on matters within their competence (Ministry of Transport, Federal Tax Service, Federal Anti-Monopoly Service, Federal Customs Service, etc.).

Regional legislation is adopted in those areas which, under the Constitution, come under the joint competence of the federation and the regions, such as environmental, administrative, and housing law (as opposed to areas such as criminal law, the financial system, military matters, etc., which come under the exclusive competence of the federation). The legislatures of each region adopt regional laws and regional executive authorities issue regulations which have legal force in that territory only.

Rulings made by Russian courts are considered as decisions on specific cases and from a formal perspective are not binding on other Russian courts (do not establish legal precedents), although in practice judges do consider the legal positions of other courts. The Russian Supreme Court may adopt special acts interpreting the law or summarizing case law that serve as guidance for all commercial and non-commercial courts, but it cannot create new legal rules.

## The court system

The court system in Russia consists of general and arbitration courts. General courts consider cases involving individuals (whether civil law, administrative law or criminal law cases), whereas the arbitration courts consider cases arising from business relationships of legal entities and individual entrepreneurs, including tax claims, claims arising from commercial contracts, and corporate disputes.

The arbitration court system is comprised of five instances. The court of first instance renders a judgement, which may be appealed through four appeal instances one after another, i.e., if the appellant misses one of the successive instances it loses the right to appeal further. The arbitration court system consists of:

- ▶ Regional Courts (1<sup>st</sup> instance)
- ▶ Regional Courts of Appeal (2<sup>nd</sup> instance)
- ▶ District Courts (3<sup>rd</sup> instance)
- ▶ the Commercial Bench of the Supreme Court (4<sup>th</sup> instance) and
- ▶ the Presidium of the Supreme Court (5<sup>th</sup> instance).

The general court system is comprised of up to six instances depending on the type of case. In 2019 the general court system underwent major reform: new appellate and cassation courts were

established, and jurisdiction over certain cases was transferred from regional level to the newly established courts.

The Supreme Court acts as the final appeal instance for both general and arbitration courts.

Within the arbitration court system, first instance proceedings commonly last from four to six months. However, it is compulsory to file a pre-litigation claim one month ahead of filing a claim with the arbitration court. The duration of proceedings in each appeal instance rarely exceeds two months.

The maximum stamp duty charge for filing a claim with an arbitration court is RUB 200,000 (approx. US\$ 2,765 ). The fee for filing a petition of appeal is RUB 3,000 (approx. US\$ 41).

A judgement may be enforced unless it is appealed to a second instance court (which must be done within 30 days), in which case it may be enforced after the second instance court has rendered a judgement, except where the first instance judgement is sent back to the first instance court.

The parties may also refer a commercial dispute to commercial arbitration, which is carried out in Russia both through permanent arbitration institutions and by ad hoc arbitration.



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<sup>12</sup> Here and hereinafter calculated based on an exchange rate of RUB 72.32 to US\$ 1.

Currently there are three arbitration tribunals which can consider commercial disputes in Russia:

- ▶ The Arbitration Centre at the Russian Union of Industrialists and Entrepreneurs,
- ▶ The Arbitration Centre at the Russian Institute of Modern Arbitration, and
- ▶ The International Arbitration Court at the Russian Chamber of Commerce.

Maritime disputes can be heard by the Maritime Arbitration Commission at the Russian Chamber of Commerce and Industry, while disputes on sporting matters may be addressed by the National Sports Arbitration Centre.

International arbitration institutions in Russia are treated as ad hoc bodies.

## Registration, certification and disclosure

Russian law requires certain commercial transactions and civil states to be officially registered in state registers which are made available to the public. In some cases, state registration is essential for the enforceability of a transaction, while in others it is just an element of mandatory disclosure.

For instance, the State Register of Legal Entities contains information about Russian legal entities, their founders, CEOs, share capital, reorganization status and, in the case of LLCs, the owners of participating interests in the company and encumbrances over them. A company must enter this data in the register (by filing an application

to the tax authority which maintains the register), otherwise the information in question will not have validity in dealings with third parties. An extract from the State Register of Legal Entities is considered as an official source of information on the current status of a company and its Chief Executive Officer. Any person may request an extract from the register with respect to any legal entity.

The state registers of intellectual property (trademarks, inventions, utility models, industrial designs, etc.) contain information about particular IP assets, such as the rights holders and encumbrances that are required to be registered.

Most of the information contained in the various state registers is aggregated in a special publicly available web-based register in Russian known as Fedresurs (<http://www.fedresurs.ru/>). Some data is entered by the tax authorities, which are responsible for maintaining the State Register of Legal Entities. This includes information on the establishment, reorganization or liquidation of a legal entity, changes in its CEO, share capital or address, and so on. Some data is entered by a company itself: the issuance, suspension or revocation of licences, pledges of movable property, financial statements (if publication is required by law), value of net assets, and other information. Certain disclosures are relevant for specific parties, such as the issue of guarantees for guarantors, property leases for leasing companies, factoring agreements for financial agents, etc. Breach of this obligation

does not affect the validity of relevant agreements, guarantees or pledges, but may lead to the imposition of administrative penalties on a company and its officers.

Notaries public in Russia are officials who certify (notarize) legal and other documents. Russian law requires certain commercial transactions, corporate decisions and one-party documents (such as powers of attorney) to be certified by a notary public to be legally valid and enforceable. For instance, any transaction to transfer participating interests in an LLC is subject to certification by a Russian notary public (including preliminary and principal SPAs, options and pledges).

## Registration of rights in real estate

Save for some exceptions, rights in real estate arise only upon their state registration, i.e., the registration of title to real estate is a mandatory precondition for the execution of any transaction with it. Most transactions involving real estate must also be registered:

- ▶ contracts of sale and other agreements providing for the transfer of title
- ▶ leases and subleases exceeding one year
- ▶ enterprise leases
- ▶ easements
- ▶ construction co-investment agreements



- ▶ granting of land plots for use free of charge for a period exceeding one year
- ▶ assignment of any agreement which was subject to state registration

State registration records are entered in the Unified State Register of Real Estate, which is maintained by the Federal Service for State Registration, Cadastral Records and Cartography. State registration takes up to 12 business days depending on the type of right or agreement being registered. Basic information on every property contained in the Register (area, year of construction, title holder, encumbrances and limitations, etc.) is available to the public.

## Corporate law

Russian corporate law provides for two categories of legal entity: (1) commercial legal entities and (2) non-commercial legal entities. Commercial legal entities include, but are not limited to, companies, partnerships and commercial co-operatives, and may be private or public. Non-commercial legal entities include funds, associations, agencies, etc.

A legal entity may be established for a definite or indefinite period of time. An entity is considered as established when a relevant registration entry is made in the State Register of Legal Entities. Each company must have a Charter (Articles of Association) setting out general information about the company and regulating the general principles of the company's corporate structure and the status of its shareholders/

participants. The Charter and any amendments to it must be approved by the General Meeting. Although the Charter is not made available to the public, it must be registered in the State Register of Legal Entities.

Businesses such as LLCs and JSCs must have charter (statutory) capital. Such matters as the amount of initial charter capital, the company's Charter, the Chief Executive Officer and the registered address must be approved by the founders in the decision on the incorporation of the company (in addition to which, if there are two or more founders, they must also approve a foundation agreement). Russian law prohibits a single-shareholder structure where a company with one shareholder is the sole shareholder of another company.

## LLCs vs JSCs

The most frequently used types of commercial legal entity are limited liability companies (LLCs) and joint stock companies (JSCs). Only a JSC can become a public company, but a JSC is generally considered non-public unless its public status is directly indicated in the name of the company and in the company's Charter.

The financial statements of any JSC must be audited annually by an external auditor (there is no such obligation for an LLC).

The maximum number of participants in an LLC is 50. The number of shareholders of a JSC is unlimited, but a non-public JSC with more than

50 shareholders is subject to additional obligations involving the publication of an annual report and annual financial statements.

Information about participants in an LLC is publicly available in the State Register of Legal Entities. The company must also maintain a list of its participants internally or arrange for it to be maintained by the Federal Chamber of Notaries. In case of discrepancy between the State Register of Legal Entities and the list of participants, the State Register prevails. Except for the initial founders, shareholders of a JSC are not disclosed in the register, but the company must appoint a professional licensed registrar to maintain the register of shareholders.

A participant in an LLC may sell or transfer its participating interest to a third party only subject to pre-emption rights enjoyed by other participants (and the company if provided by its Charter) at the price offered by the third party or stipulated in the Charter. In addition, the Charter of an LLC may make it mandatory to obtain the consent of other participants and the company for such third-party transactions or even completely prohibit them. Any contract providing for the transfer of a participating interest in an LLC is subject to certification by a Russian notary public.

In a JSC, the pre-emption right is not a default rule of law, but it may be stipulated in the Charter of a non-public JSC (the establishment of pre-emption rights for public JSCs is prohibited unless specifically provided for by law).



The law allows both participants in an LLC and shareholders of a JSC to make “contributions to the assets” of the company that do not impact its charter capital and are not returnable to the contributors. In effect, such contributions are a form of legitimized corporate gift. In-kind contributions to assets are limited to tangible assets, shares in other companies, intellectual property, and state and municipal bonds.

Participants in an LLC also benefit from a specific exit mechanism. If directly provided for by the Charter of an LLC, a participant is entitled to “withdraw” from the company at any time. The withdrawal is executed by submitting a relevant application to the company and does not depend on the will of the company or other participants.

If a participant opts to withdraw from an LLC, the company acquires its participating interest and is obliged to pay the participant within three months the “actual value” of its stake calculated as a corresponding portion of the value of the company’s net assets as shown in the financial statements. Withdrawal is not an option for shareholders of a JSC.

### **Charter capital**

For both LLCs and JSCs the minimum charter capital is RUB 10,000 (approx. US\$ 138). The minimum charter capital for a public JSC is RUB 100,000 (approx. US\$ 1,383). There is no maximum amount.

The initial charter capital of an LLC must be paid in within 4 months of its state registration. 50% of the initial charter

capital of a JSC must be paid in within 3 months of its registration and the other 50% must be paid in within 1 year of its registration.

After a company has been established, the charter capital may be increased by contributions made by participants/ shareholders in cash or in kind (subject to the same limitations as for in-kind contributions to assets) provided that the initial charter capital has been fully paid in. In an LLC, an increase is effected by increasing the nominal value of some or all participating interests, while in a JSC the shareholders may decide to increase the charter capital either by issuing additional shares or by increasing the par value of existing shares. Debt-to-equity conversion (where capital is paid in by offsetting

debt owed to a shareholder/participant) is permitted. Any decision to increase or reduce charter capital must be adopted by a General Meeting.

In an LLC, charter capital is divided into a number of participating interests equal to the number of participants. Each participant has one participating interest with a nominal value proportionate to the amount of its contribution to the charter capital.

The charter capital of a JSC is divided into shares of equal nominal value. Unlike participating interests in an LLC, shares in the charter capital of a JSC have the status of securities and each issue of shares in a JSC must be registered with the Bank of Russia. A JSC may issue both common and preferred shares. Various types of preferred share are allowed but the total nominal value of preferred shares may not exceed 25% of the JSC's charter capital. At the time of initial placement, shares are distributed among shareholders and/or third parties by either private or public subscription.

### **Net assets**

Russian law obliges LLCs and JSCs to keep their net assets (calculated on the basis of the company's books) at a level equal to or exceeding their charter capital. When a company is established, it has 2 years to commence its business, and starting from the 2nd year the company is obliged to check annually whether the value of its net assets is less than the amount of charter capital. If the value of net assets falls below

the amount of the company's charter capital, the shareholders/participants have one year to increase them. If, after that year, the value of net assets is still less than the amount of charter capital, the shareholders/participants have 6 months to pass a resolution to reduce charter capital. If the value of net assets falls below the minimum charter capital level, the shareholders/participants must pass a resolution to liquidate the company.

### **Public companies**

A public company is obliged to disclose information in the manner prescribed by law and must have a Board of Directors within its corporate structure.

If a shareholder or a third party (together with its affiliates) acquires over 30% or 50% or 75% of the shares in a public company, it must make a public offer to all other shareholders. If the stake of an individual shareholder exceeds 95% in the course of the public offer, that shareholder is entitled to exercise a squeeze-out right with respect to the remaining shares; conversely, the remaining shareholders have the right to force a mandatory buy-out of their shares.

### **Corporate governance**

Corporate governance in Russian companies is CEO-focused: the competence of any other management body of a company must be set out in the company's Charter and all decisions lying outside that competence fall within the authority of the CEO. The General Meeting is the highest management

body but is typically convened only occasionally to decide on fundamental issues, while the Board of Directors (if one is established) acts as a supervisory rather than executive body..

### **General Meeting**

The General Meeting must be convened annually. In an LLC, the annual General Meeting must be convened between 1 March and 30 April, while in a JSC it must be convened between 1 March and 30 June. Any other General Meeting is considered to be an extraordinary meeting.

The competence of the General Meeting is divided into exclusive (decisions which may be taken only by the General Meeting) and non-exclusive (decisions which may be taken by the General Meeting or another management body of the company, depending on the company's Charter). The exclusive competence of the General Meeting includes decisions on such fundamental matters as liquidation, reorganization, changes to charter capital or to the Charter, and the payment of dividends. Matters falling within the non-exclusive competence of the General Meeting are limited to those specified in the Charter.

### **Board of Directors**

In a non-public company, the Board of Directors is not a mandatory corporate body. The competence of the Board of Directors must be expressly laid down in the Charter and may include any matters other than those falling within the exclusive competence of the General Meeting.



The requirement to appoint independent members of the Board of Directors applies to certain public companies only.

### **Chief Executive Officer**

The Chief Executive Officer (who may have the title of General Director, Director, President or otherwise as provided by the Charter of the company) is the only body entitled to act on behalf of the company without a Power of Attorney.

The Chief Executive Officer may be represented by: (1) an individual; (2) two or more individuals acting jointly as one Chief Executive Officer; (3) two or more individuals acting separately as two or more Chief Executive Officers; and (4) a legal entity acting as a Management Company.

In LLCs and JSCs the Chief Executive Officer cannot take the position of Chairman of the Board of Directors.

### **Management Board**

The law allows LLCs and JSCs to establish a collective executive body alongside the Chief Executive Officer (Management Board, Executive Board, etc.). The authority of the Management Board must be expressly laid down in the Charter and the Chief Executive Officer acts as Chairman of the Board.

### **Fiduciary duties of management**

CEO-focused corporate governance has for a long time impaired the protection of shareholders in Russian companies. Chief Executive Officers are deemed the “decision kings” and this has led

to numerous cases of abuse. Although CEOs have a duty to act reasonably and in good faith, historically shareholders have found it very difficult to prove that damage to the company was caused by the actions of management.

The situation changed in 2013 when the Supreme Arbitration Court issued a ruling establishing that in certain cases (for instance, where the Chief Executive Officer ignored the usual approval procedures or did not disclose a conflict of interest), the CEO should be deemed to have acted unreasonably or in bad faith and the burden of proof should switch to them, requiring them to justify their actions. This led to a major shift in case law, and since then the number of cases where CEOs have been found liable has grown by a third each year.

### **Piercing the corporate veil**

Russian law limits the liability of shareholders of a company to the amount of their stakes in the charter capital (a shareholder that has not fully paid for its stake will be jointly liable with the company to the extent of the unpaid share). Shareholders or persons controlling a company may also be held jointly and severally liable for the company's obligations if the company goes bankrupt through their fault.

In recent years, the legal framework has changed to expand the application of joint and several liability. For instance, the rules allowing the imposition of joint and several liability under the Bankruptcy Law have been significantly elaborated and the LLC Law (which regulates the most common form of

companies in Russia) now expressly allows the imposition of subsidiary liability on the management or controllers of a company if it has been struck off the corporate register owing to inactivity.

### **Shareholders' agreements**

Shareholders in a Russian company may enter into a shareholders' agreement (“corporate contract”) that includes an undertaking to vote in a particular manner at general meetings and special provisions regarding disposal of shares and other matters. The agreement may be governed by Russian law or by foreign law provided that there is a foreign element involved (i.e., where some or all of the shareholders are non-Russian persons). An agreement governed by foreign law must be compliant with mandatory provisions of Russian law. For example, under Russian law it is not permissible for the exclusive competence of the General Meeting to be delegated to a lower level authority, there is no alternative/deputy CEO, the mandatory voting threshold cannot be lowered and pre-emption rights in an LLC cannot be eliminated.

The majority of contract law instruments provided for in Russian law and discussed in the “Contract law” section may be used in a shareholders' agreement (representations, indemnities, securities, etc.). In addition, the particular characteristics of individual companies must be taken into account. Since any deal to transfer a participating interest in an LLC must be notarized, a shareholders' agreement

with incorporated call/put options must likewise be notarized in order to be enforceable.

A shareholders' agreement may be concluded by all shareholders in a company or only some of them. The law also allows creditors of a company and other third parties with a legitimate interest (for instance, a person possessing an option to buy a share in the company) to become parties to such an agreement. At the same time, the company itself cannot be a party, and the law does not allow an obligation to be imposed on shareholders to act in accordance with the instructions of the company's management.

The shareholders' agreement is a confidential document and is not disclosed to third parties or the authorities unless the agreement places restrictions or special conditions on the disposal of shares/participating interests or grants parties rights that are disproportionate to their stakes in the capital of the company. In such cases, the fact that there is a shareholders' agreement in the company must be recorded in the State Register of Legal Entities. The company itself must in any case be notified of the shareholders' agreement. Failure to make such disclosure allows parties not bound by the agreement to claim damages against the parties to the agreement.

The law allows the parties to a shareholders' agreement to challenge corporate decisions made in violation of the agreement (if all the company's shareholders are bound by the

agreement) or a transaction made in violation of the agreement (if it is proved that the other party knew or should have known about the violation).

Any disputes arising from or in connection with a shareholders' agreement in a Russian company are deemed to be corporate disputes. If the agreement is silent about competent forum and jurisdiction, the Russian state arbitration court operating in the company's locality will review and settle such disputes. The opportunity to refer such disputes to arbitration is limited by the fact that the law only allows some such disputes to be considered by permanent arbitration institutions (for more information about the regulation of arbitration please refer to the section entitled "The court system").

### **Extraordinary transactions**

Russian law lays down special rules for obtaining corporate approvals for two types of transaction of an LLC and a JSC: major transactions and interested-party transactions. Unless specified below, these rules are mandatory, apply by default and cannot be changed by a company's Charter. Nor may a transaction be entered into by a company's CEO or authorized representative on behalf of the company in the absence of relevant corporate approval obtained from the competent management body of a higher level (i.e., the General Meeting, the Board of Directors or the Management Board as the case may be). A corporate approval may be granted in the form of prior consent or subsequent approval.

In addition to the provisions of the LLC Law and the JSC Law, a company Charter may contain a list of additional transactions that require corporate approval. It is standard business practice to restrict the powers of the company's CEO through the extension of matters reserved for the higher management bodies. Depending on the essence of the company's business, the list may include, inter alia, transactions involving real estate, intellectual property, share capital or securities of other companies, either irrespective of the transaction amount or where the total price/book value exceeds a certain threshold.

### ***Major transactions***

Major transactions are any types of transaction (sale/purchase of assets, cash borrowing/lending, issue of surety/guarantee, property lease/rental, etc.) that meet one of two criteria: quantitative and qualitative. The first refers to the ratio of the transaction amount/book value of the subject of the transaction to the value of the company's assets (25% or more). The second means that the transaction is outside the ordinary course of a company's business. This means that the company, in entering into the transaction, is not operating in the ordinary course of business as carried on prior to the transaction, and the transaction results or may result in the termination of the company's activities or a significant change in the nature or scale of its business. If either of these two conditions is met, the transaction must be approved in accordance with special rules.

The rules vary slightly for LLCs and JSCs. If the transaction amount or book value of the subject of a transaction exceeds 50% of the company's assets, the transaction must be approved by the company's General Meeting. If the ratio is from 25% to 50%, the company's Board of Directors must approve it (in JSCs – by law, in LLCs – if provided by the company's Charter).

The relevant company decision must specify the parties to the transaction, the subject, the price and other material terms. The law allows the decision to set minimum and maximum parameters of the transaction rather than exact figures and to approve alternative terms and conditions or a series of identical transactions, etc. The decision may also specify the period of validity of the relevant approval (if the decision is silent, the approval will remain in force for one year).

The LLC Law and the JSC Law set forth certain exceptions where these rules do not apply (e.g., when a company enters into a transaction under the terms set forth in a preliminary agreement properly approved in advance or a transaction that the company is required to undertake by law).

A major transaction concluded in breach of the law may be invalidated at the suit of the company, a member of its Board of Directors or a shareholder/ shareholders owning at least one per cent of total voting power in the company. This may be done within one year from the date when the claimant became or should have become aware



that the company entered into the transaction in breach of the rules.

### ***Interested-party transactions***

Where certain persons affiliated with a company have a conflict of interest regarding a particular transaction, special notification and approval rules apply. Such persons include members of the company's Board of Directors and Management Board, the CEO, and controlling persons or persons with the right to give mandatory instructions to the company (i.e., through a shareholders' agreement, silent participation agreement, etc.). For these purposes, a "controlling person" is a person who possesses directly or indirectly (through a shareholding or

an agreement) more than 50% of the voting rights at the General Meeting of a controlled company or the right to appoint its CEO and more than 50% of its Management Board.

By default, the law does not require mandatory approval for such transactions, but a special procedure must be observed. Any persons who have a conflict of interest must inform the company's General Meeting and its Board of Directors of legal entities that are controlled by them or in which they hold management posts and in transactions with which they may be recognised as interested parties (the same applies to their close family members).



If a transaction is deemed to be an interested-party transaction, the company (i.e., its CEO) must notify in advance the shareholders, members of the Board of Directors and the Management Board. They may request additional information from the CEO.

A transaction must be approved by a competent superior management body only at the special request of any of the following persons: the company's CEO, a member of the Board of Directors or the Management Board, or a shareholder/ shareholders owning at least one per cent of the total voting power in the company. If no request is filed, the transaction does not need to be approved.

If approval is requested, a relevant decision must be adopted by the company's General Meeting if the transaction amount or the book value of the subject of the transaction exceeds 10% of the company's assets. In other cases, the Board of Directors must approve it (in JSCs - by law, in LLCs - if provided by the company's Charter).

The LLC Law and the JSC Law set forth a number of exceptions where these rules do not apply (e.g., where all shareholders have an interest in the transaction and there are no other reasons for the transaction to be deemed an interested-party transaction, etc.).

Notwithstanding the above, the Charter of a non-public company may establish a different procedure for approving interested-party transactions or may determine that the relevant provisions of law do not apply to that company at all.

An interested-party transaction may be invalidated if it is detrimental to the company's interests and the other party knew or should have known that the transaction was an interested-party transaction and requested corporate approval was not obtained. Other rules for challenging such transactions are the same as for challenging major transactions.

### **Representation of foreign companies**

Foreign companies may operate in Russia without creating a local legal entity through the establishment of a branch or a representative office. Such branches/representative offices are not bound by any Russian corporate law rules on corporate governance, net assets, extraordinary transactions and so on.

#### ***Branch***

A branch of a foreign company must be accredited with the tax authorities (and with the Chamber of Commerce and Industry as part of the accreditation process). The accreditation is unlimited in time. In addition, a branch of a foreign company must be registered with the tax authorities, social funds and other state bodies.

The branch must have a manager or head of branch who acts on the basis of a power of attorney issued by its parent company. Since a branch is not considered to be a separate legal entity, all obligations and rights accrue to the legal entity which created the branch. A branch may be inappropriate

for certain activities, such as those requiring licences which are issued only to Russian legal entities.

#### ***Representative office***

Under Russian law, representative offices are not allowed to carry on commercial activities, their main purpose being to gather information about the Russian market and generally to promote their parent companies. The same accreditation/ registration procedures are applicable to representative offices that are applicable to branches of foreign legal entities.

### **Contract law**

For years, Russian contract law was applied quite rigidly. Every provision of the Civil Code that was not qualified by the words "unless the contract provides otherwise" was treated by the court as a mandatory provision that could not be changed by the parties. For instance, a contractor and its client could not enter into a risk-sharing agreement since the law mandated the reimbursement of a contractor's costs in any situation, while long-term service contracts were compromised because the law had an imperative rule that service agreements could be terminated at the discretion of any party at any time.

In addition, the courts were very reluctant to grant protection to such contractual mechanisms as representations, indemnities, options or break-up fees, as they had no distinct regulation in the Civil Code.

The situation has changed in the last few years, however, first of all due to important amendments introduced to the Civil Code in 2015 as part of a major reform aimed at bringing the Civil Code closer to the civil law concepts that are commonly used in standard business practice. The Russian Supreme Arbitration Court has also played an important role by issuing a number of rulings in which it protected freedom of contract and instructed the lower courts to restrict the treatment of legal rules as mandatory to a limited number of cases.

### **Negotiating and executing an agreement**

Russian law establishes freedom of contract: parties are free to enter into an agreement and to determine its terms and conditions. A contract is deemed to be concluded if the parties have reached agreement on all essential conditions of the contract as prescribed by law or expressly specified by the parties (typically the law only treats the subject-matter as essential, i.e., the object to be sold, the property to be leased, the service to be rendered, etc.). There are principal contracts that set out specific obligations of the parties, framework contracts that only set out the general contours of contractual relations, and preliminary contracts that record the parties' intention to enter into a principal contract.

The law requires the parties to negotiate a contract in good faith. The sudden and unjustified termination of negotiations when the other party could not reasonably have expected it is judged

as bad-faith conduct, which gives the other party a right to claim damages. The parties may also enter into an agreement establishing the procedure for conducting negotiations, allocating negotiation costs, etc.

All contracts must be made in writing except for contracts between individuals up to a maximum amount of RUB 10,000 (approx. US\$ 138). A contract is concluded when the party making an offer receives acceptance of the offer from the other party. Russian law allows parties to sign a separate option agreement where one party makes an irrevocable offer to another party (for or without consideration) to enter into a principal contract under particular terms and conditions.

If, before, during or after the conclusion of an agreement, a party makes a representation to the other party concerning circumstances relevant to the conclusion, performance or termination of an agreement, and that representation proves to be incorrect, the party concerned must compensate or pay a penalty or damages to the non-breaching party. If the representation has crucial importance for the non-breaching party, the latter is also entitled to seek the termination of the agreement. In the case of a representation made by a business entity, the effect of giving a false representation applies irrespective of whether the representing party knew that it was false

Representations may relate to the terms and conditions of an agreement (e.g., specific characteristics of the subject-

matter), the legal status and authority of the parties, the legal effect of an agreement, etc. .

Russian law allows parties to agree on various types of performance of a contract:

- ▶ alternative performance, where a party may choose to exercise any of a number of options specified in the contract to fulfil its obligations under the contract
- ▶ substitute performance, where a party may choose to use an alternate method to the one provided for in the contract terms to fulfil its obligations under the contract, and
- ▶ optional performance, where the obligee may request the other party to perform at any time at its discretion

Failure to fulfil an obligation under a contract gives the injured party a right to claim damages or a penalty, or to terminate the contract (depending on the terms of the contract and specific provisions of law). Force majeure is acknowledged as a legitimate excuse for the failing party.

Russian law also allows business entities to indemnify the other party against losses arising out of or in connection with certain circumstances agreed by the parties.

If such circumstances have occurred, the indemnified party must prove this fact only. This is much easier than recovery of damages, which under Russian law requires an injured party to prove the amount of damage and the causal link between the damage and the actions of

the defendant. The indemnified party must not act in a way that may serve to increase losses sustained.

### **Invalidation or termination of an agreement**

Under Russian law, a contract may be deemed invalid only in certain cases specified in the Civil Code (such as fraudulent or sham transactions, contracts made by an incapable person, under duress, in violation of the law, etc.). Besides these cases, a contract is void when the parties have not been able to reach an agreement on all essential conditions stipulated by the law or by the parties themselves.

However, the law has an estoppel principle whereby a party to a contract that has accepted performance by the other party cannot claim the contract as void by reason of the absence of essential terms if this contradicts the principle of good faith and fair dealing. Nor may a party challenge a transaction if it knew or should have known of the circumstances on which the challenge is based when it expressed its intention to enter into the transaction.

As a general rule, a contract may be amended or terminated only by agreement between the parties. Unilateral amendment or termination of a contract is possible only when the other party has materially breached it (meaning that the damage suffered by the injured party substantially deprives it of the benefit it expected to derive when it entered into the contract) or in cases specifically provided by the law or the contract.

A contract between business entities may allow for a unilateral waiver of obligations. If the party that is entitled to waive some or all of its obligations notifies the other party of its intention to do so, the contract is deemed amended or terminated respectively. The exercise of this right may be subject to the payment of a special break-up fee agreed by the parties in a special break-up fee clause. However, such a clause would be void if a party's right to claim early termination or modification of the agreement is established by mandatory provisions of law

### **Securing an agreement**

Russian law provides for various types of security for commercial and/or corporate obligations, which may generally be classified into two groups: (i) those specified in the Civil Code (the most frequently used are: pledge, suretyship, independent guarantee and security payment), and (ii) other legal instruments used in business practice as security.

Russian law has evolved substantially over recent years, making the regulation of security instruments more diverse and flexible. For instance, an escrow mechanism has been introduced whereby parties may deposit cash, securities and other movable assets with an escrow agent (being any person chosen by the parties). In another development, a suretyship now remains valid if the debtor is liquidated provided that the creditor has presented a claim to the surety in advance (earlier, the suretyship terminated upon the

liquidation of the debtor). The law allows any person to issue a guarantee of performance by another person, whereas previously only banks could issue guarantees.

It is essential to consider the formal requirements for the execution of pledges under Russian law. A pledge of real estate (a mortgage) is subject to official registration in the Real Estate State Register. No mortgage exists for third parties until it is registered in the manner required by law. A pledge of shares in a JSC must be registered in a non-public register of shareholders kept by a specialized registrar. A pledge of participating interests in an LLC is subject to state registration in the State Register of Legal Entities, and the pledgee's right of pledge arises from the date of such registration. Official registration is also required for a pledge of IP rights in cases where IP assets (e.g., trademarks, patents, etc.) are subject to state registration in publicly accessible state registers.

A pledge of movable property does not require any state registration to be enforceable, but it may be recorded by a Russian notary in a special register upon the pledgee's or pledgor's application. The absence of such a record does not affect the validity of the pledge, but, if a pledged asset with missing registration is acquired by a bona fide third party, the pledge will terminate. Therefore, registration is highly advisable for such pledges as well.



# The financial system

Credit institutions, non-state pension funds, insurance companies and investment funds are the major pillars of the Russian financial system.

The Central Bank of the Russian Federation (the Bank of Russia) acts as the single financial mega-regulator responsible for oversight of the entire financial segment of the Russian economy, with authority extending from the supervision and licensing of financial institutions, including exchanges, to regulation and registration of securities offerings. In addition, the Bank of Russia is vested with the exclusive right to issue Russian national currency – the Russian rouble – and is in charge of overall monetary policy in Russia.

Cash transactions and transfers are carried out by financial institutions within the framework of the national payment system. Organized trading in securities, currencies and commodities takes place via exchanges and trading platforms. Professional participants in the securities market such as brokers, dealers, forex dealers, asset managers and fund managers are the major financial intermediaries facilitating securities and derivatives trading as well as other financial transactions, whilst registrars, depositories (including the National Settlement Depository) and clearing institutions (including the Central Counterparty) are the key providers of financial infrastructure services. Another category of

professional participants is investment advisers, who provide targeted investment recommendations to their clients.

## Banking system

Banking operations in Russia may be carried out by licensed credit institutions only, which include banks and non-bank credit institutions. Banking operations are listed in the relevant statute and include: accepting deposits (in cash and precious metals) from legal entities and individuals, placement of funds and precious metals, opening and maintaining bank accounts (in cash and precious metals) for legal entities and individuals, execution of money transfers and electronic money transfers, cash collection services and foreign currency exchange.

A banking licence may only be issued to a Russian legal entity that satisfies a vast number of requirements. All licensed banks in Russia are entitled to accept deposits from and open accounts for legal entities and (subject to compliance with additional requirements) individuals, place funds and perform money transfers. From the regulatory standpoint, all banks in Russia are generally divided into three

categories: (1) banks with a basic licence, (2) banks with a general licence, and (3) banks with a general licence which are systemically important (SIBs or “too-big-to-fail”). Compared to banks with general licences, banks with basic licences are subject to restrictions on certain banking operations and dealings with foreign clients. Such banks are also restricted in their rights to open correspondent accounts with foreign banks and to have subsidiaries, branches and representative offices in foreign countries. SIBs may perform the same operations as regular banks but are subject to stricter capital requirements.

Non-bank credit institutions are permitted to perform limited types of banking operations only as listed in their licences and may only accept deposits from, and open accounts for, legal entities (but are not allowed to carry out similar operations with individuals).

The Bank of Russia establishes mandatory regulations applicable to banking operations and sets financial ratios which Russian credit institutions must meet, approves senior management appointments at credit institutions, holds their mandatory reserves and monitors their compliance with applicable requirements.

Russian credit institutions are required to comply with Basel III capital requirements. The introduction of the Basel III requirements resulted, in particular, in new regulation of subordinated financing for credit institutions, which provides for the mandatory release of credit institutions from their obligations in case of their failure to meet certain capital adequacy ratios, or the implementation of insolvency prevention measures in relation to the institutions concerned.

Foreign banks are not currently permitted to carry out banking activities in Russia directly or through branch offices, but they are allowed to set up Russian banking subsidiaries. The establishment and operation of such subsidiaries is subject to certain additional requirements (e.g., Russian citizens must make up at least 75% of the overall employee headcount and at least 50% of the management board if the chief executive officer is a foreign national). The other notable restriction, which applies to both Russian and foreign investors, is the requirement to obtain prior approval of the Bank of Russia when acquiring ownership or control over 10% (or more) of shares in a Russian bank, directly or indirectly.



Foreign entities may not control more than 50% of the aggregate amount of charter (share) capital of all credit institutions in the Russian Federation. The proportion controlled by foreign entities is calculated by the Bank of Russia on an annual basis. The Bank of Russia is not allowed to register new credit institutions or approve acquisitions of credit institutions if it might result in an excessive share of foreign-controlled capital in Russian credit institutions.

Foreign banks are also allowed to establish representative offices in the territory of Russia subject to the prior approval of the Bank of Russia. Representative offices of foreign banks may only be established with a view to

evaluating prospects for entering the Russian banking market and providing advisory services to the bank's clients. Accordingly, representative offices of foreign banks cannot carry out any banking operations in Russia.

### **National payment system**

The National Payment System Law establishes the legal and organizational framework for transactions within payment systems in the territory of the Russian Federation, including the payment system operated by the Bank of Russia, the national payment card system, and other payment systems of national significance, as well as private payment systems and foreign payment systems, and sets out the procedures

and mechanisms for money transfers (wire transfers) both for funds in bank accounts and for electronic funds.

Balances held in various types of bank accounts (including current (settlement), escrow, nominee and pledge accounts) serve as the main source of funds for money transfers.

The National Payment System Law allows credit institutions to create private payment systems, which are subject to supervision and oversight by the Bank of Russia. As a general rule, the processing and clearing of payments between Russian credit institutions within the private payment system may only be carried out by Russian entities. Operators of private payment systems are generally required to make and maintain security deposits with the Bank of Russia, unless they arrange for payments by international bank cards within Russia to be carried out through the national payment card system.

The National Payment System Law also regulates the operations of "bank payment agents", legal entities or individual entrepreneurs engaged by a credit institution to identify customers and to collect or make payments of cash or electronic funds on behalf of the credit institution. Operations of "nonbanking payment agents" responsible for the collection of cash from individuals on behalf of suppliers of goods, works or services are also subject to similar regulation under a different piece of legislation: the Law on Operations Involving the Collection of Payments from Individuals by Payment Agents.





## Deposit insurance

A bank may only accept deposits from or open accounts for individuals, legal entities classed as “small enterprises”, and certain non-commercial organizations if the bank is a member of the national deposit insurance system in accordance with the Deposit Insurance Law.

The Deposit Insurance Law provides for the creation of the Deposit Insurance Agency (the “Agency”). The Agency acts as the insurer in the deposit insurance system. Its responsibilities include collecting insurance contributions, managing funds in mandatory insurance pools, establishing insurance premiums and monitoring insurance payments. Any bank that has been granted a banking licence is entered in the Agency’s register as a participant in the mandatory deposit insurance system.

The Agency plays an active role in the implementation of bankruptcy prevention measures in relation to member banks: it may act as temporary administrator of troubled financial institutions, provide them with financial support (or support investors that assume responsibility for their rehabilitation), and even acquire shares in them.

Banks participating in the deposit insurance system are subject to a number of requirements, including compliance with monitored mandatory ratios (capital adequacy, liquidity, etc.) set by the Bank of Russia, reliability of financial accounts and reports, and transparency of ownership structure.

Failure to meet these requirements may result in a bank being disqualified from accepting deposits from or opening accounts for individuals, legal entities classed as small enterprises, and certain non-commercial organizations.

Member banks pay contributions to the deposit insurance fund. These contributions are calculated as a percentage of the average daily balance of covered deposits maintained with a particular bank and are subject to an upper limit.

## Insurance companies and non-state pension funds

### *Insurance companies*

In the Russian Federation, insurance services may be provided only by licensed insurance companies. The types of activities that are subject to licensing include property insurance, liability insurance, accident insurance, health insurance, life insurance and business risk insurance, as well as reinsurance and insurance brokerage.

An insurance company may not simultaneously hold licences to provide life insurance (a “life insurance company”) and property, liability and business risk insurance (a “property insurance company”). However, both types of insurance companies may provide health and accident insurance.

The Bank of Russia is in charge of regulating and supervising the Russian insurance sector. It sets certain financial requirements relating to the capital adequacy of insurance companies and the formation of insurance reserves.

It monitors compliance with regulatory requirements relating to the operations of insurance companies and their officers and shareholders. The Bank of Russia is also authorized to pass regulations determining classes of assets that are acceptable for the purposes of the investment of insurance reserves.

At present, foreign insurance companies may not provide insurance in Russia directly or through their branch offices, but they are allowed to set up Russian insurance subsidiaries. Operations of such subsidiaries are generally subject to certain additional restrictions (for instance, an insurance company with foreign ownership exceeding 49% may not carry out insurance at the expense of the public budget, insurance in the area of public procurement or insurance of the interests of state and municipal organizations). Furthermore, foreign entities or their subsidiaries may not control more than 50% of the aggregate amount of charter (share) capital of all insurance companies in the Russian Federation. Foreign insurance or reinsurance companies may (if licensed to do so in their country of incorporation) reinsure obligations of Russian insurance companies owed to their clients. Foreign insurance brokers may not conduct business in Russia directly or through their branch offices, except for insurance brokerage activity related to reinsurance. Foreign insurance brokers may also set up Russian subsidiaries as insurance brokers.

The Russian authorities are currently considering a draft amendment to legislation that would allow foreign

insurance companies of WTO countries to establish branches in Russia to carry out insurance activities. It is expected that this amendment will be approved and will enter into effect in 2021 in line with Russia's undertakings to its WTO partners.

### ***Non-state pension funds***

Licensed non-state pension funds ("pension funds") are the structures most commonly used to set up pension and retirement schemes in Russia. Pension insurance may also be provided by insurance companies.

Pension funds either manage private pension schemes ("private pension funds") or manage a portion of mandatory state pension insurance contributions ("mandatory contribution funds") if an employee for whose benefit such contributions are made

opts for them to be managed by such pension funds. Mandatory contribution funds are subject to tighter regulatory requirements but may also manage private pension schemes. Amounts of mandatory state pension insurance contributions are insured by the Deposit Insurance Agency.

A new pension fund or mandatory contribution fund may only be established in the form of a joint stock company.

The discretion of mandatory contribution funds as to the choice of investment strategy for amounts received as contributions to the mandatory state pension insurance system is significantly limited by numerous restrictions set out in the Federal Law No. 111-FZ "On the Investment of Funds for the Financing of the Funded Part of a Retirement Pension

in the Russian Federation" dated 24 July 2002. Pension funds managing private pension schemes are subject to a lighter set of restrictions applicable to their investment strategies.

The Bank of Russia acts as the major regulating authority for pension funds. It sets certain financial requirements relating to the capital adequacy of pension funds and the formation of pension reserves. It monitors compliance by pension funds and asset managers (who may be engaged to manage a fund's assets) with regulatory requirements.

### **Investment funds and asset managers**

An investment fund is the most common framework for professional asset management of financial assets for larger groups of investors in Russia. Private



asset management schemes may be set up based on a contract for direct fiduciary management of financial assets by a licensed asset manager or based on an investment partnership agreement, which allows a managing partner(s) to manage a pool of assets contributed for the purposes of investment by commercial legal entities acting as limited partners. An investment partnership agreement must be notarized and must comply with certain statutory requirements. Managing partner activity is not per se subject to licensing.

Investment funds are usually organized in the form of a mutual or “unit” investment fund – a pool of assets (rather than a legal entity) that is jointly owned by the fund members (whose interests are evidenced by certificates) and is managed by a licensed fund manager based on the fund rules, including its investment declaration, which are subject to registration with the Bank of Russia. Alternatively, investment funds may also be organized as joint stock companies. Operations of investment funds and their asset managers are heavily regulated by the Bank of Russia, which, among other things, specifies the categories of assets in which the fund manager is permitted to invest.

### **“Know Your Customer” procedures**

The Anti-Money Laundering Law is the primary legislative act in Russia aimed at preventing money laundering activities and the financing of terrorism, and is supported by numerous recommendations, binding instructions and regulations of the Bank of Russia and other authorities.

The Anti-Money Laundering Law requires institutions that engage in monetary transactions, including all kinds of financial institutions (in particular, credit institutions, pension funds, insurance companies, professional participants in the securities market (excluding investment advisers), mutual fund managers, payment agents, operators of investment platforms, financial platforms and digital financial asset platforms, leasing and factoring companies, etc.) and companies such as mobile operators, pawn shops, federal post offices, realtors, precious metal dealers, casinos and consultants (collectively referred to as “regulated entities”) to establish mandatory internal protocols for client and payment acceptance.

In particular, regulated entities must exercise due diligence procedures to ascertain the identity of a customer and its ultimate beneficial owner (“the beneficiary”) and to monitor transactions for suspicious activity. Identification of non-registered trusts, funds or similar structures also entails identification of their name, registration and taxpayer data, jurisdiction, composition of assets, settlors and managers (trustees).

As a general rule, identification of an individual customer is required unless the amount of the operation is below RUB 15,000 (approx. US\$ 207) or the equivalent in foreign currency. Higher thresholds are set for operations involving jewellery.

Identification of the beneficiary is required for all customers with certain

narrow exceptions set out in the Anti-Money Laundering Law for public bodies, certain publicly listed companies and foreign unincorporated structures without beneficiaries. This means that a regulated entity must ascertain the identity of an individual who ultimately, whether directly or indirectly, holds shares in, or has a dominant interest of more than 25% in the capital of, a corporate customer, or who has the ability to control that customer.

Starting from 2021, the law allows banks to perform the initial identification of an individual customer or a CEO of a corporate customer (who is authorized to act on behalf of the corporate customer without a power of attorney) without his/her personal presence by establishing and confirming the accuracy of information about him/her via the Russian unified identification and authentication system and the Russian unified biometric system in the manner prescribed by law. Identification without personal presence may not take place if the bank has any suspicions regarding either the customer or its operations / transactions (e.g., suspicions of connection to money laundering or the financing of terrorism). The Bank of Russia is entitled to establish limits on transactions and operations performed by a bank with customers identified without the personal presence.

Regulated entities must identify and report transactions falling under mandatory control to the Federal Financial Monitoring Service, the designated monitoring authority. Those transactions include, among others,



(i) cash transactions, acquisitions of precious metals and precious stones, and operations under leasing agreements to the value of RUB 600,000 (approx. US\$ 8,296) or more, (ii) postal remittances and refunds of unused balances of funds paid in advance for communications services to the value of RUB 100,000 (approx. US\$ 1,383) or more, and (iii) any immovable property transactions amounting to RUB 3 million (approx. US\$ 41,482) or more, or the equivalents of these amounts in foreign currency. If one of the parties to a transaction is suspected of being linked to terrorist activity, the transaction is subject to mandatory control regardless of the amounts involved.

Regulated entities, as well as investment advisers, exchanges, trading platforms, clearing organizations and central counterparties, are required to identify and report to the Federal Financial Monitoring Service transactions that they suspect are related to money laundering or the financing of terrorism. In addition, the Federal Financial Monitoring Service is vested with the authority to request from such entities certain information relating to their clients and transactions.

The Bank of Russia may undertake preventive or enforcement measures in relation to a regulated financial institution involved in transactions which violate anti-money laundering

legislation. Preventive measures may include issuing an order to cease a violation and provide the Bank of Russia with a compliance improvement programme, and establishing additional monitoring measures. Enforcement measures with respect to credit institutions may also include the imposition of a fine and the withdrawal of their banking licence.

## FATCA implementing legislation

The United States Foreign Account Tax Compliance Act ("FATCA") requires foreign financial institutions, among other things, to perform due diligence procedures with respect to their customers and report certain information to the competent authority in the United States.

Russian legislation allows Russian financial institutions to adopt and implement policies and procedures that are required for the purposes of FATCA. Collection of additional information from clients and reporting of information to foreign competent authorities are allowed with the clients' consent. In cases where a client fails to give consent to the disclosure and reporting of information, the financial institution concerned is authorized under Russian law to rescind the agreement with that client and close the relevant account.

## Automatic exchange of tax information (CRS)

Russia participates in the automatic exchange of financial information based on the OECD's Common Reporting Standard (CRS) for countries that have signed up to the automatic exchange system. This means that

- ▶ Russian banks and financial institutions are obliged to disclose information on clients that are tax residents of other countries participating in the CRS to the Russian tax authorities, and
- ▶ the Russian tax authorities exchange the information received with the tax authorities of other participating countries.

Russia began to exchange financial information in September 2018. At the end of 2019 the Federal Tax Service approved a new list of countries with which information is automatically exchanged. The new list includes 77 countries and 12 territories<sup>13</sup>.

In addition, with effect from 2020 the Federal Tax Service removed Panama and San Marino from the list of offshore jurisdictions that do not co-operate with Russia in the area of the exchange of information on tax matters.

The Federal Tax Service publishes a list of states of jurisdictions with which tax information is not exchanged. This includes 98 countries and 18 territories (see Appendix 5)<sup>14</sup>.

<sup>13</sup> Federal Tax Service Order No. MMV-7-17/582@ of 21 November 2019 "On Approval of the List of States (Territories) with Which the Automatic Exchange of Financial Information is Not Carried Out and the Annulment of Federal Tax Service Order No. MMV-7-17/784@ of 4 December 2018"

<sup>14</sup> Federal Tax Service Order No. MMV-7-17/511@ of 11 October 2019 "On Approval of the List of States (Territories) Which Do Not Provide for the Exchange of Information for Tax Purposes with the Russian Federation and the Annulment of Federal Tax Service Order No. MMV-7-17/786@ of 4 December 2018"

## Basic principles of Russian securities regulation

### Regulation of securities offerings

Russian legislation prohibits the public offering or sale of any instruments other than securities issued under Russian law and, in certain cases, foreign securities. The definition of a “security” under the Securities Law encompasses shares (stocks), bonds, warrants and Russian depositary receipts. Subject to compliance with certain requirements, any commercial paper may qualify as a security; however, Russian law prescribes an exhaustive list of types of commercial paper, which makes it impractical to issue securities in any form other than those expressly listed in the Securities Law.

As a general rule, offerings of securities in the Russian Federation, both public and private, are subject to mandatory registration with the Bank of Russia or, in certain cases, with other authorised institutions. Registration of share issues upon the establishment of joint stock companies may be carried out by securities registrars and some bond offerings may be registered by an exchange or a central depository. In these cases, the exchange, central depository or securities registrar must assign an identification number to the share/bond issuance and send a relevant notification to the Bank of Russia.

If the shares of a joint stock company are issued as digital financial assets, the registration of the issue must

be performed by the relevant digital platform operators.

In the case of a public offering, the registration of a prospectus must take place simultaneously with the registration of the securities issue itself. The Securities Law provides for statutory safe harbours for private offerings, which are not subject to the prospectus registration requirement. These safe harbours include offerings totalling less than RUB 1 billion (approx. US\$ 13,827,743 million) per year and closed subscriptions to less than 150 persons (not including “qualified investors” and persons who a preferential right to purchase the securities in question).

The Securities Law distinguishes the category of “qualified investors” and prescribes certain instruments (e.g., foreign securities) which may be offered only to qualified investors. Professional participants in the securities market, credit institutions, investment funds, pension funds, insurance companies and clearing organizations are recognised as “qualified investors” by law. Certain corporations or individuals may be recognised as qualified investors if they are classed as such by a broker or an asset manager. They may also be recognised as qualified investors by operators of digital platforms in order to be able to invest in a wider range of digital financial assets.

An offering of securities to any number of qualified investors is not considered a public offering and does not require the registration of a prospectus.

There are also new rules for transacting with individuals who do not have the status of a qualified investor: to engage in certain transactions involving securities or derivatives, such individuals will have to pass a specific test. These new rules will come into force on 1 April 2022 (the Bank of Russia has suggested bringing the date forward to 1 October 2021). The offering of complex and/or high-risk investment products to non-qualified investors has become a matter of increasing concern for the Bank of Russia, which recommends refraining from making such offerings at least until the above-mentioned date.

Requirements relating to the content of a prospectus include a prospectus summary, information on the issuer and its subsidiaries, including financial statements, and details of the securities offered. Russian law allows issuers to incorporate certain information into the prospectus by reference to prior filings, provide a draft prospectus for comment prior to submission of the final prospectus for registration and register a shelf prospectus (which would be valid for one year).

Issuers who have registered a prospectus are subject to continuous disclosure requirements in the form of reports and disclosure of significant events that may affect the financial position or business activities of the issuer, which should be posted on an internet site and, in some cases, disseminated through a newswire.

Issuers of bonds may, and at the demand of bondholders are required to, convene meetings of bondholders that are authorized to approve amendments to the bond placement terms, grant waivers of bondholders' rights and appoint a bondholder representative (whose functions are similar to those of an indenture trustee). The Securities Law prescribes situations where the appointment of a bondholder representative is mandatory, for example in cases of collateralized placements of public bonds.

### **Regulation of secondary transactions**

Any secondary transactions involving securities that are subject to state registration with the Bank of Russia, but have not been registered, are generally prohibited. Where securities have been registered by the Bank of Russia but no prospectus is available for the securities or the issuer is not subject to continuous disclosure requirements or, in the case of equity securities, the issuer is not a public company, any public offerings or sales of such securities are restricted. Other transactions involving securities of Russian issuers are generally permitted with no mandatory holding periods set in the Securities Law.

Securities of foreign issuers (as well as a few types of Russian securities that are expressly designated for qualified investors only) are deemed "restricted securities" in Russia and are subject to much tighter restrictions on secondary transactions than registered securities for which no prospectus is in place.

Secondary transactions involving restricted securities are only allowed between entities that are qualified investors by law or, via a broker, between other qualified investors.

The above-mentioned restrictions on securities of foreign issuers may be lifted on the basis of a decision of the Bank of Russia made at the request of a Russian exchange submitted together with the prospectus prepared by the issuer. Securities of a foreign issuer that are not restricted for public offering by applicable foreign law and are in the process of being listed or already listed on an internationally recognised foreign exchange (including NYSE, NASDAQ and London Stock Exchange) may be admitted for listing by a Russian exchange without the need to obtain permission from the Bank of Russia. In the latter case, the foreign issuer will be deemed compliant with the Russian prospectus disclosure and continuous disclosure requirements if it meets the relevant requirements of the internationally recognised exchange.

Starting from 1 April 2022, securities of foreign issuers will have to comply with additional requirements set for various types of securities. The Bank of Russia has issued recommendations for the transitional period.

The placement of securities of Russian issuers overseas and the establishment of depositary receipts or a similar program with respect to Russian securities may only take place with the permission of the Bank of Russia. Currently, the number of shares offered overseas or deposited in a depositary receipts program may not

exceed 25% of the overall share capital of the Russian issuer and 50% of the particular equity offering.

### **Securitization**

Russian legislation sets the regulatory framework for such forms of securitization as the issue of mortgage-backed securities, securities backed by a pool of other financial assets (including credit card debts, retail loans, etc.) and infrastructure bonds backed by claims under contracts pertaining to long-term investment projects.

The Securities Law establishes special corporate governance and bankruptcy rules for securitization vehicles and sets out procedures for the issue of different tranches of securities backed by the same collateral.

### **Title transfer registration system for securities**

From 1 January 2020, all Russian securities may be issued only in registered form.

Russia has adopted a two-tier system of title registration for registered securities. Transactions involving all such securities must be recorded in a register maintained by a licensed registrar. Licensed depositaries are free to open nominee securityholder accounts with registrars or other depositaries and are authorized to record transactions in respect of securities held by such depositaries as nominees. Securityholders then are free to choose to have the title to their securities recorded by the registrar or the depositary.



The National Settlement Depository has the status of the national Central Securities Depository (CSD) and as such has an exclusive right to act as nominee securityholder in all registers of securities of issuers that are subject to the continuous disclosure requirement. No other Russian depositories (besides the CSD) are allowed to open nominee accounts with the registrars of securities of reporting issuers.

Russian securities underlying depositary receipts or similar foreign securities must be held in a “foreign depositary program account”, which must be opened with a Russian depositary that has in turn opened an account with the central depositary. Foreign depositories (custodians) are allowed to exercise voting rights only with respect to shares underlying such foreign securities whose holders have been disclosed to the Russian issuer.

### **Professional participants in the securities market**

The Securities Law identifies several types of professional participants in the securities market (brokers, dealers, forex dealers, asset managers, investment advisers, depositories and registrars). Activities of professional participants in the securities market may only be carried out by Russian legal entities licensed by the Bank of Russia, with the exception of investment advisers, who are not subject to licensing requirements and must obtain membership of a self-regulatory organization and be registered in the register of investment advisers held by the Bank of Russia.

The Bank of Russia performs a supervisory function in relation to professional participants in the securities market. In particular, it sets qualification requirements for senior managers and oversees compliance with internal control, internal audit and risk management procedures.

Foreign financial institutions are subject to restrictions on the public offering (advertising) of their financial services (including both licensed and unlicensed services) or the public dissemination of information on those services in the territory of the Russian Federation. However, there are currently no restrictions on foreign companies setting up Russian subsidiaries engaged in professional activities on the securities market (with the exception of forex dealers, which may not be owned, directly or indirectly, or controlled by an entity incorporated in a jurisdiction that does not disclose information on financial transactions).

Foreign financial institutions may also establish representative offices in the territory of the Russian Federation subject to the prior approval of the Bank of Russia. Representative offices may be established only for the purpose of evaluating prospects for entering the Russian market and providing advisory services to clients (thus, they may not carry on any activities of a professional participant in the securities market in Russia).

### **Control and supervision on the Russian securities market**

Control and supervision on the securities market is carried out by the Bank of

Russia. It implements government policy on the securities market, regulates the activities of professional participants in the securities market, and protects the rights of investors and shareholders. Its major functions are as follows:

- ▶ Developing a regulatory legal framework for the securities market, including adoption of relevant regulations
- ▶ Determining the key directions for the development of the securities market
- ▶ Registering securities offerings, prospectuses and reports on securities offerings
- ▶ Keeping appropriate records and ensuring the disclosure of information on the securities market
- ▶ Licensing and overseeing professional participants in the securities market
- ▶ Performing inspections, issuing mandatory instructions, bringing administrative actions and taking other legal action

In addition, the Russian market has a number of self-regulatory organizations that unite professional securities market participants and develop uniform standards for their members' activities. PARTAD is the Professional Association of Registrars, Transfer Agents and Depositories; the National Securities Association (NFA) mainly unites banks that are licensed as professional securities market participants; and members of the National Association of Stock Market Participants (NAUFOR) also include non-bank securities market participants.

# Currency control

## General principles

Russian currency control rules differentiate requirements for Russian currency residents and currency non-residents, and currency residence criteria are different from those established for tax purposes.

The following persons are considered Russian currency residents:

- ▶ Russian nationals
- ▶ Foreign nationals and stateless persons who live permanently in Russia on the basis of a residence permit

- ▶ Legal entities registered under Russian law and foreign branches, representative offices and other subdivisions of Russian legal entities, except for legal entities registered as international companies
- ▶ Diplomatic missions, consular offices and other official representative bodies of Russia located abroad, and
- ▶ The Russian Federation and its regions and municipalities

All other persons and entities are deemed non-residents, including Russian branches, representative offices and other subdivisions of foreign legal entities. International companies that are registered as Russian legal entities through redomiciliation are considered non-residents for currency control purposes.

Transactions between residents and non-residents involving payments in roubles and foreign currency or securities denominated in roubles and foreign currency may be concluded without limitations, except for the sale and purchase of foreign currency and cheques, which must take place through authorized organizations.

Foreign currency transactions between Russian residents are prohibited (i.e., payments between them must be made in Russian roubles), although the law does make some exceptions. Residents may use foreign currency to set the price of a contract, but payment must be made in roubles.

Payments in foreign currency are generally permitted between non-residents without restrictions (the purchase and sale of securities between non-residents is also permitted although Russian securities and anti-monopoly regulations may apply).



## Currency control restrictions for Russian residents

Russian currency control rules include three key requirements: (i) cash received by residents from export transactions must be repatriated to Russia; (ii) accounts opened with foreign banks by Russian residents are subject to restrictions, and (iii) transactions entered into by residents with non-residents must be reported to local banks.

At the same time, there are no limits on exchanging foreign currency for companies and individuals; a foreign investor is not required to have a capital account; capital injections and dividend distributions are not restricted; no approval from a currency control authority is required for any operation.

The main requirements for operations between residents and non-residents are.

- ▶ Residents must repatriate rouble (with certain exceptions) and foreign currency proceeds from export transactions and recover currency paid to a foreign party under import transactions that were not completed. The repatriation obligation also applies to the repayment of loans (irrespective of the loan currency) granted by residents to non-residents, although it does not impact loans granted before April 2018 for which

the essential terms (i.e., amount, currency and interest rate) remain unchanged

- ▶ Russian residents must notify the tax authorities of the opening of overseas bank accounts with foreign banks and other non-Russian financial institutions. They are also required to file notices on the opening or closing of such accounts and to submit regular account activity reports for such accounts (legal entities on a quarterly basis and individuals on an annual basis) to the tax authorities. This requirement does not apply to Russian nationals who spend more than 183 days in a calendar year outside of Russia or when transaction activity and the remaining balance of the Russian national's account (opened with a bank/other financial institution in a jurisdiction expressly referred to by law) does not exceed RUB 600,000 (approx. US\$ 8,296)
- ▶ Residents must file contracts with non-residents and other supporting documents (such as amendments to contracts, acceptance certificates and so on) for registration to a Russian bank which handles payments under a transaction. Registration is not required for import transactions and loans with a value below RUB 3 million (approx. US\$41,482) or for export transactions with a value below RUB 6 million (approx. US\$ 82,965)

- ▶ Foreign currency and cheques (including traveller's cheques) in foreign currency may be purchased and sold only through banks that have obtained a special licence to carry out operations involving foreign currencies
- ▶ Individuals must declare currency in the event that they take it out of Russia in excess of certain thresholds.

The operation of an overseas bank account by a Russian resident is subject to significant restrictions – a resident may receive money in such an account only in a limited number of cases. For individuals, these include:

- ▶ the minimum deposit required to open an account
- ▶ salary and other payments made by a non-resident under an employment contract in connection with the performance by the resident of employment duties outside Russia
- ▶ interest on the balance of such accounts
- ▶ cash deposits
- ▶ cash from currency exchange transactions using funds on the account
- ▶ pensions, stipends, alimony and other social payments
- ▶ insurance payments made by non-resident insurers
- ▶ funds repayable to resident





individuals, including funds transferred in error and money refunded to a resident individual for goods purchased from a non-resident and returned or for paid services provided by such non-resident

- ▶ proceeds from sales of precious metals (held in foreign accounts) if such proceeds are credited to bank accounts with foreign banks by reason of legal requirements in the relevant jurisdiction
- ▶ Amounts received by a resident individual from non-residents may be credited without restrictions to accounts held with EAEU banks or with banks of a country that automatically exchanges financial account information with Russia

## Liability for violation of currency law

The penalties for violating currency regulations can be severe. The Administrative Offences Code states that unlawful currency operations and non-compliance with currency repatriation limitations are subject to an administrative fine of from 75% to 100% of the amount of the non-compliant operations. Moreover, for certain offences, additional criminal liability may be imposed on the executives of the offending legal entity, including imprisonment. Non-compliance by Russian banks with currency control regulations may result in the revocation of their licences. However, only Russian currency residents are liable for such offences.

Examples of violations of Russian currency control rules:

- ▶ A foreign contractor does not pay its Russian supplier on time, or does not deliver goods to its Russian customer and does not return advance payments for those goods on time (i.e. the Russian resident is unable to comply with the repatriation obligation)
- ▶ A Russian resident has entered into a currency forward transaction, swap or option with a party other than a Russian bank.

In view of the above, in any situations where a Russian entity is involved in any debt forgiveness, net-off or other similar operation with a foreign company, it is strongly recommended that currency control be given due attention in advance of entering into any substantial transactions.

# Competition law

## Merger control

Russian law requires certain transactions involving Russian and foreign companies, as well as assets located in Russia, to be pre-approved by Russian public authorities before the deal can be closed. These pre-approval regimes may be subdivided into the following groups:

- ▶ Competition sector
- ▶ Natural monopolies sector
- ▶ Financial institutions sector
- ▶ Foreign investments sector

A particular transaction may fall within the scope of one or several sector-specific regulations at the same time, and sometimes the respective pre-approvals must be obtained in a specific order for clearance to take full effect.

The merger control rules are complex and tightly intertwined with one another, but generally cover the following types of transaction: (a) acquisition of shares/participating interests, (b) acquisition of control, (c) acquisition of assets, (d) corporate restructurings (incorporations, mergers, spin-offs, etc.), and (e) joint ventures.

The above transactions are subject to merger control if certain financial and/or business-related thresholds are met. These thresholds can be defined as (a) the transaction test and (b) the parties

test, which must be met simultaneously in order for a transaction to be subject to merger control.

The transaction test is met if the transaction itself meets specific criteria, such as the acquisition of more than 25/50/75% of the shares in a Russian company, or the acquisition of more than 20% of a seller's assets, or the signing of a joint venture agreement between competitors.

The parties test is met if the parties involved in or undertakings relevant to the transaction meet specific financial criteria or other relevant requirements, such as the total book asset value of the acquirer, the target and their groups (typically RUB 7 billion combined or approx. US\$ 97 million), or their total turnover during the last financial year (typically RUB 10 billion combined or approx. US\$ 138 million) or significant turnover in Russia (typically RUB 1 billion or approx. US\$ 13,8 million), or competition between the parties to a joint venture agreement.

It is worth noting that transactions effected outside of Russia, also known as foreign-to-foreign transactions, are caught within the scope of merger control and may be subject to pre-approval by Russian public authorities. The sector-specific regulations define which thresholds must be met in each particular case for a transaction to be subject to merger control.

The Federal Antimonopoly Service (FAS) is the Russian competition authority involved in most merger control procedures. Sometimes the competition authority performs these functions alone, while at other times different authorities are involved in the process as well, such as the Bank of Russia (for financial institutions) or the Russian Government (for foreign investments in strategic companies).

The specific role of each authority depends on the sector-specific regulations applicable to each transaction. For instance, the competition authority may be the only regulator making the final decision on a transaction, or it may be one of several authorities each making its own decision on the transaction, or it may act as an intermediary between the parties seeking pre-approval and a different public authority. The sector-specific regulations define the exact range of authorities involved in the merger control process and their respective roles.

While rules for financial markets are outlined in the section entitled "The Financial System" above, Russian law also sets special rules for foreign investments in particular areas of the Russian economy which the state views as having strategic significance and, therefore, requiring a special protection regime. There is a list of over 40 types of activity (sectors)

with strategic significance. Foremost among them are the environmental sector, the nuclear industry, military equipment and industrial explosives, the aviation and space sectors, mass media, natural monopolies, etc. The law limits or prescribes a special regime for the acquisition by foreign investors of control over Russian companies which carry on activities in the above-mentioned strategic sectors.

The timeline for the review of a merger control application may vary depending on the sector-specific regulations applicable. The parties seeking pre-approval should consider the timeline while preparing for the transaction: sometimes, the review may take up to a year before a final decision is made. However, for the most common merger control procedures it usually takes the regulators 1 to 3 months to review and make the final decision. The preparation of a formal merger control application takes time, and it is normally prudent for the parties involved to factor in 2-4 weeks for this exercise.

Russian law enables regulators to approve transactions subject to performance by the parties involved or their affiliates of certain mandatory actions, such as divestiture of assets, or execution of certain business decisions with the regulator's consent only, or regular reporting to the regulator. Regulators usually impose these mandatory rules, also known as remedies, if major international companies are involved in a particular transaction. It is worth noting that remedies have become more complex

during the past few years, and recent cases demonstrate the regulators' intent to broaden the scope of permitted remedies as much as possible. More often than not, a transaction would be approved with remedies instead of being prohibited altogether.

## Abuse of dominance

Russian competition law provides for certain restrictions applicable to undertakings having substantial influence in the market. Where such influence enables one or more undertaking to determine the terms of circulation of products in the relevant market, or to eliminate other undertakings from the relevant market, or to create market entry barriers, such undertakings may be considered dominant.

Dominance is generally presumed where an undertaking holds a market share in excess of 50%. Dominance may be established by the competition authority where an undertaking holds a market share between 35% and 50%. Dominance may also be established for undertakings with a market share between 8% and 35%, but only if collective dominance is present. Collective dominance implies that several undertakings have a decisive influence on the market, and their joint market share must exceed either 50% or 70% depending on the quantity of those undertakings. In addition, other federal laws may provide for and the Russian Government may introduce special criteria of dominance in distinct sectors, such as the telecom sector or

the financial industry. In some instances, dominance is presumed regardless of the market share, such as in the natural monopolies sector. Where dominance is presumed, Russian competition law enables the respective undertaking to prove the absence of dominance despite meeting the formal market share threshold or engaging in a particular type of business.

To prevent undue behaviour of dominant undertakings, Russian competition law defines numerous types of action such undertakings may not perform, such as: (a) predatory and excessive pricing, (b) tying and bundling, (c) discriminating and imposing unfair conditions, (d) setting different prices for the same products without justification, etc. Such behaviour is illegal only if it does or may lead to restriction of competition, or to the infringement of interests of a third party concerning business or of consumers at large.

Specific rules aimed at the prevention of abuse of dominance, also known as non-discriminatory access rules, may be additionally established by a federal law or the Russian Government. These rules may be introduced not only following a formal abuse of dominance case by the competition authority, but also if there is substantial risk of a dominant undertaking misbehaving. The rules may provide for particular contract terms a dominant undertaking must observe, public disclosure of information relevant to entering into contracts with such undertaking, a detailed procedure for applying to a dominant undertaking to enter a contract, etc.





## Anti-competitive agreements, concerted actions and illegal coordination

Russian competition law prohibits agreements involving undertakings or public authorities which may restrict competition. These agreements may be divided into the following categories for convenience:

- Horizontal agreements
- Vertical agreements
- Other agreements
- Agreements with public authorities

### Cartels

Horizontal agreements, also known as cartels, involve undertakings competing in the same market. Competition between undertakings is established not only based on the respective undertakings' sales activities, but also on their purchasing of products in the same market. A cartel may be present where no formal contract has been made as competition law broadly defines an agreement as an arrangement made in writing or orally.

Not all agreements between competitors are illegal. Russian competition law defines a wide variety of consequences a cartel must actually or potentially lead to in order to be considered anti-competitive, such as (a) price or incentive fixing, (b) price manipulation in tenders, (c) market allocation, (d) refusal to deal with specific customers/suppliers, and (e) output restriction.

Russian competition law provides for certain exemptions from the above prohibitions, which may vary in each individual case. Generally, the use of intellectual property is outside the scope of the dominance-related provisions of competition law, and undertakings may freely acquire or dispose of their intellectual property as they see fit. However, limiting trade in goods through commercial contracts for the use of intellectual property may still breach Russian competition law and is strongly opposed by the competition authority.

Dominant undertakings may also claim that some actions formally considered

abuse of dominance are in compliance with competition law provided that the following conditions are simultaneously met: (a) competition in the relevant market cannot be eliminated, (b) the restrictions imposed on third parties are aligned with the objective of such actions, and (c) such actions (i) may or actually do lead to an improvement of the manufacturing process or sale of products, promote economic and technological advancement or increase competitive advantages of Russian products, or (ii) provide customers with advantages proportionate to those acquired by the dominant undertaking.

A cartel is prohibited per se, which means that adverse impact on competition is presumed and need not be established by the competition authority. The mere conclusion of a cartel that meets either of the above criteria is illegal regardless of its actual implementation. In some instances, Russian competition law permits cartels considered joint ventures, but the permissibility of such agreements is considered by the competition authority on a case-by-case basis.

### **Vertical agreements**

Vertical agreements involve undertakings at different levels of the supply chain, i.e., where one undertaking supplies products and the other purchases such products. Vertical agreements are prohibited if they may or do lead to resale price fixing or a prohibition on dealing in competing goods. These restrictions are limited in that maximum resale price fixing is permissible by default and a prohibition on dealing in competing goods is permissible for resellers trading under a supplier's trademark or other means of individualization.

Besides the above, competition law permits vertical agreements between undertakings with low market shares or acting under franchising agreements. There are also legal means of proving the permissibility of vertical agreements even if they technically conflict with competition law, such as the promotion of Russian products worldwide and the provision of comparable benefits to consumers. The Russian Government has also defined a set of conditions that

are permissible in vertical agreements by default, also known as general block exemptions, provided that certain market-related criteria are met by the parties to such agreements. Unlike cartels, vertical agreements are considered illegal only if they may or do have an adverse effect on competition, and merely reaching a formally anti-competitive vertical agreement does not constitute a violation of competition law.

### **Other agreements**

Other agreements between undertakings limiting competition are also prohibited by competition law. These include all agreements that do not formally fall within the definition of horizontal or vertical agreements.

Competition law also expressly prohibits certain specific agreements limiting competition in certain industries, such as the power supply sector. Other agreements limiting competition may be considered illegal if they may or do lead to restriction of competition, and competition law does not prescribe a definitive set of anti-competitive consequences such agreements must entail. Such agreements can benefit from permissibility criteria provided for in competition law, sometimes including those applicable to vertical agreements.

### **Agreements with public authorities**

Agreements between business entities and public authorities, or between different public authorities, may also



sometimes restrict competition. Such anti-competitive agreements are prohibited and, as with other anti-competitive agreements described above, competition law does not prescribe a definitive set of anti-competitive consequences such agreements must entail. This category includes, inter alia, agreements pertaining to public procurement tenders which the competition authority oversees. More often than not, anti-competitive agreements between procuring authorities and bidders lead to criminal investigations into alleged corruption by criminal enforcement authorities, along with administrative investigations by the competition authority.

### **Concerted practices**

Concerted practices of business entities or public authorities which lead to restriction of competition are prohibited by Russian competition law. Concerted practices are defined as actions of undertakings in the relevant market that (a) achieve goals beneficial to their participants, (b) are known to the participants in advance due to a public announcement by either of the participants, and (c) are caused by actions of the participants and are not related to market processes affecting all market players.

Actions performed pursuant to the agreements do not fall within the scope of concerted practices and are covered by agreement-related provisions of competition law. Unlike agreements, concerted practices must actually lead to restriction of competition in order to be considered illegal.

Concerted practices, like vertical and other agreements, can benefit from permissibility criteria provided for in competition law.

### **Coordination**

Coordination of business activities of undertakings by a third party is prohibited if it leads to the restriction of competition. Coordination is defined as the orchestration of undertakings' actions by a third party which neither belongs to the same group as the coordinated entities, nor operates in the market where the undertakings' actions are being coordinated.

As with concerted practices, coordination must actually lead to restriction of competition in order to be considered illegal. Coordination, like concerted practices and other agreements, can benefit from permissibility criteria provided for in competition law.

### **Exceptions**

There are several exceptions to the above prohibitions. For instance, the use of intellectual property rights is not covered by the above prohibitions at all. The agreements and other actions outlined above involving companies under common control or involving parent companies and subsidiaries thereof fall outside the scope of the above prohibitions. Lastly, any restrictions provided for in agreements reviewed and approved by the competition authority under a special pre-approval procedure are not subject to the above restrictions either.

## **Unfair competition**

Russian competition law prohibits unfair competition, i.e., actions of undertakings (a) aimed at acquiring competitive advantages, (b) in violation of applicable laws, normal business practices or requirements of good faith, rationality and fairness, and (c) that have or may cause damage to competing undertakings or hurt their business reputation.

It is within the discretion of the competition authority to decide whether a particular action represents unfair competition, as competition law defines such acts rather broadly. However, some types of action, such as the distribution of false, inaccurate or distorted information about products or businesses, inaccurate comparison of products or misappropriation of intellectual property, are expressly provided for in competition law.

## **State aid**

Russian competition law imposes certain requirements on state aid, i.e., the provision of specific privileges to undertakings over other market players by governmental and municipal authorities through the transfer of property or by granting preferences and guarantees. Russian competition law establishes a special procedure for granting state aid, which involves obtaining pre-approval by the competition authority for the provision of preferences.



Violation of the applicable procedure may result in the competition authority initiating a formal case against the relevant public authority. If held liable, the relevant public authority may be required to terminate the preferences. As with agreements involving procuring authorities, state aid provided in breach of competition law leads to criminal investigations against public officials by criminal enforcement authorities as well as administrative investigations by the competition authority.

## Trade law

Russian law lays down specific requirements applicable to the sale of food. Undertakings engaged in retail and wholesale trade in food are subject to a set of prohibitions similar to those outlined in Russian competition law, albeit some restrictions are of a purely technical nature aimed at preventing excessive pricing of food sold to consumers.

The key restrictions applicable to retailers and suppliers of food are as follows: (a) mandatory public disclosure of material terms of contracts for the supply or acquisition of food and criteria for the selection of business partners, (b) limitation of the total value of bonuses payable to retailers for purchase volumes, promotion, packaging and processing of food and for services rendered by retailers to suppliers, (c) prohibition of bonuses, incentives or other payments for entry or anything not directly related to the

supply of food, (d) maximum deferred payment terms, and (e) a prohibition on combining the supply of food and additional related services in supply agreements.

The competition authority oversees compliance with trade law. While not necessarily aimed at protecting competition in the food market, the above trade rules are rigorously enforced by the authority due to the sensitive nature of food pricing for consumers. Failure to comply with the requirements often leads not only to a formal investigation and administrative proceedings, but also to a public announcement of the violation by the competition authority. This may entail significant reputational risks for undertakings along with substantial administrative fines and an order to bring commercial contracts into compliance with Russian trade law.

## The Eurasian Economic Union

Russia has since 2015 been a member of the Eurasian Economic Union, a regional international organization aimed at the promotion of economic relations and the harmonization of the national legislation of Russia, Belarus, Kazakhstan, Kyrgyzstan and Armenia (the current members). Among other matters, the Union has adopted a separate set of competition rules which must be observed by the member states, their public authorities and undertakings operating within the Union.

These rules are quite similar to those outlined in Russian competition law, namely anti-competitive agreements, illegal coordination, abuse of dominance, and unfair competition. However, there are several exceptions: the competition rules of the Union do not prohibit concerted practices and do not cover merger control, state aid or public procurement tenders.

The competition rules are enforced by the Eurasian Economic Commission, a supranational enforcement authority overseeing compliance with competition rules within the Union. Unlike national competition authorities, the Commission enforces competition rules on cross-border markets, i.e., markets covering the territory of several member states. Distinct additional criteria apply depending on the type of alleged violation to establish the jurisdiction of the Commission over each individual case.

Decisions of the Commission may be challenged in the Court of the Union, a separate supranational authority overseeing, among other matters, compliance of the Commission's decisions with Union legislation. If a petitioner is unhappy with a ruling made by the Court, a formal appeal may be filed with the Court's Appeals Chamber. Rulings of the Appeals Chamber are final and are not subject to further revision or challenge.

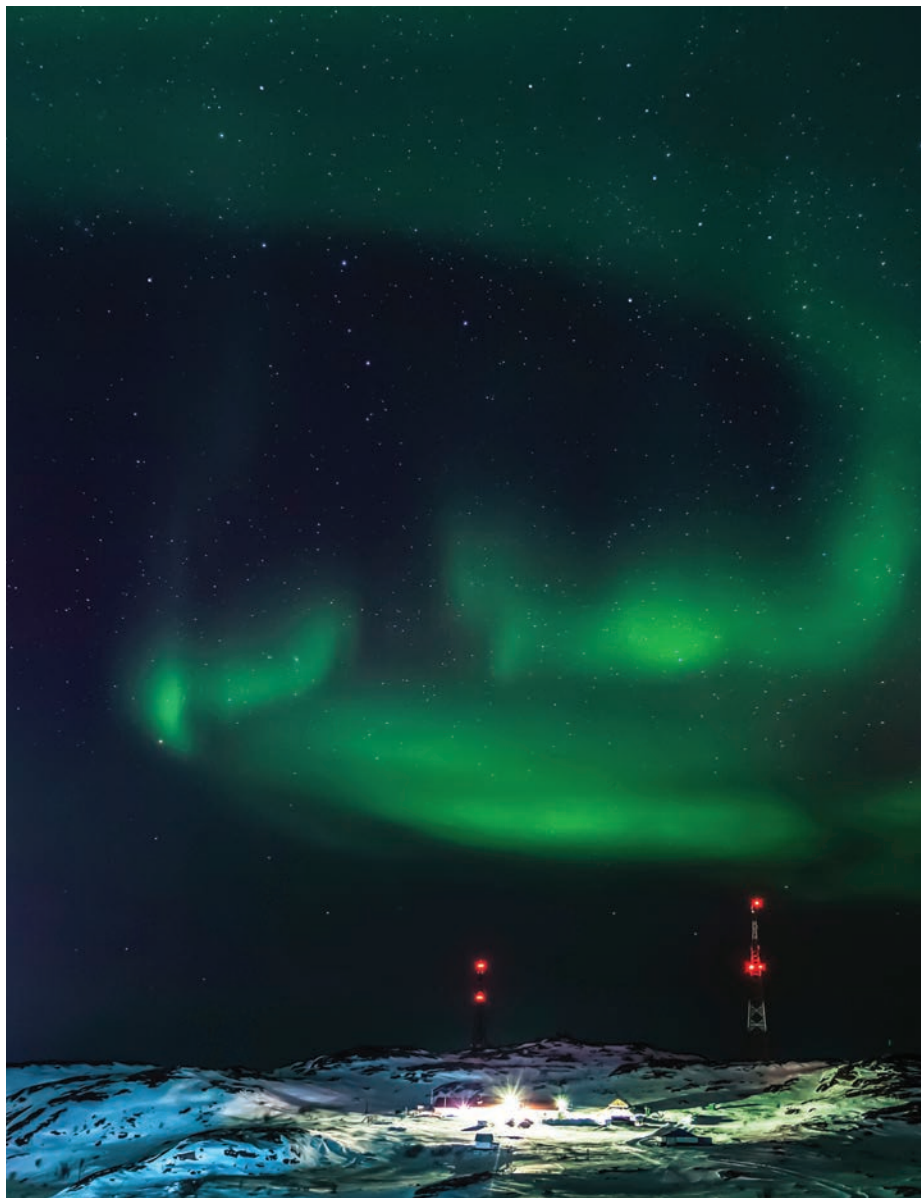
# Licensing

## Permits for certain activities

Under Russian law, certain types of activity may be carried out only by a person who has obtained the relevant licence or other type of permission. Licences allow recipients to engage in certain activity on a permanent basis (typically with a lifetime licence). Various statutes regulate licensing requirements.

The key federal law is the Licensing Law, which contains uniform licensing rules and covers a number of industries such as the production of pharmaceuticals, air, sea, car or rail passenger carriage, the collection, processing and utilization of waste, commercial security services, and so on. There are a number of industry-specific laws with particular licensing rules for such areas as the production of alcoholic products, banking, insurance, the sale of electricity, and others. Licences are issued by the state authorities which are competent to regulate a particular industry

Another type of permission is an authorization certificate for a particular activity issued by a self-regulatory organization (SRO) competent under the law to authorize activity in a specific sector. Membership of an SRO substitutes the licensing regime in certain areas such as audit services,



professional appraisals, cadastral surveying and construction activities, and generally, apart from the SRO certificate, no other licences or certificates are required to carry out the activity concerned.

In order to obtain a certificate, a person must join the SRO and comply with its requirements, i.e., SROs serve as professional clubs in the industry which control their members and enable

them to share liability. Unlike licences issued by state authorities, some laws regulating access to SROs expressly allow foreign legal entities to join Russian SROs.

Meanwhile, a permit is a type of permission which is required for a certain activity limited by time, for instance, a permit for the construction of a particular building, a permit for the operation of a particular hazardous

facility or a permit (licence) for access to the subsurface for the exploration or production of minerals. The issue of a permit may be accompanied by additional terms and conditions: to complete construction by a specific deadline, to register a hazardous facility in a special state register and insure risks related to its operation, or to comply with the requirements of a subsurface licence as described in more detail below.



## Licences for subsurface access

A person who plans to extract minerals must obtain a licence from the state: all mineral resources located in the territory of Russia or its continental shelf and lying beneath the surface are deemed to be the property of the state. Exploration or production of any mineral requires a state licence and only the owner of a land plot may extract common minerals such as sand, gravel, limestone, clay, chalk, etc. on that land plot for personal, domestic and other non-business-related needs without a licence.

A licence is granted to a specific person for a specific underground area to search for, explore or extract a specific mineral over a specific period of time. The licence typically contains a number of terms and conditions which the licensee must meet, such as the performance of a set amount of exploration work, the building of certain infrastructure or the extraction of a set quantity of minerals.



A licence may be transferred to another person only in certain cases specified in the law. In practice, therefore, most licences are transferred together with their holders.

## Environmental permits

Under Russian law, any activity that may have an adverse impact on the environment is subject to (a) the issuance of a special permit or a licence, (b) the establishment of limits with respect to the amount of such impact/pollution, (c) the payment of a fine for negative impact, and (d) the imposition of a liability in case of violation.

Environmental permits allow an entity to conduct activities that may have a negative impact on the environment. They consist of permits for the general use of natural resources (e.g., a water use agreement) and permits for specific negative impact on the environment (e.g. water or air pollution).

The Environmental Protection Law has a “pay-to-pollute” provision that requires a person to obtain a permit for an adverse environmental impact caused by its activities and to pay a fee for that permit. In addition to paying the pay-to-pollute fees, a person must also remediate any environmental damage caused by its activities in excess of the permitted limit (regardless of the amount of pay-to-pollute fees it has paid).

A person acquiring land or facilities will generally not be liable for environmental

violations that occurred prior to its ownership. Nevertheless, there is a risk of inheriting environmental liability if the environmental violation resulted in environmental damage and such damage continues to exist after the change in ownership of the asset. In this case, the environmental damage may be treated as a continuing violation and the current owner may be held liable for past violations (particularly if it is not possible to allocate liability for damage). In such cases, the current owner may have the right to claim recourse against the previous owner, subject to any contractual arrangements they might have.

As a result of the entry into force of recent amendments to environmental laws, all production and other industrial facilities having a negative impact upon the environment are divided into four categories (I, II, III, IV) depending on the level of such impact. Any entities performing activity at facilities of category I (those having a significant negative impact and falling within fields requiring the implementation of best available technology) are obliged to:

- ▶ obtain by 1 January 2025 an integrated ecological permit (so-called “complex ecological permit” or “CEP”), which replaces various different ecological permits (for most “dirty” production facilities the time limit for submitting an application for a CEP is 31 December 2022), and
- ▶ implement the best available technology approved for the relevant industry

- ▶ These requirements also apply to new facilities starting from 1 January 2019 and facilities under capital reconstruction from 2020: it will not be possible to launch these facilities into operation without a CEP.

Failure to obtain a CEP or to implement obligatory best available technology results in increased environmental fees (100 times the amount). There are certain state support measures allowing financing and tax incentives to be obtained for the implementation of best available technologies and the fulfilment of environmental obligations.

## Recycling requirements

The concept of extended producer responsibility (“EPR”) covers a broad range of consumer goods (electronics, motor oils, clothes, tires, kitchenware, etc.) as well as paper, glass, plastic, metal, and wooden packaging.

Producers/importers are required to arrange the collection and utilization (recycling, regeneration or recovery) of waste from used goods in line with the utilization targets for the relevant goods and packaging, otherwise they have to pay a quasi-tax called an eco-fee. They must also submit certain mandatory reports by 1 April of each calendar year; the eco-fee calculated based on those reports is due by 15 April. All these obligations apply to all goods and must be fulfilled yearly. Goods imported for personal use and exports of waste products out of Russia are not subject to EPR.

# Data Protection and Privacy

Personal data protection is regulated in Russia by the Personal Data Law. In addition, in 2013 Russia became a party to the European Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.

Personal data is defined by the Personal Data Law as any information relating to a directly or indirectly identified or identifiable individual (data subject). The definition is general and does not provide a list of data that may be classed as personal data. Thus, what constitutes personal data must be assessed on a case-by-case basis. The Personal Data Law also provides for special categories of personal data (data on an individual's race, nationality, political views, religious or philosophical beliefs, state of health, intimate life, etc.) and biometric personal data. Such personal data receives special treatment.

The Personal Data Law applies to all personal data processing operations performed within Russia. Furthermore, recent law enforcement practice includes cases where the Russian data protection authority (Roskomnadzor) has intervened to protect the rights of Russian data subjects in cases of personal data processing abroad. For example, Roskomnadzor successfully blocked several websites hosted abroad which contained Russian citizens' personal data.

Russian data protection laws apply to all data operators and third parties acting under the authorization of data operators.

The main obligations imposed on data operators to ensure personal data is handled properly include the following:

- ▶ Defining the categories of personal data, the purposes of data processing and the processing period
- ▶ Obtaining the data subject's consent for data processing (unless otherwise provided by law), which may be implied, explicit or in writing depending on the case
- ▶ Appointing a personal data officer, adopting data protection policies (other required documents) and taking other appropriate security measures as required by law
- ▶ Locating databases with personal data of Russian citizens in the territory of Russia ("localization requirement")
- ▶ Notifying Roskomnadzor of personal data processing (unless otherwise provided by law)

- ▶ The consequences of non-compliance with the requirements of the Personal Data Law include (i) restrictions on a company's operations (as described below), and (ii) fines imposed on company officers and the company itself (the most severe fines are for violation of localization requirements).

Roskomnadzor may demand the blocking or destruction of illegally obtained personal data or may ban the illegal processing of personal data and take administrative action against persons guilty of violating the Personal Data Law. Roskomnadzor may also limit access to information processed in breach of the Personal Data Law. For this purpose, Roskomnadzor maintains a dedicated register of violators of the rights of data subjects.

# Regulation of the Digital Sphere

In 2019 the Russian parliament passed two federal laws implementing significant changes in the digital sphere.

The Digital Rights Law defines such terms as digital rights, smart contracts and big data agreements:

- digital rights are contractual and other rights which are determined according to the rules of the information system
- smart contracts are “self-executing agreements” where the obligations of the parties are performed automatically upon the occurrence of certain events
- big data agreements are agreements on the collection and provision of large blocks of non-personalized data

## Investment platforms (crowdfunding)

The Investment Platforms Law (Federal Law No. 259-FZ dated 2 August 2019) regulates investments through investment platforms (crowdfunding), which may be made only in the following ways:

- provision of a loan
- sale and purchase of securities (through private subscription), or
- sale and purchase of utility digital rights

Utility digital rights are limited to the following:

- the right to demand the transfer of a particular thing (other than property subject to state registration)
- the right to demand the transfer of exclusive rights or licensing rights for IP
- the right to demand the performance of work or services

Only an investee that is a public JSC may raise more than RUB 1 billion (approx. US\$ 13.8 million) per calendar year and only individuals who have the status of individual entrepreneurs or qualified investors or who invest by entering into agreements with a public JSC regarding utility digital rights may invest more than RUB 600,000 (approx. US\$ 8,296) per calendar year.







The Investment Platforms Law establishes the legal framework for the activities of an investment platform operator. Such activities may be carried on in Russia only by legal entities that were established under the laws of the Russian Federation and have been included in a specific register maintained by the Bank of Russia.

## Financial platforms (marketplaces)

The Financial Platforms Law (Federal Law No. 211-FZ dated 20 July 2020) regulates the activities of operators of financial platforms (marketplaces) that enable individual consumers to enter into certain financial transactions in electronic form via those platforms. Various financial institutions may join a financial platform.

The Bank of Russia intends that financial marketplaces should also be available to small and medium-sized businesses (and not only to individual consumers).

There is no limit on the types of financial transactions that may be performed through a financial marketplace. Currently, there are several registered financial platforms in Russia covering the following financial products: bank deposits, insurance policies (compulsory third-party car insurance), OTC bonds, and investment fund units. Activities of a financial platform operator in Russia may be carried on only by legal entities that were established under the laws of the Russian Federation and have been included in a specific register maintained by the Bank of Russia.

## Digital financial assets (tokens) and related information systems

The Digital Financial Assets Law (Federal Law No. 259-FZ dated 31 July 2020), which came into effect in January 2021, introduces a new type of digital rights in Russia – digital financial assets (along with utility digital rights, as mentioned above), and establishes the legal framework for owning and transacting with them. “Digital financial asset” is a generic term similar to the term “token” used in the crypto sector.

Digital financial assets may certify:

- ▶ monetary claims
- ▶ the ability to exercise rights attached to securities



- ▶ the right to demand the transfer of securities
- ▶ interests in the capital of a non-public joint stock company (i.e., shares in such companies may be issued as digital financial assets).

Activities of operators of information systems in which digital financial assets are issued and activities of digital financial asset exchange operators may be carried on only by legal entities that were established under the laws of the Russian Federation and have been included in a specific register maintained by the Bank of Russia.

Any user of an information system may purchase digital financial assets. However, the Bank of Russia prescribes:

(i) types of digital financial assets that may be purchased only by qualified investors; and (ii) types of digital financial assets for which acquisition by unqualified investors must be limited to a certain amount of investment (RUB 600,000 (approx. US\$ 8,296).

## Cryptocurrency

The Digital Financial Assets Law also defines cryptocurrency and regulates the circulation of such currency. In Russia it is permitted for cryptocurrency to be issued and transferred from one holder to another (and it is permitted to organize such issue and transfer), but it is prohibited to accept cryptocurrency as payment for goods, works, services, etc.

In order to ensure judicial protection of their cryptocurrency rights, Russian legal entities, representative offices and branches of foreign legal entities in Russia, and individuals who are present in Russia for 183 days or more in a period of 12 consecutive months must report their cryptocurrency holdings and transactions to the Russian tax authorities. There is currently a bill according to which such reporting would only be required if the amount exceeds RUB 600,000 (approx. US\$ 8,296).

# Sanctions and Restrictive Measures

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Since 2014, a number of countries, including the US, EU member states, Australia, Canada, Japan and Switzerland, have implemented certain sanctions against Russia. These mainly consist of asset freezes, travel bans and various restrictions on dealings with sanctioned persons (individuals and entities).

In response, Russia banned imports of a wide range of agricultural products, raw materials and food products, including meat, fish, seafood, vegetables, fruit, milk, dairy products (as well as many processed foods) from the US, the EU, Australia, Canada, and Norway. The list was subsequently extended to include Albania, Montenegro, Iceland, Lichtenstein and Ukraine.

In spring 2018, a bill was submitted for preliminary review by the Russian parliament which would impose criminal liability (with a maximum penalty of up to 4 years' imprisonment) for the restriction of or refusal to enter into ordinary business operations or transactions in order to comply with restrictive measures imposed by foreign states, unions of foreign states or international organizations. However, as of the end of 2019 the bill had not progressed any further.





## How can EY help?

At EY Law we have developed client-focused legal services which we offer in close collaboration with other service lines to provide our clients with high-quality, multi-disciplinary advice in a cost-competitive manner. Our services cover the areas outlined below and many more

### *Company law:*

- ▶ Day-to-day advice to companies of all legal forms on any corporate and commercial legal matters
- ▶ Effective planning and implementation support for corporate reorganizations
- ▶ Domestic and cross-border corporate transactions, including mergers, acquisitions and joint ventures, as well as equity investments and change of control transactions
- ▶ Support and advice on devising and implementing corporate compliance programs
- ▶ Corporate legal secretarial services

### *Corporate governance*

### *Commercial law*

### *M&A support*

### *Shareholder controversy*

### *Antimonopoly compliance:*

- ▶ Agreements with provisions that may restrict competition
- ▶ Activities resulting in restriction of competition
- ▶ Improper pricing of goods or services
- ▶ Limitation of access to goods or services on a certain market or segments thereof

### *Comprehensive turnkey services for IP:*

- ▶ Brand protection strategy development and implementation (including registration of “non-standard” trademarks)
- ▶ IP asset management system implementation (including identification and review of IP rights)
- ▶ IP rights due diligence, including compliance with open-source licences

### *Effective solutions for HNWIs:*

- ▶ Top holding structures for business and private assets (setting up and restructuring)
- ▶ Structuring of personal investments (JVs, LP/GP structures, debt financing)
- ▶ Succession planning
- ▶ Family law advice (prenuptial agreements and division of assets)
- ▶ Restrictions applicable to Russian residents
- ▶ Reporting requirements of Russian residents
- ▶ Sale and lease of residential real estate
- ▶ Currency control advice

### *Full-scope legal support with all real estate related issues:*

- ▶ Real estate transactions
- ▶ Real estate investment and financing

- ▶ Construction and EPC
- ▶ Brownfield and greenfield development
- ▶ Legal due diligence of land plots, buildings and premises
- ▶ Leases
- ▶ Real estate private equity and investment funds
- ▶ Regulatory requirements
- ▶ Support with registration of title to real estate
- ▶ Green buildings
- ▶ Hospitality
- ▶ PPP & Concession

### *Assistance with implementation of infrastructure and PPP projects in the following areas:*

- ▶ IP/IT
- ▶ Transport (roads, highway maintenance, airports, ports, railways)
- ▶ Social infrastructure (educational institutions, courts, prisons and social services)
- ▶ Healthcare
- ▶ Conventional and renewable electricity generation
- ▶ Waste and wastewater treatment
- ▶ PPP secondary market (sale of project, re-negotiation of agreement, disputes, etc.)

# 3 Tax System



Russian taxes are regulated by the Russian Tax Code. The list of Russian taxes, levies and social contributions includes:

- ▶ Federal taxes, levies and social contributions – VAT, excise duties, personal income tax, profits tax, mineral extraction tax, water tax, levies for the use of fauna and for the use of aquatic biological resources, state duty, and tax on additional income from hydrocarbon extraction. The Tax Code also establishes social contributions, which are likewise federal payments
- ▶ Regional taxes – corporate property tax, gaming tax, transport tax
- ▶ Local taxes – land tax, personal property tax, the trade levy.

Regional and local legislatures do not have the right to introduce taxes or levies not provided for in the Tax Code. Local governments are permitted to set:

- ▶ tax rates (within the limits set by the Tax Code)
- ▶ tax reliefs
- ▶ procedures and time limits for the payment of taxes

The three-tier taxation system described above means that taxpayers registered in different regions or municipalities may have different tax burdens.

The Tax Code also prescribes special tax regimes under which a taxpayer may pay one special tax in place of others.

Special tax regimes include the simplified tax, the unified agricultural tax, the taxation system for production sharing agreements, and others.

# Tax rates

Tax rates on corporate income and capital gains are summarized below:

Profits tax	20% (a)
Capital gains tax	20% (b)
Profits tax for CFCs	20% (c)
Branch remittance tax	n/a (d)
Withholding tax	
Dividends	0%/5%/13%/15%/ (e)
Interest on certain types of state and municipal securities and mortgage-backed bonds and certain income from certificates of participation in a mortgage pool	0%/9%/15% (f)
Other interest paid to foreign companies	20%/30% (g)
Income from the rental or sublease of ships and aircraft and/or means of transport and containers used in international traffic	10%
Rental income derived from property used in Russia	20%
Royalties from patents, know-how, etc. paid to foreign companies	20%
Income from the sale of Russian immovable property or shares (and derivatives thereof) of qualifying property-rich companies	20%
Payments of other similar Russian-source income to foreign companies	20%(h)





For some categories of taxpayers (participants in special investment contracts, residents of special economic zones, entities operating in the fields of education or healthcare, and others), reduced rates of profits tax may be available under special rules subject to certain conditions being met.

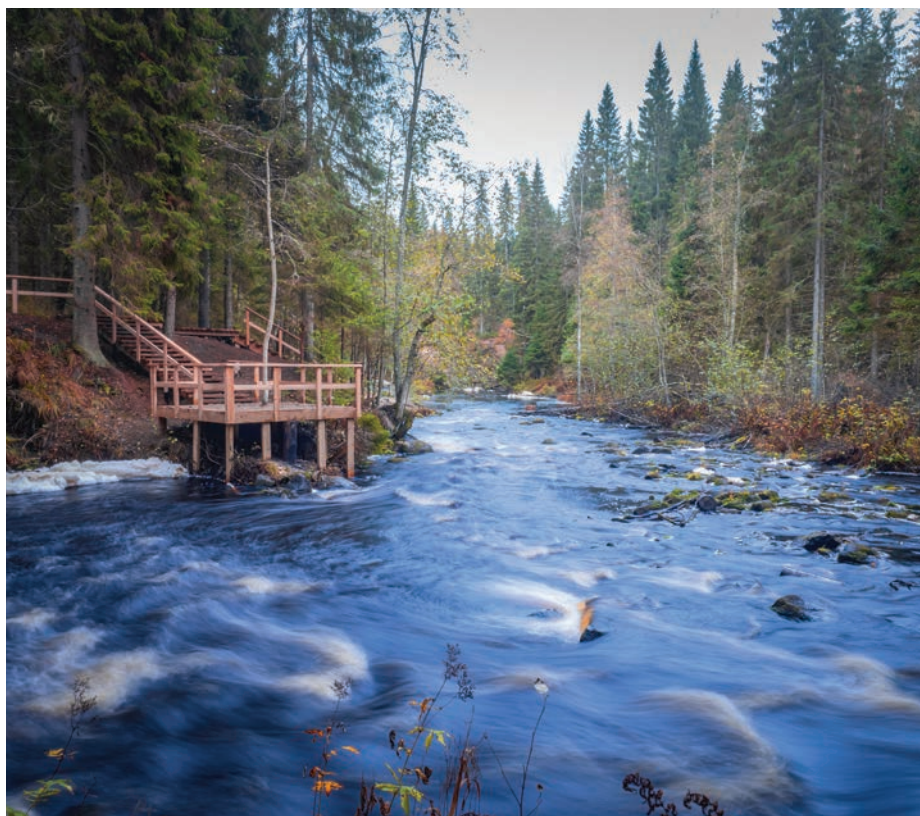
- (a) The basic profits tax rate comprises 2% (3% in 2017-2024) payable to the federal budget and 18% (17% in 2017-2024) payable to the regional budget. Until 1 January 2019, regional authorities could reduce their share of profits tax by 4.5 percentage points and the reliefs so granted could remain in force until 1 January 2023. From 1 January 2019, reduced rates may only be granted for certain categories of taxpayers in cases specifically provided for in the Tax Code, such as residents of special economic zones and participants in regional investment projects.
- (b) Capital gains of Russian companies are subject to profits tax at 20% of the gain. In certain circumstances, however, the 20% rate applies to gross income (see “Capital gains and losses” on [page 63](#)).
- (c) Profits of CFCs are determined by the controlling persons. More detailed information is given in the “Deoffshorization measures” section on [page 100](#).
- (d) There is no branch remittance tax in Russia.

(e) The following tax rates apply to dividends:

- 1) 0% for (i) dividends received by RLEs on investments meeting certain conditions (please see the “Dividend income” section on [page 63](#)). The rate if the conditions are not met is 13%; (ii) dividends received by an international holding company if, on the day the decision to pay the dividends is made, the international holding company has continuously owned for not less than 365 calendar days a

stake (interest) of not less than 15% in the charter/pooled capital/fund of the entity paying the dividends or depositary receipts conferring the right to receive dividends amounting to at least 15% of total dividends paid by the entity. More detailed information is given in the “Deoffshorization measures” section on [page 100](#)

- 2) 5% for dividends received by foreign persons in the form of dividends on shares (interests) in international holding companies that are public companies on the



day of the company's decision to pay the dividends (subject to certain conditions). More detailed information is given in the "Deoffshorization measures" section on [page 100](#)

- 3) 15% for dividends received by a foreign entity on shares in Russian companies and dividends from another form of participation in an entity's capital
- (f) Interest on certain types of state and municipal securities and mortgage-backed bonds, state securities of member states of the Union State, state securities of regional governments of the Russian Federation and municipal securities and bonds of Russian entities (excluding bonds of foreign entities treated as tax residents of the Russian Federation) that are traded on the organized securities market at the dates on which interest income on them is recognised, are denominated in roubles and were issued in the period from 1 January 2017 to 31 December 2021, as well as income derived from certificates of participation in a mortgage pool, is subject to tax at reduced rates.
- (g) A "punitive" withholding tax rate of 30% may be applied to interest and dividends paid on Russian securities (including ADRs and GDRs for Russian securities) held through foreign nominee accounts with Russian depositaries in the event of a failure to provide summary information on the beneficial owners

of those securities to the Russian depositaries.

- (h) Items of "active" income such as income from sales of goods or other property (except for Russian immovable property or shares and related derivatives of property-rich companies) and from the performance of work and the rendering of services in Russia are generally exempt from withholding tax in Russia.
- (i) The standard penalty is 20% (which may be increased to 40% in the case of a deliberate violation). Transfer pricing legislation establishes a 40% penalty (see the "Transfer pricing" section on [page 116](#)).

The above withholding tax rates apply to payments to FLEs that do not operate in Russia through a permanent establishment.

- (j) The following rates apply for particular categories of taxpayers:
  - 1) entities engaged in educational and/or medical activities - 0%
  - 2) residents of special economic zones - 2% payable to the federal budget
  - 3) residents of the Kaliningrad Province special economic zone - 0%, 10%
  - 4) agricultural goods producers and fishing organizations - 0%
  - 5) operators of a new offshore hydrocarbon deposit and holders of licences to use a

subsurface site within which a new offshore hydrocarbon deposit is situated or within which the prospecting for, evaluation and/or exploration of a new offshore hydrocarbon deposit is planned - 20%

- 6) participants in regional investment projects - 0% payable to the federal budget, 10% payable to the regional budget
- 7) participants in a free economic zone - 0%
- 8) residents of priority socio-economic development areas - 0% payable to the federal budget, 5% and 10% payable to the regional budget
- 9) entities that provide social services - 0%
- 10) participants in the Magadan Province special economic zone - 0%
- 11) tourism and recreation operators in the Far Eastern Federal District - 0%
- 12) regional operators in the area of municipal solid waste - 0% payable to the federal budget
- 13) museums, theatres and libraries founded by regions or municipalities - 0%
- 14) participants in special investment contracts - 0%
- 15) participants in the Skolkovo innovation centre project - 0%

## Penalties for late payment and tax filing violations

The Tax Code prescribes various fines for violations of the tax payment, tax filing, tax accounting and CFC rules.

Non-filing or late filing of returns incurs fines prescribed by the Tax Code and by the Administrative Offences Code.

Non-payment or underpayment of tax incurs interest penalties calculated as the product of the amount of arrears, 1/300 or 1/150 (depending on how many days payment is late) of the Bank of Russia key interest rate and the number of calendar days late.

The Tax Code sets the fine for failure to file or late filing of a tax return for a tax period at 5% of the amount of declarable tax not paid on time for each full or partial month of the delay. The fine may not be less than RUB 1,000 (approx. US\$ 14) or more than 30% of the amount of declarable tax not paid on time. Under the Administrative Offences Code, failure to submit a tax return on time incurs a warning or an administrative fine on executive officers of RUB 300-500 (approx. US\$ 4.1-7).

The fine for the late filing of returns for advance tax payments for a reporting period is set by the Tax Code at RUB 200 (approx. US\$ 2.7). The fines set by the Administrative Offences Code in this case are the same as for the late filing of a return for a tax period as a whole.

## Penalties for non-compliance

Non-compliance with tax registration requirements may lead to tax, administrative and (in a worst-case scenario) even criminal liability. Below is a list of the main administrative and tax law sanctions for non-compliance with tax registration requirements:

- ▶ non-compliance with tax registration requirements: a fine of RUB 10,000 (approx. US\$ 138) and/or a fine of 10% of all income received over the period in which activities were carried on without tax registration, but not less than RUB 40,000 (approx. US\$ 553)
- ▶ failure to file a tax declaration on time: a fine of 5% of the unpaid tax, but not more than 30% of that amount and not less than RUB 1,000 (approx. US\$ 14)
- ▶ non-payment of tax: a fine of 20% to 40% of the unpaid amount and late payment interest charged at 1/300

of the Central Bank key interest rate effective in the first 30 calendar days of the delay in payment and 1/150 of the key interest rate effective from the 31st calendar day of the delay onwards

Responsible officers may also face administrative penalties for the violation of (i) registration requirements - up to RUB 3,000 (approx. US\$ 41), and (ii) tax compliance obligations as outlined above - RUB 500 (approx. US\$ 7). Furthermore, if business activities carried on without state registration or not in compliance with state registration rules result in substantial detriment due to non-compliance with tax registration requirements, the responsible representatives may face criminal liability. For the sake of completeness, the transfer pricing fine of 40% of unpaid tax should also be mentioned here.





# Corporate Profits Tax

## Taxpayers

Taxpayers for profits tax purposes are (i) Russian companies (RLEs), (ii) foreign companies (FLEs) that carry on activities in Russia through permanent establishments and/or receive income from sources in Russia, and (iii) consolidated groups of taxpayers.

The definition of “permanent establishment” is similar though not identical to the definition of the same term in the Model Treaty published by the Organization for Economic Co-operation and Development (OECD). For more details, see the “PE risk for profits of an FLE attributable to its Russian business” section on [page 69](#).

Foreign entities classed as tax residents of Russia are also liable to pay profits tax.

## Tax year

The tax period is the calendar year (from 1 January to 31 December of the relevant year). The law does not allow for the tax period to be changed.

Where a company was established between 1 and 31 December of a calendar year, its first tax period will be the period from the date of its establishment until 31 December of the following calendar year.

The above rules do not apply to the determination of the first tax period for profits tax for foreign entities that

have voluntarily declared themselves tax residents of the Russian Federation if, as at the date on which they declare themselves as such, their activities have not given rise to a permanent establishment in the Russian Federation.

## Russian legal entities

Russian entities are defined as legal entities formed in accordance with the laws of the Russian Federation. Foreign entities classed as Russian tax residents are also treated as Russian entities for profits tax purposes.

Russian legal entities and foreign legal entities classed as Russian tax residents are taxed on their worldwide income.

Foreign legal entities are deemed to be Russian tax residents if their place of management is the Russian Federation, except as otherwise provided by a double taxation treaty.

## Rates

The standard rate of profits tax is 20%. This rate is split into two components paid to different budgets:

Federal	2% (3% in the period 2017-2024)
Regional	18% (17% in the period 2017-2024)

Special rates prescribed by law are set out in the “Tax rates” section above.

## Tax base

The tax base for profits tax purposes is taxable profit expressed in monetary terms. For Russian entities, profit means income received minus deductible expenses, which are subject to a range of rules. For more details see the “Tax-deductible expenses” section below.

The law also lays down numerous special provisions relating to the treatment of particular income and expense items, which give rise to differences between accounting and tax records.

## Taxable income

Gross income includes income from sales of goods (work and services), whether internally produced or bought-in, revenue from the sale of property rights and non-sales income such as income in the form of interest received under loan agreements, income from leased properties, dividends and other income.

As a rule, taxpayers use the accrual-basis method to determine income. The cash-basis method may only be used if average revenue from sales over four consecutive quarters amounts to less than RUB 1,000,000 ex VAT (approx. US\$ 13,827) per quarter. Certain types of businesses may not apply the cash-basis method at all (banks, etc.).

## Exempt income

The Tax Code provides a list of income that is not taxable for profits tax purposes.

Exemptions are commonly claimed for funds received by an RLE without consideration (i) from its parent (an entity or individual), provided that the parent owns more than 50% of the RLE's capital, or (ii) in the form of a contribution to assets in accordance with civil law. Applying this relief requires compliance with a number of special rules, including consideration of provisions of civil law. It is important for such operations to be analysed in advance for all potential tax implications.

## Tax-deductible expenses

The Tax Code allows the deduction of expenses incurred by a taxpayer subject to the following conditions: (i) the expenses are documented, (ii) the expenses are reasonable and economically justified, (iii) the expenses were incurred in carrying on activities aimed at the receipt of income. The Tax Code also lays down a list of expenses that are classified as non-deductible.

The tax authorities are fairly thorough about analysing a taxpayer's expenses for compliance with the above conditions, especially the reasonableness and documentation criteria, which are most frequently at the centre of disputes between tax authorities and taxpayers.

The Tax Code does not provide a specific list of documents needed to support expenses incurred. For example, for some expenses it may not suffice to provide a

set of financial documents, and additional supporting documents may be required.

Thus, expenses may potentially be challenged by the tax authorities even if the conditions listed above are technically met. For more details see the "Unjustified tax benefit" section below.

## Unjustified tax benefit

The basic principles of the unjustified tax benefit concept were first formulated by the Plenum of the Supreme Arbitration Court of the Russian Federation and are now enshrined in the Russian tax system.

A tax benefit is a reduction in tax liability resulting from a reduction of the tax base, or the receipt of a tax credit or tax exemption, or the application of a lower tax rate, or the acquisition of a right to a tax refund or credit.

Russian tax authorities and courts may regard a tax benefit obtained by a taxpayer as unjustified and deny the benefit on that basis (e.g., disallow expenses claimed for tax purposes).

A tax benefit will be treated as unjustified if:

- 1) the taxpayer's underlying transactions are recorded not in accordance with their real economic substance (i.e., the taxpayer has misrepresented facts regarding such transactions for tax or financial accounting purposes).
- 2) The taxpayer has reported transactions that lack economic substance or other reasonable business purpose. Obtaining a tax benefit may not be accepted as the main purpose of the transaction.
- 3) The tax benefit was obtained from sources unrelated to real entrepreneurial or other economic activity (e.g., from claiming expenses for bogus services).

None of the following constitute automatic grounds for denying a tax benefit as unjustified:

- ▶ Accounting source documents are signed by an unknown or unauthorized person.
- ▶ The taxpayer's counterparty is in breach of tax legislation.
- ▶ The taxpayer could have achieved the same economic effect by entering into alternative transactions not prohibited by law.

## Interest

The deductibility of interest is subject to arm's-length and thin capitalization tests.

From 1 January 2015, taxpayers are allowed to deduct debt interest in full based on the actual rate provided that the debt liability did not arise from a controlled transaction.

If a transaction is classified as a controlled transaction under transfer pricing rules, the lender is entitled to recognise interest income based on the actual rate as long as the rate is above the lower limit of the range of permissible values. The borrower has the right to expense interest calculated at the actual rate provided that the rate is below the upper limit of the range of permissible values.

If the debt arises from a controlled transaction and the agreed interest

rate is outside the range of permissible values, then the resulting income (expense) must be recognised at the rate determined by applying transfer pricing rules.

The ranges of permissible values are as follows:

- ▶ for a debt obligation arranged in roubles:
  - from 75 to 125 per cent (from 0 to 180 per cent for domestic transactions and from 75 to 180 per cent for cross-border transactions in the period from 01.01.2020 to 31.12.2021 – Article 269(1.2) (1) of the Tax Code) of the key rate of the Central Bank of the Russian Federation (4.25% as of 1 January 2021)



- ▶ for debt obligations arranged in foreign currencies:

<b>Euros</b>	from EURIBOR plus 4% to EURIBOR plus 7% (from 0% to EURIBOR plus 7% for the period from 01.01.2020 to 31.12.2021)
<b>Chinese yuan</b>	from SHIBOR plus 4% to SHIBOR plus 7% (from 0% to SHIBOR plus 7% for the period from 01.01.2020 to 31.12.2021)
<b>Pounds sterling</b>	from GBP LIBOR plus 4% to GBP LIBOR plus 7% (from 0% to GBP LIBOR plus 7% for the period from 01.01.2020 to 31.12.2021)
<b>Swiss francs or Japanese yen</b>	from CHF/JPY LIBOR plus 2% to CHF/JPY LIBOR plus 5% (from 0% to CHF/JPY LIBOR plus 5% for the period from 01.01.2020 to 31.12.2021)
<b>US dollar and other currencies</b>	US\$ LIBOR plus 4% to US\$ LIBOR plus 7% (from 0% to US\$ LIBOR plus 7% for the period from 01.01.2020 to 31.12.2021)

According to the provisions of Federal Law No. 374-FZ of 23.11.2020, which introduced extended ranges of permissible interest rate values for the period from 1 January 2020 to 31 December 2021, the extended ranges apply to legal relations arising starting from 1 January 2020.

From 1 January 2019, thin capitalization rules apply to debt obligations of Russian companies arising from their relationships with:

- a) a foreign person (individual or company) if that person owns, directly or indirectly, at least 25% in the Russian

company, or owns an interest in the Russian company via a direct ownership chain where each preceding person's direct interest in each successive entity is more than 50%; b) a person (Russian or foreign) that is related to the foreign companies referred to in the previous item; c) persons referred to in the previous two items if they act as a surety or guarantor, or otherwise undertake to guarantee the fulfillment of the Russian company's debt obligation.

A Russian company should not be subject to thin capitalization rules if: a) the debt is owed to a bank unrelated to the Russian company, or to a person acting as a surety, guarantor, or otherwise undertaking to fulfill the taxpayer's debt obligation; b) no payments have been made towards the debt since the origination date, and the debt has not been terminated.

Where a Russian company's debt is not classified as a controlled transaction under the Russian Tax Code, it may still be ruled by a court to be controlled if it is established that the beneficial owner of the payments made towards the debt is an entity or an affiliate of an entity that controls the debtor.

The debt-to-equity ratio above which restrictions apply is generally 3:1, but 12.5:1 for banks and leasing businesses. Excess interest, which is the amount of interest on loans in excess of the 3:1 or 12.5:1 ratio, is non-deductible and is treated as a dividend paid to the organization in relation to which controlled indebtedness exists and is subject to 15% withholding tax unless the applicable tax treaty reduces tax rate.





## Depreciation

Depreciable or amortizable assets are fixed and intangible assets with a useful life of more than 12 months and a historical cost of more than RUB 100,000 (approx. US\$ 1,383). Taxpayers are allowed to pool assets into 10 groups depending on the type of asset and their useful life, and to apply depreciation rates to the assets within each pool. Taxpayers may choose between straight-line and reducing-balance depreciation methods and must apply the same method to all depreciable assets. The exact depreciation groups are determined by a governmental decree that sets out the allocation of various types of assets. Most production equipment is subject to depreciation over a period from 7 to 10 years, while buildings are depreciated over more than 30 years.

The reducing-balance method cannot be applied to certain long-lived assets or assets of a licence-holder or operator used exclusively in carrying out hydrocarbon extraction activities at a new offshore hydrocarbon deposit.

Fixed assets classified as highly energy-efficient facilities and assets that were entered in accounting records before 1 January 2014 and operate in an aggressive environment and/or on a multi-shift basis can be tax-depreciated at up to twice the normal tax depreciation rate.

Fixed assets used only in carrying out scientific and technical activities, assets which are the subject of a leasing agreement and assets of a licence-holder or operator which are used exclusively in carrying out

hydrocarbon extraction activities at a new offshore hydrocarbon deposit may be depreciated at up to three times the usual rate. In the last case, a change in the use of an asset can trigger a claw-back of the accelerated depreciation deducted if the tax book value exceeds 20% of the historical cost when it begins to be used in activities not connected with hydrocarbon extraction at a new offshore hydrocarbon deposit.

An asset cannot be subject to accelerated depreciation on more than one of the above bases at a time.

Taxpayers which incur capital expenditures have the right to expense an “accelerated capital allowance” calculated on the historical cost of fixed assets. The accelerated capital allowance is generally 10% of the

historical cost of the fixed asset, while for assets belonging to the third to seventh depreciation groups (assets with a useful life of from 3 to 20 years) it is 30%. The deduction applies to the acquisition of fixed assets and to the extension, retrofitting, reconstruction, modernization, retooling, and partial dismantling of fixed assets. The accelerated capital allowance must be reversed and included in the profits tax base if the fixed assets are sold to a related party less than five years after they were brought into use.

Companies that carry on activity in the area of information technology are allowed to treat expenses for the acquisition of electronic and computer equipment as material expenses and deduct them in full when the equipment is placed into use rather than through depreciation (subject to certain conditions).

Intangible assets are subject to amortization over the useful lives set by the taxpayer based on the type and characteristics of a given asset; otherwise, the amortization term is fixed at 10 years.

To apply the benefits mentioned in this section, taxpayers must meet certain conditions and have documents supporting the use of the benefits.

## Investment tax credit

In the period from 2018 to 2027 inclusively, taxpayers are eligible for an investment tax credit that is deducted from their regional income tax liability. The tax credit may be claimed only

to the extent allowed by the relevant regional law.

The amount of the credit applicable in a given period will generally be no more than 90% (or less, if so provided by the relevant regional law) of the amount of expenditures incurred for the acquisition, creation, reconstruction, modernization, etc. of fixed assets (except for expenses associated with the decommissioning of fixed assets).

The investment tax credit is applicable to fixed assets with a useful life of more than 3 years (except for buildings, installations and transmission facilities with a useful life of more than 20 years).

A taxpayer that has exercised the right to apply the investment tax credit in relation to a fixed asset does not have the right to charge depreciation on and/or apply an accelerated depreciation allowance in relation to that asset.

In addition, the Tax Code places a restriction on the disposal of fixed assets on which an investment tax credit is claimed. In the event that a fixed asset in relation to which a taxpayer has exercised the right to apply the investment tax credit is sold or otherwise disposed of (other than decommissioned) before the expiry of its useful life, the amount of tax previously deducted in respect of that fixed asset must be restored and paid and corresponding penalties must be paid for the entire period over which the deduction was applied.

From 1 January 2021:

- ▶ Where an investment tax credit was applied to a part of the value of an asset, income may be reduced when the asset is sold. A deduction may be made for the amount of the asset's net book value corresponding to the part of the historical cost to which the credit was not applied.
- ▶ It is now permitted to carry forward not only the balance of an investment credit (i.e., expenses that reduce payment to the regional budget), but also expenses that reduce tax payable to the federal budget.
- ▶ Where an entity ceases to apply a credit to an asset, it may depreciate subsequent expenditure on extending, retrofitting and upgrading the asset.
- ▶ Regions may introduce an investment credit for R&D costs.

The investment tax credit is also limited to a maximum amount equal to the product of the tax base determined under the normal rules (without applying the investment tax credit provisions) and the difference between the standard tax rate for tax payable to the regional government (which is 18% (17% in 2017-2024) but may be reduced by a regional law) and a rate of 5% (or another rate decided on by the region concerned).

As a general rule, an investment tax credit claim in excess of the maximum amount may be used in subsequent periods, unless otherwise provided in a regional law.

In addition, taxpayers using an investment tax credit are generally

entitled to deduct the remaining 10% of investment from their federal tax liability.

The Tax Code specifies a number of categories of taxpayers that do not have the right to apply the investment tax credit (for instance, companies that are participants in regional investment projects, residents of special economic zones, participants in a free economic zone, residents of a priority socio-economic development area, and foreign companies classed as tax residents of Russia).

Starting from 2020, the Tax Code has been amended to include additional types of expenditure eligible for investment tax credit where provided for in a regional law (expenditure on building infrastructure facilities and donations to support state and municipal cultural institutions).

As of 1 January 2021 investment tax credit was available in a number regions, including Moscow, the Moscow Region, Saint Petersburg, the Leningrad region, the Kaluga Region, the Lipetsk Region, the Ryazan Region, the Rostov Region, the Krasnodar Region, the Kamchatka Region, and many others.

## Expenses subject to special rules

The Tax Code establishes a list of expenses that are deductible within certain limits, including, for example, certain types of advertising expenses, representational expenses, voluntary medical insurance expenses, and others.

Advertising expenses for mass media advertising (TV, radio and telecommunications networks), exterior advertising (billboards, illuminated signs), participation in exhibitions and fairs, the maintenance of showrooms and the preparation of advertising brochures and catalogues are fully tax-deductible. Expenses for prizes awarded during advertising campaigns and expenses for other types of advertising are deductible up to a cap equal to 1% of the taxpayer's sales revenue.

Representational expenses are tax-deductible up to an amount equal to 4% of payroll expenses for the relevant accounting/tax period.

Expenses in the form of premiums paid under voluntary personal insurance agreements that require the insurers to pay medical expenses for insured workers are deductible up to an amount equal to 6% of payroll expenses.

Eligible R&D expenses are generally deductible irrespective of whether or not the research yielded a positive result.

Certain listed R&D expenses are deductible at cost plus a 50% uplift.

As stated in the "Tax-deductible expenses" section above, the Tax Code sets out a list of expenses that are non-deductible by default. The most commonly encountered of these are charitable expenses, material assistance to employees, tax fines, and payments to employees that are not provided for in an employment agreement and/or required by Russian law.

## Loss carry-forward

Taxpayers have the right to carry forward prior year losses in calculating profits tax.

In reporting periods from 1 January 2017 to 31 December 2021, the tax base for the current reporting/tax period may be reduced by losses that arose from 1 January 2007 onwards without any time limitations. However, the tax base may not be reduced by more than 50% in any one reporting/tax period.

The Tax Code also imposes a requirement to retain supporting documents for losses incurred. Taxpayers are obliged to retain such documents for the entire period over which the tax base is reduced.

Special rules apply to losses on securities transactions and losses of operators and licence-holders arising from activities related to new offshore hydrocarbon deposits. There are also various special rules governing the treatment of losses in particular circumstances (such as reorganizations).

Tax losses may not be carried back or surrendered to related companies. A change in ownership of a Russian company does not restrict the future relief available for losses arising prior to the change in ownership.

Where a taxpayer ceases activities owing to re-organization, the successor entity has the right to reduce the tax base, subject to the rules and conditions laid down in the Tax Code, by the amount of losses made by the re-organized entities



prior to the re-organization. This provision does not apply if it is discovered as a result of a tax inspection that the principal purpose of the re-organization was to enable the tax base of the successor entity to be reduced by the amount of losses made by the re-organized entities prior to the re-organization.

## Dividend income

Dividends received by Russian tax resident entities are subject to withholding tax at the rate of 13%. Dividends received by a foreign entity that is not a Russian tax resident from a Russian tax resident are taxable at the rate of 15% (the tax rate may be reduced under a double tax treaty). Tax withheld on dividends received by a Russian tax resident from another Russian tax resident may be offset against the tax that the recipient would normally withhold on dividends paid to Russian tax residents.

Dividends received by Russian legal entities on strategic shareholdings are exempt from tax (a 0% tax rate applies). Dividends are considered to have been received from a strategic shareholding if, as at the date of the decision to pay the dividends, the recipient has held at least a 50% interest in the payer for more than 365 consecutive days. This provision does not generally apply to dividends received by foreign companies classed as tax residents of Russia (a transitional period from 1 January 2021 to 31 December 2023 applies to a foreign company that voluntarily declares itself a Russian tax resident (given several conditions are met)). If dividends are received from shareholdings in a foreign legal entity, additional criteria must be met (the foreign entity must not be located in a jurisdiction on the Russian Finance Ministry's list of offshore jurisdictions).

Starting from 2021, the provision allowing application of 0% rate for

dividends by means of the look-through approach (where beneficial owners of dividends are Russian legal entities) is removed. However, the transitional period until 2023 inclusively remains in place where the following conditions are met:

- ▶ the indirect interest of the Russian tax resident entity in the Russian entity paying the dividends is not less than 50%;
- ▶ the amount of dividends payable to the Russian tax resident entity is not less than 50% of the total amount of dividends distributed; 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.

Dividends received by a multinational (international holding) company which is resident in a special administrative district ("Multinational Company") attract a rate of 0% if, as at the date of the decision to pay the dividends, the recipient has owned at least 15% of the payer's capital for more than 365 consecutive days. Dividends on shareholdings in a foreign company are also subject to the requirement that the foreign company must not be on the Russian Finance Ministry's list of offshore jurisdictions.

Subject to certain conditions, a reduced 5% withholding tax rate will be available until 1 January 2029 for dividends paid by a Multinational Company in favour of its foreign shareholders.

## Capital gains and losses

Capital gains are generally included in taxable income and taxed at the regular rates, except for capital gains realized by



Russian tax residents on the disposal of certain shares or participating interests in Russian tax residents that have been held for more than five consecutive years. (please see details below).

The redomiciliation and/or a change in the tax residence of either the taxpayer or the mentioned entities are not deemed to interrupt the period of possession of shares or participation interests in the entities concerned. In the event of the sale or other disposal (including redemption) of shares (participation interests) in Russian and/or foreign entities that were received by the taxpayer as a legal successor following reorganization, the 5-year period for which the taxpayer owned those shares/ownership interests will be calculated from the date on which they were acquired by the reorganized entity/entities.

The disposal of shares is subject to a 0% rate in the following cases provided the following requirements are simultaneously met:

- ▶ shares or participation interests in Russian and (or) foreign organizations are held for more than five consecutive years;
- ▶ If shares (participation interests) are shares (participation interests) in Russian and (or) foreign organizations in which the value of immovable property located in Russia does not exceed 50% of total assets. If shares in Russian organizations are circulated on a regulated securities market and such shares are shares in high-tech (innovative) companies 0% rate applies notwithstanding the assets' structure (the last provision has been suspended until 1 January 2023).

- ▶ If the state of residence of foreign entities in which shares or participation interests are sold or other disposed 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).

Capital gains realized on shares by a Multinational Company attract a rate of 0% if all the following conditions are simultaneously met with respect to the shares/participating interests:

- ▶ The shares/participating interests in the Russian or foreign organization have been continuously owned for at least 365 calendar days as at the date of disposal and constitute a holding (stake) of not less than 15%
- ▶ The shares/participating interests are in a tax resident entity whose total assets do not derive more than 50% of their value from immovable property located in the Russian Federation
- ▶ The shares/participating interests in a Russian or foreign organization were not contributed (transferred) to the charter capital of the Multinational Company within 365 calendar days before or after the date of the registration of the company as a Multinational Company or acquired by the company as a result of reorganization within 365 calendar days before or after the date of the registration of the company as a Multinational Company

Capital gains derived by a foreign company without a tax presence in the

Russian Federation from the sale of shares in a Russian tax resident company whose assets derive more than 50% of their value directly or indirectly from immovable property located in the Russian Federation are generally subject to tax in the Russian Federation at the regular rate of 20%.

Capital gains on disposals of securities are subject to income tax at the standard tax rate. Specific rules on the computation of capital gains on quoted and unquoted securities apply to transactions classed as controlled transactions under the transfer pricing rules. Otherwise, the actual transaction price applies.

Starting from 2021 capital gains on the sale or other disposal of shares (participation interests) could be reduced not only by the value of shares (participation interests), but also by the amount of any monetary capital contribution (in proportion to the amount of the participation interest or shareholding being alienated) 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).

There are distinct rules regarding the recognition of tax losses from sales of quoted and unquoted securities. Losses on disposals of quoted securities may be deducted from the general profits tax base. The tax bases for unquoted securities and unquoted derivatives are combined into a single tax base.

Losses on sales of fixed assets and other property are generally deductible, subject to certain restrictions.

## Tax reporting and payment<sup>15</sup>

Taxpayers may opt to file profits tax returns on a quarterly or monthly basis. As a rule, the monthly option is chosen by large taxpayers whose businesses are subject to seasonal factors. With certain exceptions, taxpayers are required to make monthly advance tax payments equal to one third of total advance payments for the preceding quarter. Alternatively, taxpayers may choose to pay tax by the 28th of each month based on profits actually earned in the preceding month if they opt for monthly filing. The final return for the year and tax liability are based on actual results. Final returns are due on 28 March following the end of the tax year. Significant penalties are imposed for failure to file returns by this deadline, which cannot be extended. Russian tax law does not allow for tax filing and payment deadlines to be postponed.

When a company is founded, the following rules apply regarding the first tax period:

- ▶ If the company is founded in the period from 1 January to 30 November of a calendar year, the first tax period for the company will be the period from the date of its foundation until 31 December of that calendar year

- ▶ If the company is founded in the period from 1 December to 31 December of a calendar year, the first tax period for the company will be the period from the date of its foundation until 31 December of the calendar year following the year of the company's foundation

For information on the calculation and payment of tax by a foreign company, see the section entitled "Foreign companies operating via a branch or representative office".

Tax agents that pay passive types of income (such as dividends, interest and royalties) to foreign entities which are subject to withholding tax must submit a tax statement to the tax authorities on a quarterly basis detailing amounts of income paid to foreign entities and amounts of taxes withheld. The amount of tax due must be remitted to the budget not later than the working day after the day on which the income is paid. The tax statement for a reporting period (quarter) must be submitted to the tax authorities not later than the 28th of the month following the reporting period that has ended. The final tax statement for the tax period (calendar year) must be submitted not later than 28 March of the year following that tax period.

## How can EY help?

The scope of tax compliance services for Russian legal entities (preparation and submission of tax filings) includes:

### *Preparation of quarterly and annual tax filings, including:*

- ▶ Quarterly profits tax returns and annual filing packages for Russian legal entities
- ▶ Tax statements concerning income received by Russian legal entities and tax withheld
- ▶ Quarterly VAT returns
- ▶ Prepayment calculations and annual tax returns for corporate property tax and other regional and local taxes
- ▶ Preparation of tax ledgers and calculation of tax payments
- ▶ Tax reconciliations with the tax authorities, receipt of reconciliation certificates, statements of settlements with the budget and certificates of the fulfilment of tax obligations

### *Preparation and submission to the tax authorities of explanations relating to tax returns*

### *Review of CIT returns on a quarterly and annual basis*

Whether a company prepares tax filings in-house or uses third-party services, it helps to have a tax expert take a fresh look in order to identify tax risks or potential tax assets. We offer tax return review services which may be performed either before or after a company files its tax returns. The review will enable the client to amend its tax return and file an updated version as well as providing tax recommendations based on current law, practice and industry-specific factors.

<sup>15</sup> The comments in this section relate to Russian legal entities registered with the Russian tax authorities. Information on tax reporting and payment for foreign entities is presented in the section entitled "Foreign companies operating via a branch or representative office".



Russian companies with a presence in multiple locations must register a subdivision and file a special profits tax return in each tax district in which they have fixed workplaces. They must also apportion taxable income among the head office and the subdivisions in different locations. The apportionment should be based on (i) the net value of fixed assets according to tax records and (ii) at the taxpayer's option, either the number of employees or total payroll.

If a Russian company has multiple subdivisions in one district, it may designate one of them as responsible for filing the profits tax return for all of them.

If a taxpayer owns foreign companies that are classed as controlled foreign companies, it must complete a special section of the profits tax return (for more details see the “Deoffshorization measures” section on [page 100](#)).

*Where organizations had no taxable items for taxes to which they are subject or had no cash flow during a reporting/ tax period, they have the right to file a unified (simplified) tax return. The simplified tax return must be filed not later than the 20th of the month following the quarter, half-year period, nine-month period and calendar year that has ended.*

## Tax accounting

Where accounting ledgers contain insufficient information to determine the profits tax base, taxpayers are required to maintain separate tax ledgers. The tax base is calculated based on tax

accounting data concerning income and expenses. The tax accounting system must be organized by the taxpayer independently, ensuring the consistent application of tax accounting rules. Tax accounting procedures must be formally established in a taxpayer's tax accounting policy.

Since tax accounting rules differ both from Russian accounting standards and international standards, tax records may be fairly substantial, especially for large companies (for example, in areas such as depreciation, interest on obligations and supporting documents for expenses). For more details, please refer to the “Tax-deductible expenses” section.

## Foreign companies operating through a branch or representative office (FLEs)

The tax treatment of foreign entities operating in Russia depends on whether their activities give rise to a PE and their tax status.

### **Tax status of a representative office: how not to miss changes**

Profits tax must be paid when a permanent establishment arises in Russia.

For profits tax purposes, a permanent establishment of a foreign entity in the Russian Federation is understood to mean a branch, a representative office, a division, a bureau, an office, an agency or another other economically

autonomous subdivision or other place of activity of that entity through which the entity carries on business in Russia. A permanent establishment of a foreign entity is considered to have been formed from the moment when business begins to be regularly carried on through a division of that entity.

A particular case in which a foreign entity is deemed to have a permanent establishment in Russia is when it carries on activities in Russia on a construction site. A definition of the term “construction site” is given for profits tax purposes with rules established for determining the period of existence of a construction site, including cases of the temporary suspension and subsequent resumption of work.

Where a foreign entity is a resident of state with which the Russian Federation has a current tax treaty, the provisions of the relevant treaty have priority in determining whether a permanent establishment exists.

In the case of a construction site a treaty may establish a grace period for profits tax purposes. Under tax treaties, activities on a construction site or a construction and installation project of a foreign entity give rise to a permanent establishment if the period of operation specified in the treaty is exceeded.

The fact that a foreign entity carries on activities of a preparatory and auxiliary nature in the territory of the Russian Federation, where the attributes of a permanent establishment are not present, is not regarded as giving rise to a permanent establishment.

Where the activities of a company do not give rise to a permanent establishment, the company still has an obligation to file returns with the tax authorities.

It often happens that representative offices/branches incorrectly determine their tax status, which can lead to serious tax consequences and difficulties in doing business.

A change in the tax status of a foreign company operating in Russia through a representative office/branch may be triggered by changes in the company's business, organizational structure and functions, which may affect the initial determination of the foreign company's tax obligations when it enters the Russian market and opens a representative office/branch.

It is essential to bear in mind that the tax status of each subdivision is determined individually. A company may simultaneously have a representative office and a branch, each of which may have a different tax status.

If a company operates in Russia through a representative office/branch, in order to determine its tax status it must analyse such key points as the type of activity carried on in Russia through the representative office/branch relative to the core activity of the parent company, the source of financing of the representative office/branch, whether activities have been carried out for the benefit of third parties, including companies of the same group, and other factors. Otherwise, the company may face substantial tax consequences and fines.

## How can EY help?

The scope of tax compliance services for representative offices and branches of foreign companies (preparation and submission of tax filings) includes:

### *Preparation of quarterly and annual tax filings, including:*

- ▶ Quarterly profits tax returns and annual filing packages for foreign entities
- ▶ Tax statements for income received by foreign entities and tax withheld
- ▶ Quarterly VAT returns
- ▶ Prepayment calculations and annual tax returns for corporate property tax and other regional and local taxes
- ▶ Preparation of tax ledgers and calculation of tax payments
- ▶ Tax reconciliations with the tax authorities, receipt of reconciliation certificates, statements of settlements with the budget and certificates of the fulfilment of tax obligations

### *Preparation and provision to the tax authorities of explanations relating to tax returns*

### *Tax support during the liquidation or reorganization of representative offices or branches of foreign entities, which may also form part of comprehensive legal and tax support services*

Whether a company prepares tax filings in-house or uses third-party services, it helps to have a tax expert take a fresh look in order to identify tax risks or potential tax assets. We offer tax return review services which may be performed either before or after a company files its tax returns. The review will enable the client to amend its tax return and file an updated version as well as providing tax recommendations based on current law, practice and industry-specific factors.

## Tax compliance requirements

### **Determination of the tax base and object of taxation. Income and expenses**

Profits tax for foreign companies operating in Russia via a PE is administered in largely the same way as profits tax for Russian companies. However, there are a number of differences which are described below.

For foreign entities operating in Russia via a permanent establishment, profit is defined as income received through

that permanent establishment minus expenses incurred by the permanent establishment. Income of the permanent establishment that is taxable in the Russian Federation is determined based on functions performed, assets used and economic/commercial risks assumed in the Russian Federation. For other foreign entities it is defined as income received from sources in the Russian Federation.

Where a foreign entity has more than one division in Russia whose activities give rise to a permanent establishment, the tax base and the amount of tax



must be calculated separately for each division. Losses arising from the activities of one PE cannot generally reduce taxable profit from the activities of others. There are two exceptions. One is where an FLE carries out activities through multiple PEs within the framework of a unified production process or in other similar cases, for example when constructing a single object, such as a bridge, pipeline or road, spanning multiple tax districts. Such an FLE may be able to obtain approval to calculate profits tax for a group of such PEs as a whole provided that all the divisions included in the group apply the same accounting policies for taxation purposes. The other exception applies only to FLEs which are operators of new offshore hydrocarbon deposits and allows profits tax to be calculated on the aggregate result of activities at multiple locations relating to the same deposit subject to certain conditions.

For profits tax purposes, a foreign entity operating via a PE in Russia may reduce income received from sales of goods (work, services) and property rights and income from the possession, use and/or disposal of property by the amount of expenses incurred by that PE in connection with the receipt of that income.

The rules governing the recognition of expenses for profits tax purposes are generally the same as for Russian entities.

The special rules governing the deduction of expenses apply in the case of foreign entities, but there are some differences, e.g., expenses may be allocated from the parent office subject to certain conditions, the thin capitalization rules do not apply, and various other differences.

*Where a foreign entity carries on in Russia activities of a preparatory and/or auxiliary nature for the benefit*

*of third parties which give rise to a permanent establishment and does not receive remuneration in respect of those activities, the tax base is determined as equal to 20 per cent of the amount of expenses incurred by the permanent establishment in connection with those activities.*

### **Tax reporting and payment requirements**

Foreign entities file a profits tax return using a special form which differs from the form used by Russian entities. In addition to the profits tax return, foreign entities must file an annual statement of activities with the tax authority. It is important to note that different regions may establish their own requirements relating to the composition of the annual reports. In Moscow, for example, representative offices/branches must also file an explanatory note to the statement of activities.



Another distinction with regard to the filing of returns by foreign companies is the fact that Moscow, for example, has a dedicated inspectorate to which returns are filed by all foreign companies registered in Moscow, regardless of their registered address.

For foreign companies operating in Russia via a branch/representative office, the law prescribes only quarterly payments of profits tax and only quarterly returns (on a cumulative basis). There is no monthly filing option for such companies.

Please see the compliance calendar in the Appendix 6.

### **Interaction with the tax authorities**

Most tax filing and other communication/correspondence with the Russian tax authorities takes place electronically (via authorized operators). It is common for the tax authorities to request information and documents in relation to positions taken in tax returns, e.g.:

- ▶ explanations on losses incurred
- ▶ differences between figures in profits tax and VAT declarations
- ▶ documents and calculations supporting head office allocations
- ▶ clarifications and documents substantiating the use of tax benefits

Failure to accept or respond to electronically delivered requests from tax authorities within the set time limit may result in the suspension of operations on bank accounts.

### **Penalties for non-compliance**

For more details regarding penalties for non-compliance please refer to the “Penalties for late payment and tax filing violations” section ([See page 56](#)).

### **PE risk for profits of an FLE attributable to its Russian business**

Russian PE risk is essentially the risk that a foreign legal entity may be considered as generating profit that is taxable in Russia as a result of carrying on business activities on a regular basis through a fixed place of business in Russia or through a dependent agent. Where activity of a foreign legal entity triggers a PE in Russia, profits attributable to that PE (rather than the entire worldwide income of the foreign legal entity) will be subject to Russian tax.

The definition of a PE may be found in Russian domestic tax legislation and respective double tax treaties. Russia has ratified the MLI and it is expected that Russian PE rules will be applied with MLI modifications from 2021.

Both the model DTT and the Tax Code provide for two tests, either of which may trigger a PE of a foreign entity in Russia:

- ▶ The fixed place of business test (i.e., branch, representative office, other place of business, etc.); and
- ▶ The dependent agent test (i.e., a person who, on the basis of contractual relations with the foreign company, represents its interests in Russia, etc.).

In order to mitigate the risk, it is important that none of the functions relating to the activities of the FLE in Russia are carried out from the premises of a branch in Russia. Alternatively, functions performed from Russia should fall within the scope of auxiliary and preparatory activities. It may be difficult to distinguish between activities that are, and are not, preparatory or auxiliary in nature. Based on current case law, it may be concluded that the decisive criterion here is whether an activity that is carried on forms an essential and significant part of the activities of the enterprise as a whole. In any case, if the general purpose of a given activity is identical to the general purpose of the enterprise as a whole, the activity in question cannot be considered preparatory or auxiliary. All business decisions of the FLE should be taken outside Russia and any activities undertaken by the branch in Russia should be limited to preparatory and auxiliary activities only. This may also be supported by documents such as internal regulations, policies and procedures.

A Russian PE triggered by the dependent agent test should be analysed to determine the existence of formal or informal authorities granted by the FLE to Russia-based individuals or Russian legal entities. Such authorities are usually granted under a power of attorney or an agreement. Activities of fully owned subsidiaries may in certain circumstances be viewed as dependent agent activities, so it is important to examine these.

# 4 Real Estate Transaction Costs and Taxes



There are generally two ways of acquiring a real estate asset: direct purchase of the asset (asset deal) or purchase of shares in a company that owns the asset (directly or indirectly) (share deal). Historically, share deals prevailed over asset deals for tax planning reasons. Nowadays, however, asset deals are also being considered in view of the changing tax environment in Russia.

## Sale of real estate via an asset deal

If the seller is a Russian taxpayer (Russian enterprises, foreign legal entities that are Russian tax residents and foreign legal entities operating through a permanent establishment), the seller will be obliged to pay 20% Russian profits tax.

The sale of commercial real estate is subject to 20% Russian VAT. The sale of residential premises is not subject to VAT. The buyer pays VAT to the seller and the seller pays it to the state. At the same time, the buyer has the right to reclaim VAT either through a refund or through a credit against future tax obligations (provided that the general criteria for the deduction of VAT are met).

If the seller is a foreign company without a tax presence in the Russian Federation and the buyer is a Russian taxpayer, the buyer will be obliged to withhold and pay profits tax and VAT (if applicable) on the payment to the seller. Income of the foreign company may be reduced by the acquisition cost of the asset and incidental costs of disposal, provided that documents supporting those costs are possessed by the tax agent at the time when income is paid to the foreign company.

In the case of an asset deal, historical risks of the seller (including tax risks) should not, in general, be transferred to the buyer.

## Sale of real estate via a share deal

Capital gains on the sale of shares or participating interests in a company whose assets derive more than 50% of their value directly or indirectly from immovable property located in the Russian Federation (“property-rich companies”) are generally included in taxable income and taxed at standard rates. The sale of shares or participating interests is not subject to Russian VAT.

Capital losses on the disposal of a participating interest are deductible. Capital losses on the disposal of quoted shares are also deductible, while losses on the disposal of unquoted shares are deductible only against profit from transactions involving other unquoted shares.

Capital gains derived by a foreign company without a tax presence in the Russian Federation from the sale of property-rich companies are subject to tax at the standard 20% rate. A buyer which is a Russian taxpayer will be obliged to withhold and pay profits tax on the payment to the seller. Income of a foreign company may be reduced by the acquisition cost of shares and participating interests (subject to transfer pricing rules) and incidental costs of disposal, provided

that documents supporting those costs are possessed by the tax agent at the time when income is paid to the foreign company.

In the case of a share deal, historical risks of the seller (including tax risks) remain with the target company and are therefore transferred from the seller to the buyer.

## How can EY help?

When acquiring or selling real estate in Russia, whether via a share deal or an asset deal, it is important to give careful consideration to potential profits tax, VAT and WHT implications and risks. Timely review and proactive preparation are therefore essential for any deal.

### *We are happy to assist companies in:*

- ▶ Analysing a potential sale-purchase transaction from a tax perspective
- ▶ Providing recommendations for reducing potential tax implications and risks
- ▶ Assisting in structuring the acquisition of real estate assets
- ▶ Conducting a pre-sale tax “health-check”
- ▶ Reviewing sale-purchase documents from a tax perspective



# 5 Tax Control



## Tax audits

Tax control measures in Russia include tax audits (on-site and in-house) and tax monitoring.

Their general purpose is to check compliance with tax law, including checking that taxes, levies and insurance contributions have been correctly calculated and paid.

### In-house tax audit

In an in-house tax audit, the tax authority examines only the tax return filed by the taxpayer.

The in-house tax audit takes place on the tax authority's premises and does not require a separate decision to be made to carry it out.

An in-house tax audit takes 3 months, except for audits of VAT returns, which take 2 months. In 2020, the Federal Tax Service launched a pilot project whereby in-house tax audits of VAT returns are carried out within 1 month. An in-house tax audit of foreign entities that provide electronic services takes up to 6 months.

If the results of the audit show violations of tax law, a tax audit report is drawn up, otherwise no summary document is prepared.

### On-site tax audit

An on-site tax audit may be conducted in relation to more than one tax at once and is carried out on the basis of a decision of the head of the tax authority. It may take place on the premises of the entity being audited.

The period that may be covered by the audit is the 3 years preceding the year in which the decision to conduct the on-site tax audit was issued.

In the process of the on-site tax audit, the tax authority makes a thorough analysis of the company's activities to check that taxes, levies and insurance contributions have been correctly calculated and timely paid.

The tax authority may carry out various tax control procedures in the course of an on-site tax audit, such as demanding (and seizing) documents, interviewing witnesses, engaging an expert (specialist or translator) and inspecting premises.

The standard duration of an on-site tax audit is 2 months, but allowing for extensions and suspensions, it may take up to 15 months.

Once the on-site audit has ended (regardless of whether or not violations have been found), a statement of completion of the on-site tax audit is drawn up, and then a tax audit report is issued.

### Individual tax control measures

In January 2015 tax monitoring appeared as a new form of tax control in Russia. It replaces in-house and on-site tax audits with an online arrangement based on remote access to a taxpayer's information systems and its financial and tax statements ([see page 77](#) for more details).

## Contesting a report/decision on a tax audit

After receiving a report on a tax audit (whether on-site or in-house), the taxpayer has a calendar month to file objections to the report, which will be taken into account in the making of the final decision based on the results of the tax audit. The objections must be filed with the tax authority which conducted the audit.

In some cases, a tax authority may, after receiving objections, carry out additional tax control measures with a view to gathering additional evidence and updating its position. Additional tax control measures must be performed by the tax authority within 1 month.

If, after considering the objections, the tax authority issues a decision with which the taxpayer disagrees, the taxpayer may appeal against it to a higher tax authority under a pre-litigation procedure.

For this purpose, appellate and general administrative appeal procedures are prescribed.

The appellate procedure is used to challenge decisions that have not yet entered into force. The appellate appeal is filed with the higher tax authority (through the tax authority that made the decision) within a calendar month of the decision being received.

An appellate appeal suspends the entry into force of a decision on an audit.

## How can EY help?

We offer an integrated approach to the resolution of tax disputes which involves supporting the client through all stages of the process, from the identification and evaluation of potential tax risks that might lead to a tax dispute to administrative and/or judicial procedures for the settlement of a dispute.

### *At the stage of identifying and evaluating tax risks and preparing for a tax audit, we:*

- ▶ examine the company's documents, databases and tax records
- ▶ identify potential tax risk areas
- ▶ assess identified tax risks for materiality and the likelihood of challenges from the tax authorities
- ▶ prepare recommendations for eliminating/mitigating identified tax risks
- ▶ prepare a "defence file" for the company

### *At the stage of support during a tax audit, we:*

- ▶ analyse demands/requests received by the company from the tax authorities to provide documents
- ▶ formulate proposals as to the range of documents and the content and form of explanations to be provided to the tax authority
- ▶ check the set of documents prepared for the tax authority to check that it is in order
- ▶ represent the company's interests in dealings with the inspectors, including during interviews/surveys of the company's employees, expert examinations, document seizures and other tax control procedures
- ▶ assess and, if necessary, file appeals against actions/omissions of tax officials

### *At the stage of contesting the results of a tax audit at the pre-litigation stage, we:*

- ▶ represent the company's interests in communicating with the tax authority on reaching agreements
- ▶ analyse the tax audit report and relevant company documents
- ▶ check the accuracy of the tax authority's calculations and help prepare an alternative calculation
- ▶ formulate a legal position in response to the challenges presented against the company
- ▶ prepare written objections to the tax audit report
- ▶ represent the company's interests during the examination of tax audit materials by the head of the tax authority
- ▶ represent the company's interests in the course of additional tax control measures conducted by the tax authority
- ▶ provide all necessary assistance in securing a deferral (instalment plan) for the payment of taxes, penalties and fines charged as a result of the tax audit
- ▶ prepare an appeal to the higher tax authority and, if appropriate, to the Federal Tax Service

### *At the stage of contesting the tax authority's decision in court, we:*

- ▶ analyse the tax authority's decision based on the results of the tax audit and the decision issued by the tax authority on the appeal
- ▶ identify weaknesses in the evidence used by the tax authority and formulate arguments to support the taxpayer's position
- ▶ formulate the legal position for the company's defence and devise a litigation strategy
- ▶ prepare and present all required documents in the hearing
- ▶ if necessary, prepare and file a petition for interim measures
- ▶ represent the company's interests in litigation in any instance of arbitration courts



The period allowed for the consideration of an appellate appeal is generally a calendar month from the day on which it is received.

The general procedure is used when challenging a decision that has already entered into force. Such an appeal may be filed within the higher authority within a year from the date of the decision on an audit and will likewise be considered within a calendar month after it is received.

If an appellate/general appeal does not yield the desired outcome, the taxpayer may appeal to the Federal Tax Service and/or to a court.

The filing of an appeal with the Federal Tax Service may take place within 3 months after the date of the higher tax authority's decision on the appellate/general appeal and is the taxpayer's right.

It is essential to point out that a court appeal may be filed only after the appellate/general pre-litigation appeal process. The time allowed to file a petition with a court is 3 months from the date on which the taxpayer learned of the higher tax authority's decision on its appeal.

## Administration of major taxpayers

A new system for the administration of major taxpayers took effect from 2019. As a result of reforms in the administration of taxpayers, specialized interregional tax inspectorates have



been established at federal level along with lower-level interdistrict tax inspectorates.

The criteria on which this specialization is based are the make-up of organizations, the areas of business in which they operate and potential tax risks that typically affect particular sectors of the economy.

At present, for instance, there are interregional inspectorates which administer transnational companies, financial companies, and companies

whose main activity is mineral extraction.

The following criteria are used to define major taxpayers: financial and economic performance indicators for the reporting year from an organization's financial and tax statements, indications of relationships with other entities and the taxpayer's influence on the economic performance of related entities, the possession of a special permit (licence) to carry on a particular activity, and the conduct of tax monitoring.

## Digital tax control

### Automated Information System (AIS) Tax-3

AIS Tax-3 is a unified information system that automates various functions of the tax authorities, including the collection, processing, storage and analysis of information. The main goals of the system are:

- ▶ simplification of communication between taxpayers and tax authorities
- ▶ automation of tax administration procedures (including tax registration, processing of tax returns, and tracking of cashflows)

- ▶ improving the efficiency of the tax control function (combating tax fraud)

### Automated Control System (ACS) VAT-2

ACS VAT-2 is a component of AIS Tax-3 and constitutes an automated system for checking VAT returns submitted to the tax authorities in xml format and generating requests for clarification of discrepancies found. The system allows VAT returns filed by the taxpayer and its counterparties to be cross-checked by comparing data from purchase and sales ledgers and journals of VAT invoices received and issued in automatic mode<sup>16</sup>.

Since VAT returns contain transaction-by-transaction information, ACS VAT-2 enables the following to be identified:

- ▶ breaches of control ratios set by the Federal Tax Service within a single VAT return (the control ratios are public, and every taxpayer may check whether its figures comply with them)
- ▶ mismatches between data in the taxpayer's VAT return and data in a VAT return submitted by its counterparty
- ▶ gaps in the supply chain caused by missing traders (companies that receive unjustified tax benefits by receiving input VAT credits while not paying output VAT)

In case of any discrepancies, the system automatically generates and sends requests for clarifications to the taxpayer in xml format. Responses to such requests must likewise be sent in xml format.

ACS VAT-2 also allows the tax authorities to perform automated "risk-based control procedures" that assign a particular level of risk to each taxpayer – from red (high risk) to green (low risk). The classification serves as a basis for planning future tax audits.



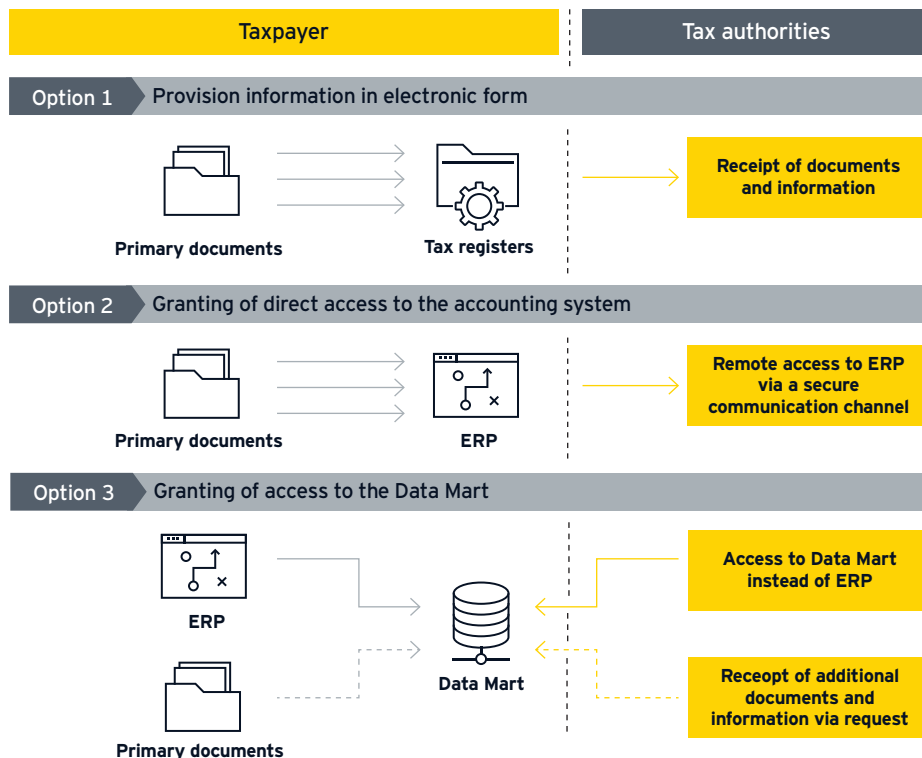
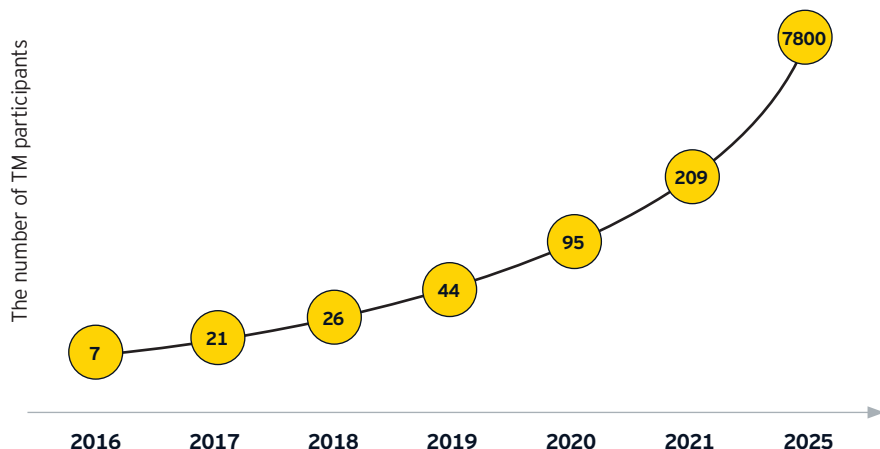
<sup>12</sup> Transactional VAT reporting, whereby information on every incoming and outgoing VAT invoice for a given period must be included in the VAT return.

## Tax Monitoring

Following the publication of the OECD study, “Co-operative Compliance - A Framework”, in 2013, Russia introduced a Co-operative Compliance regime known as Tax Monitoring (TM) as a pilot program in 2013 and established corresponding regulations in its law in 2016. From a starting point of just 5 pilot companies (EY Russia was one of those first five participants), the number of participants has risen to 209 companies in 2021. They include some of the largest Russian-headquartered state and private corporations and international investors from major industries (Oil & Gas, Energy, Banking, Transport, Telecom, FMCG, Retail, Trading, Manufacturing etc.). Russia's Federal Tax Service has a strategy to develop this regime (the strategic plan for the development of tax monitoring was approved by a government order) and aims to attract the majority of major taxpayers to the regime by 2025.

Participation in the regime is voluntary for companies and subject to their meeting quantitative thresholds for revenue (over RUB 1bn), assets (over RUB 1bn) and taxes paid (profits tax, excise duty, mineral extraction tax and VAT totalling at least RUB 100m) based on the Russian statutory accounting P&L statement and balance sheet for the preceding year. The Federal Tax Service plans to change the quantitative thresholds in order to expand the range of potential participants in tax monitoring (it is estimated that 7,800 companies may apply for the regime in 2025).

### Increase in the number of TM participants





An applicant is required to prepare and file quarterly reports relating to the Tax Control Framework (TCF) in a format prescribed by the Federal Tax Service. It must also implement electronic information exchange with the tax authorities using one of three options (organization of direct access to the accounting/ERP IT system, installation of special software in the form of a tax data mart, or the default option – electronic exchange via telecommunications channels) (these options will be cancelled in 2024).

The key benefits for companies that have signed up for tax monitoring over the traditional form of tax control are:

- ▶ Release from traditional tax audits (both in-house and on-site), except for transfer pricing audits
- ▶ “Fast close” of the tax period – the tax inspectorate finalizes audit procedures by 1 October of the year following the reporting year with limited grounds to open it up
- ▶ Possibility to obtain a “reasoned opinion” from the tax authorities (very similar to the international “private letter ruling” concept) for a particular tax position taken in a tax return or agree on the tax treatment of an expected transaction. When acting on the basis of a reasoned opinion from the tax authorities, a company is protected from fines and interest that would apply under the traditional regime

- ▶ Importantly, tax monitoring applies prospectively, and joining the regime does not automatically “close” preceding tax years. Thus, taxpayers may expect “traditional” tax audits to close prior periods in the first 1-2 years after joining the regime, as well as transfer pricing audits during the entire period of tax monitoring.

The application must be submitted to the tax inspectorate no later than 1 September of the year preceding transition to the regime together with the following set of documents:

- ▶ Tax accounting policies
- ▶ Information on corporate structure and shareholders
- ▶ Regulations on information exchange
- ▶ Tax Control Framework policy
- ▶ Special reporting forms for the Tax Control Framework in a format to be prescribed by the Federal Tax Service (including Risk Control Matrix, TCF maturity assessment, etc.)

The tax inspectorate must analyse the documents and issue a decision on whether to admit the company to the regime by 1 November. Tax monitoring starts from 1 January of the year following the year in which the application was submitted and considered.

Participation in TM constitutes public and official recognition of a company as a trusted and responsible taxpayer and is an important step in building trust with the tax authorities. Despite the additional costs associated with the implementation of electronic information exchange with the tax authorities and Tax Control Framework reporting, the number of participants in the regime is rapidly expanding every year with Russian and international investors looking for tax certainty and transparency.

## How can EY help?

*EY has vast experience in assisting companies from different industries with the process of transitioning to the tax monitoring regime. Our services include:*

- ▶ Analysis of a company’s readiness for transition to tax monitoring
- ▶ Development of measures to improve internal processes, controls and IT systems
- ▶ Preparation of the required set of documentation
- ▶ Assistance with the implementation of a Tax Data Mart
- ▶ Assistance in conducting negotiations with the tax authorities and the Federal Tax Service

## Hot trends

In order to increase the efficiency of tax control measures, tax authorities apply a risk-based approach. In practical terms, this means that the tax authorities do not examine the entirety of a taxpayer's business activities and tax obligations, but rather focus on the most high-risk areas or transactions.

Current trends in case law are as follows:

The provisions of the GAAR (General Anti-Avoidance Rule) (and specifically Article 54.1 of the Tax Code, which came into effect on 19 August 2017) are being increasingly used in Russia. The provisions are being implemented, inter alia, in the context of domestic law enforcement practice.

The tax authorities pay particular attention to cross-border transactions. They analyse the status of the beneficial owner of income for the purposes of assessing the applicability of the provisions of double tax treaties.

Contracts for the provision of intercompany services within MNEs are closely scrutinized by the tax authorities. This involves checking that services were actually provided and that they are properly documented and economically justified.

Transactions associated with intra-group financing are also subjected to rigorous scrutiny. In some cases, the tax authorities reclassify loans from foreign entities as investments, which

leads to adverse tax consequences (non-deductibility of interest expenses and reclassification of interest payments as dividends).

The Russian GAAR rules are also designed to combat "technical companies" (mala fide counterparties) which are used by mala fide taxpayers as a means of securing VAT refunds and claiming expenses for profits tax purposes.



# 6 Value Added Tax (VAT)





## Taxpayers

Taxpayers for VAT purposes are any individual entrepreneurs or legal entities (including foreign legal entities) that make taxable supplies of goods (works and services) and/or property rights in the territory of Russia and territories under Russian jurisdiction in the course of their business activities or that bring goods into the territory of Russia and territories under Russian jurisdiction.

The territory of Russia and territories under Russian jurisdiction means the territory of Russia and artificial islands, installations and structures over which Russia exercises jurisdiction.

## Registration

General tax registration in Russia covers all taxes, including VAT. There is no separate VAT registration except for the VAT registration required for foreign legal entities that provide electronic services to Russian customers (see the “VAT on e-services” section below). Such VAT registration does not *per se* trigger a permanent establishment of the foreign company in Russia.

Russian tax law does not provide for voluntary tax registration or group VAT registration.

## Taxable operations

VAT applies to the following transactions:

- ▶ Supplies of goods (work and services) in the territory of Russia and territories under Russian jurisdiction
- ▶ The transfer of property rights
- ▶ The transfer of goods (work and services) in the territory of Russia for own requirements, expenses for which are not deductible for profits tax purposes
- ▶ The performance of construction, installation and assembly works for own consumption
- ▶ The importation of goods into the territory of Russia and territories under Russian jurisdiction

The transfer of goods (work and services) without consideration is treated as a sale for VAT purposes.

## Place of supply of goods and services

For VAT purposes goods are deemed to be supplied in Russia if either (i) the goods are situated in the territory of Russia or territories under Russian jurisdiction and are not shipped or transported or (ii) the goods are situated in the territory of Russia or territories under Russian jurisdiction at the moment when shipment or transportation begins.

Generally, the place of supply of services not covered by special VAT rules is defined as the supplier's place of activity. However, there is a limited list of services that are deemed to be supplied at the customer's place of activity, including, *inter alia*, the transfer or licensing of intangible property, services involving the development, adaptation or modification of computer programmes, consulting, legal, accounting, audit, advertising and marketing services, the provision of personnel secondment services (where the staff work in Russia), the renting of movable property (with the exception of land motor vehicles) and certain other types of services.

In addition, Russian law specifically designates certain other services that are deemed to be provided in Russia. These include services (work) directly connected with immovable or movable property situated in Russia, services actually rendered in Russia in the sphere of culture, art, education, tourism, leisure or sport, certain types of transportation services, and others.

## Rates

VAT is levied at the standard rate of 20% on taxable supplies, which include most domestic sales of goods, work and services. Certain basic food products, children's goods, medical devices, medicines, newspapers and magazines attract a reduced rate of 10%.

A zero VAT rate is applicable to certain supplies, including:

- ▶ Exports of goods
- ▶ The performance of certain types of work and services related to exports and imports of goods
- ▶ Goods (work, services) supplied for official use by diplomatic missions
- ▶ Work and services directly connected with the transportation of goods placed under the customs transit procedure which is carried out by Russian taxpayers within the territory of Russia

The application of the zero VAT rate for certain types of supplies is subject to a requirement to collect supporting documents and submit them with a VAT return to the Russian tax authorities within a set time limit. If the required documents are not submitted on time, the standard VAT rate will apply.

The supply of electronic services by foreign legal entities and the sale of an enterprise as a whole as an asset complex are subject to a special VAT rate of 16.67% applicable to the VAT-inclusive value of the transaction (which is simply the same as a 20% rate applied to the VAT-exclusive value).

## Non-taxable supplies

Certain transactions occurring in Russia are not subject to VAT by reason of the application of VAT exemptions (these differ from zero-rated supplies in that a VAT exemption does not allow for the deduction of related input VAT). The list of VAT-exempt transactions is exhaustive and includes, inter alia, the provision of financial, insurance, educational, cultural or medical services, the supply of certain medical equipment and prosthetics and the supply of equipment for disabled persons.

A VAT exemption also applies to the granting of exclusive rights over inventions, utility models, industrial designs, software, databases, integrated circuit topographies and production secrets (know-how) and the granting of rights to use the above-mentioned items under a licence agreement. The exemption does not cover trademark royalties.

Effective from 1 January 2021, the scope of the VAT exemption for the provision of exclusive (license) rights to software and databases was significantly narrowed. Specifically, a new requirement must now be met for such transactions to be VAT exempt, namely that the software or databases in respect of which rights are transferred must have been included in the Unified Register of Russian Software and

Databases (hereinafter, “the Register”). Among the conditions required for software and databases to be included in the Register and benefit from the VAT exemption are that the exclusive rights to the software or database must be owned by a Russian legal entity (with no more than 50% foreign direct or indirect participation) and that payments received from non-Russian entities for the software or database should not exceed 30% of revenue for the calendar year. Caution must be taken with respect to payments received in 2020 and the beginning of 2021, since the law does not provide clear guidelines on the applicability of the VAT exemption in such cases, meaning that clarifications from tax regulatory bodies should be relied upon.

Furthermore, with effect from 1 January 2021 a VAT exemption is no longer available for the provision of exclusive (license) rights to software or databases if they are used for advertising on the Internet, to post offers for the purchase (sale) of goods (works, services) or property rights on the Internet, to search for information about potential buyers (sellers) or to conclude transactions.

Certain activities aimed at the development and modernization of innovative products and technologies are also VAT-exempt.

## How can EY help?

*In view of the changes made to the VAT exemption rules from 1 January 2021, we would be glad to assist businesses that may be affected by the changes in taking the following preparatory steps:*

1. Assessing whether the company's software and databases may be included in the Unified Register of Russian Software and Databases for VAT purposes,
2. Reviewing VAT clauses included in existing agreements with Russian customers in order to check VAT obligations,
3. Reviewing VAT calculation and invoicing procedures as well as reporting obligations if the company previously applied a VAT exemption to its contracts,
4. Developing a strategy for the transition period (2020 - beginning of 2021) and for managing cashflows with Russian customers in light of the new rules,
5. Communicating with Russian clients about the change from VAT exemption to VAT charging and the possible use of an alternative tax payment mechanism.

## Time of supply

The point at which VAT becomes due is called the "time of supply." For taxpayers, the time of supply is the earlier of the following dates:

- ▶ The day on which goods (work and services) or property rights are dispatched (transferred)
- ▶ The day on which payment or partial payment is received in respect of future supplies of goods (work and services) or transfer of property rights

In the case of the supply of electronic services by foreign legal entities, the time of supply is the last day of the quarter during which payment for the services is received.

## Calculation of VAT

VAT due is calculated as the VAT base (in most cases the value of the supply) multiplied by the applicable VAT rate. The taxpayer may reduce VAT payable by the amount of input VAT incurred on purchases of goods (work, services) if the general criteria for input VAT recovery are met.

## Recovery of VAT by taxpayers

VAT charged by suppliers (input VAT) is generally recoverable by the buyer as long as the underlying costs relate to its taxable business activity and VAT invoices properly drawn up by suppliers are in place. Input tax includes VAT charged on goods (works and services) and property rights supplied in Russia,

VAT paid on imported goods and VAT paid by a customer acting as a tax agent upon acquiring goods (work, services) from a foreign legal entity (see the section entitled "Withholding of VAT on purchases from foreign legal entities" below).

Starting from 1 July 2019, an exception to the above general rule entered into force. Specifically, taxpayers became entitled to recover input VAT on goods (work, services) used in the provision of services not deemed to be supplied in Russia based on the applicable place of supply rules. There are no restrictions relating to the business sector or location of the purchasers of so-called "exported" services. The new regime does not, however, extend to services classed as VAT-exempt supplies as established in Russian tax law.

Input VAT recovery is permitted only for tax-registered persons that make taxable supplies in Russia. Russian tax law does not allow foreign entities to recover input VAT incurred as result of purchases in Russia, including when the foreign entities are VAT-registered in Russia as suppliers of electronic services. Thus, any Russian VAT charged to a customer that is not tax-registered in Russia would represent an additional cost for the customer.

If a taxpayer carries out both non-VATable (or VAT-exempt) and taxable supplies, it is obliged to account for those operations separately. Input VAT directly related to taxable supplies is recoverable in full, while amounts of input VAT directly related to VAT-exempt supplies is not recoverable and should be expensed for profits tax purposes.



Input VAT that cannot be directly attributed to taxable or non-VATable supplies (such as VAT on G&A expenses) must be apportioned. If certain purchased goods (works and services) are used in the production and/or sale of both taxable and non-VATable supplies, the associated input VAT may be recovered pro rata to the share of taxable supplies in total sales revenue.

If input VAT on supplies exceeds the amount of output VAT, the difference may be reimbursed to the taxpayer either through a refund or by means of an offset against the taxpayer's future obligations to the state (future payments of VAT, other federal taxes or accrued tax fines). A VAT refund position triggers an in-house tax audit within three months after the submission date of the VAT return. In certain cases, VAT reimbursement (offset or refund) may be granted to taxpayers before the completion of an in-house tax audit if (i) the taxpayers have existed for more than three years and their total gross tax paid for the three previous calendar years amounted to not less than RUB 2 billion (approx. US\$ 27,654,867) and (ii) the taxpayers have submitted a bank guarantee to the tax authorities for the reimbursement amount.

A Russian legal entity or individual entrepreneur that purchases electronic services from a foreign legal entity has the right to recover VAT charged by the supplier. To exercise the right to recover VAT, the Russian customer must have (1) an agreement and/or a settlement document with a separately specified VAT amount, VAT identification number

## How can EY help?

In view of the legislative changes regarding the deduction of input VAT, now is a good time for international groups of companies with Russian subsidiaries to check that services provided by Russian entities are correctly treated from a Russian VAT perspective. With taxpayers gaining the right to deduct input VAT on certain non-VATable services, we expect the Russian tax authorities to pay closer attention to the substance of functions performed in Russia and whether they are correctly treated for VAT purposes. The issue is especially critical for Russian subsidiaries of international groups which are financed through service agreements and do not have much VAT on output transactions: the introduction of the changes will place these companies in a VAT refund position, which could trigger an in-depth tax audit.

*In view of the above, we would be glad to assist in:*

- ▶ Analysing services supplied under cross-border agreements and identifying elements that might be treated as non-VATable in Russia
- ▶ Reviewing whether services are correctly treated as non-VATable in Russia
- ▶ Updating internal accounting policies to implement legislative changes
- ▶ Reviewing potential for the restructuring of intra-group relations to manage Russian VAT implications.

(TIN) and code of reason for registration of the supplier and (2) documents for the transfer of payment, including VAT, to the supplier.

## Tax reporting and payment

Taxpayers file VAT returns on a quarterly basis (by the 25th day of the month following the calendar quarter) in electronic form via telecommunications channels. Payments of VAT to the Russian budget must be made in equal instalments by the 25th day of each of the three months following the tax period that has ended.

Branches of a legal entity do not have to compute and pay VAT. All VAT compliance may be centrally managed.

Foreign suppliers of e-services which are registered with the Russian tax authorities for VAT purposes are obliged to file quarterly VAT returns via the official website of the Russian tax authorities and pay VAT in full by the 25th day of the month following a calendar quarter.

## Imported goods

Imported goods are subject to import VAT levied at the customs border. VAT on imports is generally collected at customs and is payable by the entity declaring the goods for import on the basis of the total value of the goods, including import duty and excise duty (where applicable).

In practice, import contracts may provide for not only the importation of goods but also the provision of services related to those goods. Different VAT treatments might be applicable in such cases, i.e., the whole contract value may be treated as VATable at customs

or the value of goods may be treated as VATable while the VAT status of services may need to be determined separately. Contracts covering both the importation of goods and the provision of services must therefore be drafted carefully.

Certain goods are exempt from import VAT. For example, certain kinds of manufacturing equipment (including related spare parts) for which no equivalents are made in Russia are exempt from import VAT. See the “Customs” section on [page 108](#) for further information on import VAT exemption.

## Withholding of VAT on purchases from foreign legal entities

When Russian legal entities purchase goods (work and services) from foreign legal entities that are not registered for tax purposes in Russia and the place of supply of the goods (work, services) is in Russia, the tax base is determined by the buyer acting as a tax agent. The tax agent must withhold and pay VAT on the payment made to the foreign legal entity.

The general rule does not apply to purchases of electronic services from foreign legal entities, as in this case the suppliers are responsible for the collection and payment of VAT.

To address the above-mentioned withholding mechanism, foreign suppliers usually gross up fees for Russian VAT so that they receive the full amount of consideration after VAT has been withheld.

## VAT on e-services

For Russian VAT purposes, electronic services are defined as services provided via an information and telecommunications network, including the Internet, on an automated basis with the aid of information technologies. Electronic services include, inter alia:

- ▶ The provision of rights to use computer programmes via the Internet
- ▶ The provision of online advertising services
- ▶ The provision of services involving the posting of offers to purchase goods and property rights on the Internet
- ▶ Hosting and storage services
- ▶ The provision of rights to use educational and informational materials

Electronic services provided to Russian customers (both B2C and B2B supplies) are subject to VAT in Russia. Foreign legal entities that provide e-services are required to register for VAT purposes in Russia, charge and pay VAT on such supplies and fulfil VAT reporting obligations. The withholding mechanism is not applicable in this case.

In addition to the general rules, parties may follow the official (though non-binding) guidance issued by the Federal Tax Service to the effect that, if a service provider did not charge a Russian customer VAT and the latter acted as a tax agent (voluntarily) and paid VAT, the tax authorities would not have grounds to require the foreign

## How can EY help?

In practice, the above-mentioned rules governing VAT on e-services affect not only companies of the IT sector, but also a wide range of companies that provide services classified as electronic services as incidental activities as well as companies that share software/database IT solutions with other companies within the same group (intra-group supplies). Companies must therefore take proactive steps to ensure that they are in line with the Russian VAT rules relating to e-services.

*In view of the above, we are happy to assist companies in:*

- ▶ Analysing services provided to Russian customers to determine whether they should be treated as e-services
- ▶ Examining the applicability of VAT exemptions for particular e-services
- ▶ The VAT registration process in Russia
- ▶ VAT compliance in Russia, including the preparation and submission of VAT returns and potential communication with the tax authorities
- ▶ Reviewing potential for restructuring the supply of e-services to Russian customers or changing business or financial models to manage Russian VAT implications

company to pay VAT again, nor would they be able to require the customer to recalculate its tax obligations (VAT charged and VAT reclaimed). Thus, if both parties agree, the Russian customer may continue to voluntarily act as a tax agent and pay VAT on electronic services. However, even if VAT is paid by the Russian customer, the foreign supplier is still required to VAT register and submit a quarterly nil VAT return. The foreign supplier still bears responsibility in case of the non-payment of VAT and must, if requested by the tax authorities, provide documents proving that VAT was paid by the Russian customer.

A foreign legal entity is not required to register if it provides e-services through intermediaries (either Russian or foreign legal entities) that participate in settlements directly with Russian customers and have agency, commission or other similar agreements with the foreign legal entities that provide the e-services. In this case, the intermediaries must fulfil the relevant VAT obligations.

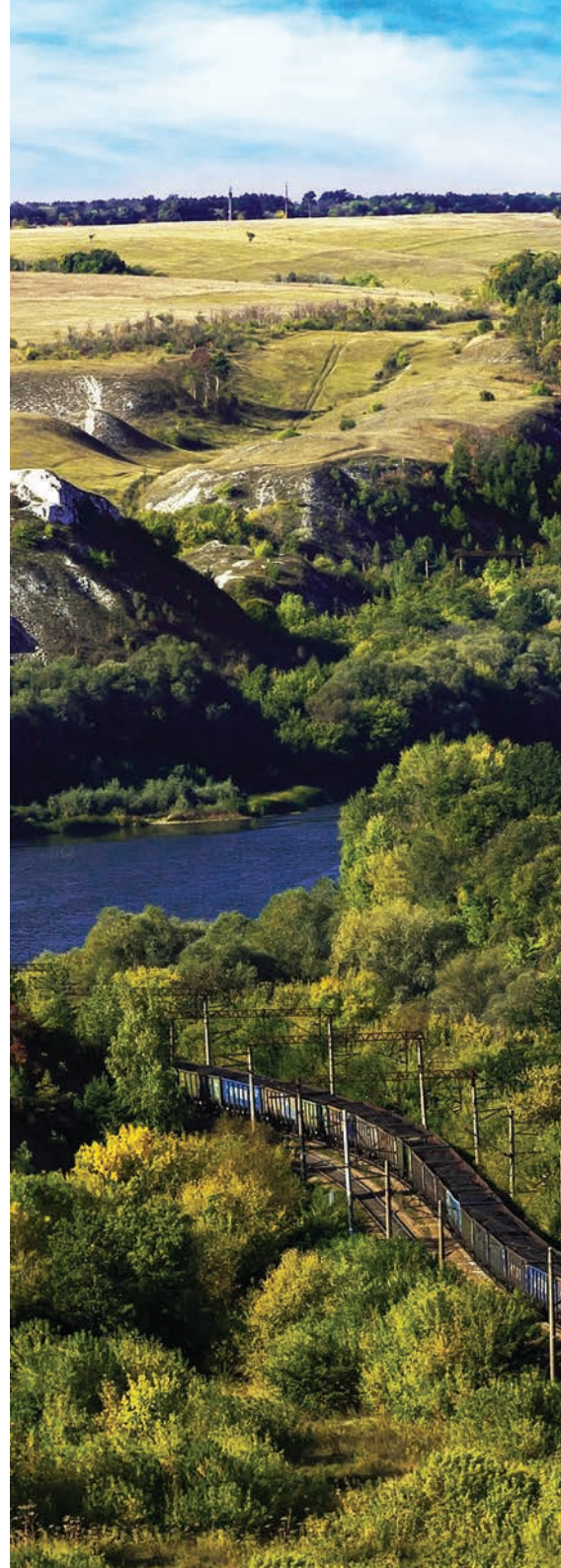
Once VAT-registered in Russia, a foreign supplier must account for and pay VAT on all supplies of goods (work, non-electronic services) subject to VAT in Russia.

## VAT and the EAEU

As mentioned above, the legislation of the Eurasian Economic Union of Russia, Belarus, Kazakhstan, Armenia and Kyrgyzstan (the EAEU) created a united customs territory for its member states. The EAEU's legislation establishes special VAT rules for transactions between entities in different EAEU member states. Exports of goods from one member state to another are subject to zero-rate VAT. In order to apply the zero VAT rate for exports a taxpayer must submit relevant documents certified by the seal of the tax authority of the member state into which the goods were imported.

Imports of goods from one member state to another are subject to import VAT in the other member state. The taxpayer is obliged to submit a separate VAT return for goods imported from another EAEU country.

As regards the taxation of electronic services, EAEU legislation does not regulate how such services should be taxed when supplied to customers located within EAEU. However, certain member states are considering implementing the same VAT regime as is currently applied in Russia.









7

# Corporate property tax



## Taxpayers

Corporate property tax is paid by the following taxpayers:

- RLEs
- FLEs that carry on activities in Russia through a PE or own immovable property in Russia

## Tax base

For RLEs and FLEs that carry on activities in Russia through a PE, corporate property tax is levied on immovable property which is recorded as fixed assets in their accounts maintained under Russian accounting principles.

The tax base is the average annual value of the property, calculated on the basis of the net book value of fixed assets period by period (the first three months, six months and nine months of a year, and the calendar year).

The tax base for certain types of property is determined as their cadastral value (administrative and business centres, residential and non-residential buildings, car parking spaces and garages, immovable property of an FLE that does not have a PE (or which is not related to the PE's activities), construction-in-progress, and structures situated on land assigned for farming, gardening or individual housing construction). These types of property form part of the tax base even if they are not recorded as fixed assets in the taxpayer's accounts (if the taxpayer is the owner of the property or the property was obtained by the taxpayer

under a concession agreement).

If property is not recorded in the official cadastral valuation report as of 1 January of the tax period (year), the property tax base for that property in that year must be determined based on net book value under the old rules. If immovable property without a cadastral valuation is owned by an FLE and the property is not related to the activity of a PE in Russia, the tax base for that property is taken to be equal to zero.

It should be noted that, owing to the ambiguous definition of the term "immovable property" in Russian legislation, as well as frequently arising issues over the approach to the division of fixed assets into movable and

immovable property, taxpayers may face problems in determining their property tax liabilities, resulting in potential tax risks (or tax overpayments). We have extensive experience in providing assistance in relation to these matters and would be happy to offer you our support.

## Tax rate

The rate of corporate property tax for immovable property is determined by regional authorities but cannot exceed:

- 2.2% for property not taxed on the cadastral value
- 2% for property taxed on the cadastral value







- ▶ 1.6%<sup>17</sup> for public railways and related facilities (specified in the list approved by the Russian Government)
- ▶ 0% for certain types of property specified in a list approved by the Russian Government (e.g., trunk pipeline facilities, gas extraction facilities, helium production and storage facilities, facilities provided for in technical plans for the development of mineral deposits) if certain conditions are met<sup>18</sup>

Regional authorities may reduce corporate property tax rates to 0%.

## Tax reliefs

Certain assets are excluded from the tax base, including land plots and other natural resource sites, nuclear plants, spacecraft, ships registered in the Russian International Register of Vessels and assets recognised as cultural heritage assets. Certain regions provide full exemptions from property tax to taxpayers involved in certain investment projects.

Corporate property tax paid by an RLE outside Russia (on property located outside Russia) may be set off against corporate property tax paid in Russia on the same property. To claim a set-off, the taxpayer must submit a document confirming the payment of property tax abroad.

## Tax reporting

Taxpayers are obliged to estimate and make advance payments of corporate property tax on a quarterly basis (for the first, second and third quarters). After the end of the tax period, taxpayers must pay the amount of tax calculated for the period reduced by the amount of advance payments made. A tax return must be submitted to the tax authorities annually by 30 March of the year following the reporting year.

Regional authorities set the deadlines for tax and advance payments. Regional authorities are also permitted to abolish advance payments (in which case tax must be paid on an annual basis).

## How can EY help?

Owing to the ambiguity of the term “immovable property”, taxpayers experience difficulties in classifying property and, accordingly, in the calculation of the property tax base, which may lead to potential tax risks and/or tax reserves (overpayments). Also, both federal and regional legislation provide various property tax reliefs that should be properly considered when calculating tax.

*We would be happy to assist with the following:*

- ▶ Analysing the company's existing approach (and, if necessary, developing a more appropriate approach) to classifying fixed assets as movable or immovable property
- ▶ Providing relevant IT tools, e.g., to automate the process of assigning tax accounting characteristics to fixed assets (e.g., useful life, depreciation group) in order to help determine the amount of deductible depreciation
- ▶ Analysing applicable tax reliefs and assistance in securing those reliefs
- ▶ Assistance with corporate property tax compliance
- ▶ Other support relating to corporate property tax

<sup>17</sup> The lower tax rate is set at a maximum level of 1.6% for 2020 and 2021. Rates could not exceed 1.3% in 2019 and 2018 and 1% in 2017.

<sup>18</sup> The property must be located (in whole or in part) in the Republic of Sakha (Yakutia) or the Irkutsk or Amur regions and must have been commissioned not earlier than 1 January 2015. In addition, the property must be owned by a payer of mineral extraction tax.

# 8 Other Taxes





## Excise duty

Excise duty is payable on domestic sales of certain goods produced in or imported into Russia. The list of goods subject to excise duty includes alcohol, beer, tobacco, cars, motorcycles, aeroplanes, petrol, diesel fuel, motor oil and straight-run petrol. The rates are ordinarily established in roubles per unit or as percentages of value and vary significantly. Imported alcohol and tobacco are cleared through customs only if they bear excise stamps. With some exceptions, export sales are exempt from excise duty. Excise duty is deductible for profits tax purposes.

## Transport tax

Transport tax applies to both RLEs and FLEs if they have registered means of transport (in particular, cars, motorcycles, helicopters, yachts and sailing boats). The tax base is calculated based on engine size, jet thrust, or type of vehicle.

For most types of land vehicle, the tax rates established in the Tax Code vary from RUB 1 to RUB 15 (approx. US\$ 0.01 to US\$ 0.21) per horsepower of engine size.

Regional authorities are entitled to increase or reduce tax rates, but not more than tenfold. Tax on motor cars

with an average value of RUB 3 million (approx. US\$ 41,482) or more is increased by multiplying the tax rate by a coefficient of between 1.1 and 3 depending on value and age.

The conditions for transport tax filing and payment are established by the authorities of the region in which the vehicle is registered. However, the final tax return must be filed and final tax paid by 1 February of the year following the reporting year.<sup>19</sup>

### How can EY help?

EY is happy to assist with analysis of applicable tax risks and benefits and to provide any other support relating to transport tax.

## Mineral extraction tax

Mineral extraction tax is paid by RLEs and FLEs that carry out mining on the basis of a license.

Mineral extraction tax is levied on minerals extracted from the subsoil in the territory of the Russian Federation and outside the territory of the Russian Federation, as well as minerals recovered from waste (losses) resulting from mining operations.

The tax base is calculated using the following methods:

- Based on the quantity of minerals extracted. Applicable for oil, gas and gas condensate.
- Based on the value of minerals extracted. Applicable for other minerals.

The tax rates for oil, gas and gas condensate are set as fixed rates based on physical volume or quantity but are subject to variation in line with changes in global prices. There are tax benefits in the form of tax holidays and coefficients that reduce the tax rate (up to 0%) in order to encourage the development of hard-to-recover oil reserves, new offshore hydrocarbon deposits and other designated subsurface sites. Other commercial minerals are taxed on the basis of the value of the extracted minerals. In determining the value of minerals, direct and indirect costs are taken into account. To determine the calculated value of an individual extracted mineral, it is necessary to allocate from the total amount of expenses a part of expenses corresponding to the proportion that the mineral in question makes up of the total quantity of extracted minerals.

<sup>19</sup> The obligation to file a transport tax return was abolished starting from 2021 (for the 2020 tax period).

## How can EY help?

- ▶ Analysis of the mining process and preparation of comments on the tax treatment of mining operations
- ▶ Analysis and identification of provisions/documents that have negative impact for the taxpayer
- ▶ Development of a procedure for determining the calculated value of an extracted mineral
- ▶ Development of recommendations on the formation of a "defense file" for use in disputes with the tax authorities
- ▶ Other support relating to mineral extraction tax

## Additional income tax on hydrocarbon production

Additional income tax is imposed on additional income received by companies that hold exploration and production licences and engage in hydrocarbon production at certain groups of subsurface sites. Additional income tax is determined as

deemed income from the sale of hydrocarbons minus related actual and deemed costs. The tax rate is set at 50% of the tax base. Companies that pay additional income tax are also liable to mineral extraction tax at reduced rates.

## Other taxes and duties

Other taxes payable by companies include personal income tax, social contributions (see section on "Individuals" on [page 142](#)), land tax, water tax, gaming tax and various licensing fees.

## How can EY help?

EY is happy to assist with compliance and analysis of applicable tax risks and benefits and to provide any other support with regard to the above-mentioned taxes and licensing fees.









# 9 International Taxation Matters



# Taxation of Russian-source income of FLEs without a PE in Russia

## Withholding tax

The source taxation regime is relatively similar to OECD principles. Russian-source income that does not relate to business activities carried on by an FLE in Russia through a PE is subject to profits tax in Russia at the source of payment. The payer of income is responsible for withholding and remitting the tax to the state.

## Russian-source income

Russian-source income includes the following:

- ▶ Dividends and other forms of profit distribution from Russian entities
- ▶ Interest income on all types of debt obligations, including profit-sharing and convertible bonds
- ▶ Royalty payments, particularly in respect of copyrights, patents, trademarks, industrial designs and secret formulas or processes used within Russia
- ▶ Income from the sale of shares (participating interests) in Russian entities if more than 50% of the assets of such entities consists of immovable property situated in Russia, and of financial instruments derived from such shares (participating interests), with the exception of quoted shares
- ▶ Gains from the sale of immovable property located in Russia

- ▶ Rental and lease payments relating to assets used in Russia
- ▶ Income from international transportation
- ▶ Fines and penalties for the violation of contractual obligations by Russian entities and state bodies
- ▶ Other similar income

The repatriation of profits from an FLE's Russian PE to the head office is not taxable.

## Payment of tax

Withholding tax must be charged on income paid to an FLE each time such income is paid and must be remitted to the state budget.



## Tax rates

The withholding tax rate applicable to income paid to foreign companies depends on the nature of the income:

Interest	20%(*)
Income from the operation, maintenance or leasing of ships, aircraft or other means of transport or containers in international traffic	10%
Dividends	15%
Capital gains from the disposal of immovable property and capital gains from the disposal of shares (participating interest) in entities whose assets derive more than 50% of their value from immovable property	20%
Rental income	20%
Royalties	20%
Other types of income	20%

\* Interest on certain types of state and municipal securities and mortgage-backed bonds and income derived from certificates of participation in a mortgage pool are subject to tax at reduced rates.

In the case of the payment of interest income on Eurobonds, Russian borrowers are not required to act as tax agents if the following conditions are simultaneously met:

1. The debt instruments in respect of which interest is paid arose in connection with the issuance of Eurobonds (the Law uses the term “circulated bonds”) and this connection is indicated in the relevant agreement and terms of issue of the Eurobonds and the prospectus, or the connection is indicated by the actual movement of funds.
2. The Eurobonds have been listed and/or admitted for trading on one or more foreign exchanges, and rights in them are registered with foreign depository or clearing organizations, provided that such foreign exchanges and foreign depository and clearing organizations are included in the list approved by the Central Bank in co-operation with the Finance Ministry.
3. Foreign organizations which are issuers of circulated bonds, or foreign organizations which are authorized to receive interest income payable on circulated bonds, or foreign organizations to which there have been ceded rights and obligations in respect of issued circulated bonds whose issuer is another foreign organization, and to which interest income on debt obligations is paid by Russian

organizations, are, as at the date on which the interest income is paid, residents of states that have a double tax treaty with Russia, as confirmed by a tax residency certificate.

The above exemption from tax agent functions also applies to:

- ▶ Interest income on state securities of the Russian Federation, state securities of constituent entities of the Russian Federation and municipal securities
- ▶ Income paid by Russian organizations on circulated bonds issued by those organizations in accordance with the legislation of foreign states
- ▶ Income paid by a Russian organization on the basis of guarantees or other security arrangements relating to the debt obligation to foreign organizations or on Eurobonds
- ▶ Other income paid by a Russian organization and provided for under the terms of the respective debt instrument or the terms of issue of Eurobonds (e.g., payments upon early repurchase and/or redemption of Eurobonds)

A “punitive” tax rate of 30% is established for income on securities (with the exception of income in the form of dividends) issued by Russian organizations rights in which are recorded in a depository account of a foreign nominee holder, a depository account of a foreign authorized holder and/or a depository programme depository account where that income

is paid to persons in relation to which information was not provided to the tax agent in the proper manner.

Dividends received by Russian organizations from Russian and foreign organizations are taxed at 13%.

The Tax Code contains participation exemption provisions for dividends received by Russian organizations from foreign organizations. A 0% rate applies if the Russian organization has continuously owned for at least 365 calendar days at least 50% of the capital of the organization paying the dividends, and if the dividends are paid by a foreign organization, that organization is not a resident of a state or jurisdiction included by the Ministry of Finance in the list of offshore zones (see Appendix 4).

## Treaty relief

Double tax treaties, including those concluded by the Russian Federation and those to which the former USSR was a party, may provide relief in the form of reduced or zero rates of withholding tax. Tax treaties to which the former USSR was party are honoured by Russia unless the other party to the treaty has renounced the treaty or it has been replaced by a new treaty. In the last twenty years, Russia has entered into many new treaties based on the OECD Model Convention and now has an extensive treaty network. As of 1 January 2020, Russia has double tax treaties in force with more than 80 countries.



A foreign company wishing to claim an exemption from Russian withholding tax or a reduced rate based on a treaty must provide the Russian payer of the income with a tax residency certificate issued by a foreign tax authority confirming that the company is a tax resident of the relevant treaty country. In addition, the tax agent must be provided with confirmation that the recipient of the income is the beneficial owner of the income (See Appendix 3 for treaty withholding tax rates).

## Foreign tax relief

As previously indicated, RLEs are taxed in Russia on their worldwide income. Therefore, both Russian and foreign-source income are taken into account when determining the tax base.

To avoid double taxation, amounts of tax paid in accordance with the legislation of foreign countries by an RLE may be credited against Russian tax payable by the RLE provided that proper documentation is in place. The amount of the tax credit may not exceed the amount of tax payable in Russia on the income taxed in the foreign jurisdiction. Foreign tax on foreign-source dividends, however, may be credited against Russian tax on dividends only if such credit relief is envisaged by an applicable double tax treaty (which is often the case). For other types of income, a tax credit is granted regardless of whether a treaty exists.

## MLI

Russia ratified the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) in 2019. MLI entered into effect for 34 Russian tax treaties starting from 2021. The MLI makes a number of amendments to the double tax treaties which it covers based on the positions of the signatory countries. Russia plans to apply the MLI to over 70 treaties.

As far as anti-abuse rules are concerned, Russia has chosen to apply the principal purpose test (the default test) together with a simplified limitation on benefits provision (this provision will be applied only if the treaty partner has agreed to do likewise). The principal purpose test provides that treaty benefits will not be applicable if obtaining the benefits was the principal purpose or one of the principal purposes of an arrangement or transaction. The simplified limitation on benefits provision only allows “qualified persons” to receive treaty benefits (exceptions are specified). Optional MLI provisions that are introduced for Russia include a condition concerning the period for which ownership interests in a company must have been held to claim reduced rates of withholding tax on dividends, rules governing the taxation of the “indirect sale” of immovable property and a number of rules regarding permanent establishments.

## How can EY help?

In a highly globalized world it is important to be able to respond rapidly to changes and trends and assess their impact as early as possible. New approaches to international tax planning require businesses to re-evaluate their structures and implement efficient global tax strategies to manage risks. With their comprehensive tax knowledge, our international tax experts have the resources and expertise needed to assist businesses with cross-border tax challenges.

***We would be glad to provide corporate income tax advice on all aspects of cross-border transactions, including:***

- ▶ Structuring of foreign businesses investing in Russia and Russian businesses investing abroad (holding, trading, IP, financing, etc., structure planning; exit tax planning; JV structure planning and restructuring advice and assistance)
- ▶ Identification of cross-border tax saving opportunities
- ▶ Withholding tax advice and assistance - review of cross-border structures from a withholding tax perspective (investment and ownership treaty tests, beneficial ownership test, principal purpose test (PPT), limitation on benefits (LOB) test), assistance with withholding tax refunds, assistance with withholding tax audits etc.
- ▶ Tax residency and permanent establishment matters
- ▶ Cross-border tax controversy (tax audits, permanent establishment matters, assistance with mutual agreement procedure (MAP), etc.)
- ▶ Advice and assistance with EU DAC6 (Mandatory Disclosure Regime)-related matters.

# 10 “Deoffshorization” Measures



Since 1 January 2015 Russia has applied tougher “deoffshorization” measures aimed at combating tax evasion and capital flight:

- ▶ Controlled foreign company (CFC) rules extending the scope of Russian tax to profits of such companies
- ▶ The concept of Russian tax residence for foreign companies based on the place of effective management test
- ▶ The beneficial ownership concept to limit the availability of treaty benefits

## CFC rules

A controlled foreign company is a foreign company that meets both the following criteria:

- 1) the company is not a tax resident of the Russian Federation
- 2) the controlling person of the company is an organization and/or individual recognised as a tax resident of the Russian Federation

A controlled foreign company may also be a foreign unincorporated entity controlled by an organization and/or individual recognised as a tax resident of the Russian Federation.

The following persons are recognised as a controlling person of a foreign company:

- 1) an individual or legal entity with a participating interest of more than 25% in that company
- 2) an individual or legal entity whose participating interest in that

company (together with spouses and minor-age children in the case of individuals) is greater than 10% if the aggregate participating interest of all Russian tax resident persons in that company (together with spouses and minor-age children in the case of individuals) is greater than 50%

A person whose participating interest in a foreign company does not meet the above criteria but who exercises control over that company is also deemed to be a controlling person of that company.

Russian residents are not deemed to be controlling persons of a CFC if they participate in it:

- ▶ through direct and/or indirect participation in Russian public companies
- ▶ through direct and/or indirect participation in foreign companies whose shares have been admitted for trading on foreign stock exchanges located in the territories of foreign states that are OECD members (other than states that do not exchange tax information with Russia. The list (“blacklist”) of such states is approved by the Federal Tax Service – see Appendix 5), and provided that the following conditions are simultaneously met:
- ▶ the direct and/or indirect participating interest of the controlling person in each such foreign company does not exceed 50 per cent
- ▶ the proportion of ordinary shares admitted for circulation on foreign stock exchanges exceeds 25 per cent

of the charter capital of each such foreign company

Retained profits of CFCs are assessable to:

- ▶ corporate profits tax at the rate of 20% if the controlling person is a Russian tax resident organization, or
- ▶ personal income tax at the rate of 13% if the controlling person is a Russian tax resident individual

If the CFC’s annual profits are less than RUB 10,000,000 (US\$ 138,274), they are not taxable in Russia.

The amount of Russian tax on profits of a CFC may be reduced by the amount of foreign tax on those profits and the amount of Russian tax withheld by a Russian tax agent on Russian-source income of the CFC.

Non-payment/underpayment of tax owing to the failure to include a portion of CFC profits in the tax base incurs a fine of 20% of arrears, but not less than RUB 100,000 (US\$ 1,383) (Article 129.5 of the Tax Code).

The CFC rules include a number of exceptions whereby profits of a CFC are not taxable in the Russian Federation (while controlling persons remain taxable). CFCs covered by these exceptions include:

- ▶ non-commercial organizations that do not distribute profits among shareholders/participants
- ▶ active foreign companies and active foreign holding or subholding companies (CFCs that are active foreign holding or subholding companies must not be residents





of states included in the Finance Ministry's "blacklist" of offshore jurisdictions - see Appendix 4)

- ▶ companies for which the effective rate of tax on income (profits) for the period for which financial statements for the financial year are prepared amounts to not less than 75% of the weighted-average rate of Russian profits tax (the CFCs in question must be tax residents of states with which Russia has a double tax treaty, other than those that do not exchange tax information with Russia. The list of such states is approved by the Federal Tax Service - see Appendix 5)
- ▶ banks, insurance companies, issuers of quoted bonds (the CFCs in question must be tax residents of states with which Russia has a double tax treaty,

other than those that do not exchange tax information with Russia. The list of such states is approved by the Federal Tax Service - see Appendix 5)

In November 2020, a new law was adopted introducing a special regime for the taxation of CFC profits for Russian tax resident individuals, to be applied with regard to tax periods starting 2020. The new regime for the taxation of CFC profits allows a controlling person to pay tax equal to approximately 5 million roubles a year on all controlled foreign companies, irrespective of the number of CFCs, and frees taxpayers from the formal requirement to calculate and declare the profits of each CFC. The regime is applied based on an application from a controlling person for no fewer than 5 tax periods (or no fewer

than 3 tax periods for persons applying for the regime in 2020-2021). Profits of CFCs covered by the new regime are not exempt from taxation in the hands of beneficiaries, once received.

## The concept of Russian tax residence for foreign companies

A foreign company may be treated as a tax resident of Russia if its place of management is in Russia. In this case, the company will be taxable in Russia on all of its income regardless of where it arose (in Russia or elsewhere).

The place of management is considered to be in Russia if at least one of the following conditions is met:

- ▶ the company's executive body regularly carries on activities in relation to the company from the Russian Federation to a greater extent than in any other state
- ▶ the company's senior executives carry on executive management of the foreign company primarily within the Russian Federation (executive management of an entity is understood to mean the making of decisions and the carrying on of other activities relating to the company's day-to-day activities)

In debatable cases, the following additional criteria are used in recognising a foreign company as a Russian tax resident:

- ▶ the company's accounting or management records are kept in the Russian Federation
- ▶ the company's records management takes place in the Russian Federation
- ▶ day-to-day management of the company's personnel takes place in the Russian Federation

Where a foreign company carries on activities using its own qualified staff and assets in the state in which it is resident and Russia has a tax treaty with that state, the company will be considered to be managed from abroad and will not be deemed a Russian tax resident by default.

Under certain circumstances a foreign company may independently declare itself a Russian tax resident.

## The beneficial ownership concept

As indicated above, in order to obtain a tax exemption or reduced tax rate for income received from Russia under the provisions of double tax treaties, a foreign company must provide to the Russian tax agent not only a certificate of tax residence in the relevant foreign state, but also confirmation that it is the beneficial owner of the income concerned.

The beneficial owner of income is the person (unincorporated entity) that has an independent right to use and/or dispose of the income by reason of direct and/or indirect participation in the company or control over the company or by reason of other circumstances.

A beneficial owner of income may also be a person in whose interests another person has the right to dispose of the income. The functions performed and risks assumed by this or that person (unincorporated entity) are taken into account in determining the beneficial owner of income.

In addition, the Tax Code provides for a so-called "look-through" approach whereby income may in certain cases be treated for tax purposes as if it was paid directly to the beneficial owner under a double tax treaty/the Tax Code even if the immediate recipient of the income is another person.

On 25 March 2020, the President of Russia announced a toughening of the provisions of Russia's tax treaties with a number of foreign states insofar as they concern withholding tax on dividends

and interest. It was proposed that a withholding tax rate of 15% should be established in Russia for dividends and interest paid from Russia to foreign recipients. Should Russia's treaty partners refuse to revise the relevant provisions of the treaties concerned, it was stated that Russia may unilaterally withdraw from those treaties.

The Ministry of Finance of Russia has already sent letters to the finance ministries of Cyprus, Luxembourg, the Netherlands and Malta regarding changes to the current rates under double tax treaties (proposing withholding tax rates of 15% for dividends and 15% for interest). A Protocol amending the DTT between Russia and Cyprus was signed on 8 September 2020, followed by Protocols with Malta on 1 October 2020 and with Luxembourg on 6 November 2020. The amendments to the DTTs with Cyprus and Malta provisionally apply from 1 January 2021, while the changes made by the Protocol with Luxembourg will enter into force on the date of the later of notifications provided through diplomatic channels by the contracting states upon completion of the necessary legal procedures and will take effect in the calendar year following the year of the entry into force of the Protocol (in any case, not earlier than 2022). All three Protocols provide for the standard withholding tax rates for dividends and interest to be raised to 15% (compared with 0%/5%/10%/15% for dividends and 0%/5% for interest before the amendments), with a few exceptions for certain categories of taxpayers and certain types of income. At the same time, the requirement for foreign

recipients of dividend and interest income to prove their beneficial ownership status in order to take advantage of reduced tax rates under the DTTs remains unchanged. As for the DTT with the Netherlands, in December 2020 the Russian Ministry of Finance initiated procedures for the denunciation of that DTT since the parties have not yet reached agreement on the proposed amendments

## Special administrative districts

Since 2018 it has become possible to register legal entities as international companies in the territory of special administrative districts (SADs) in the Kaliningrad Province (Oktyabrsky Island) and the Primorye Region (Russky Island) with a view to obtaining tax and currency privileges. International company status may be acquired only by a foreign legal entity which is a commercial corporate entity and has decided to change its status under the redomiciliation process prescribed by law, with the exception of banks, non-credit financial organizations, payment system operators and payment infrastructure operators. One of the conditions for a foreign company to be recognised as a resident of a SAD is that it must invest at least RUB 50 million (approx. US\$ 691,372) in the territory of the Russian Federation. If certain conditions are met, registration in a SAD has a number of tax benefits, such as tax relief for dividends received and income from the sale of shares/ownership interests, as well as CFC-related reliefs. These benefits are subject to conditions.

## How can EY help?

Deoffshorization law is a set of measures aimed at taxing income of foreign companies. Changes made to the Tax Code in this regard include the introduction of controlled foreign company (CFC) rules, provisions allowing foreign organizations to be treated as Russian tax residents, and beneficial ownership rules. This has made it necessary for many Russian groups with a presence abroad to substantially review their foreign structures and implement new business processes and additional control procedures, as well as considering ways to automate those processes and procedures.

*We have extensive experience of providing advisory services in relation to deoffshorization law and keep constant track of changes in this area. In particular, we would be happy to help as follows:*

- ▶ Identifying which foreign companies/structures (funds, trusts, etc.) are covered by the Russian CFC rules and which CFC regime (the regular regime or the new “fixed profit” regime) would be more preferable from a tax perspective
- ▶ Correctly calculating tax on CFC profits and identifying ways in which it may be legally reduced (for example, by deducting distributed dividends, crediting foreign tax, exempting CFCs from taxation, etc.)
- ▶ Advising on obligations of controlling persons of CFCs to report on CFCs and helping to prepare supporting documents
- ▶ Identifying risks of foreign companies of a Group being declared Russian tax residents, providing recommendations on mitigating those risks and advising on possible restructuring options
- ▶ Making a timely and thorough assessment of the risks arising for your entity and selecting the most appropriate response strategy in the light of recently adopted and planned amendments to tax treaties and tougher case law decisions
- ▶ Assessing the risks of foreign companies not meeting beneficial ownership criteria, identifying “alternative” beneficial owners and preparing a “defence file” in case of challenges by the tax authorities.

We will help your business timely adapt to the new requirements and effectively manage tax risks in the context of the application of deoffshorization legislation.





# Tax Treatment of Company Reorganizations





Reorganizations of companies (in the form of a merger, upstream merger (absorption), transformation, spin-off or demerger) in Russia are generally tax-neutral. A reorganization of companies should not give rise to any tax charge in Russia for the shareholders of the reorganized company or companies.

In addition, the reorganization of Russian companies does not give rise to any taxation for the resulting companies with respect to the assets, accounts receivable and obligations transferred by the reorganized company. Generally, there are no change of control limitations. If a taxpayer ceases its activity as a result of reorganization, the legal successor may use the loss carry-forwards transferred from the reorganized company, unless reducing the tax base of the successor entity by losses made by the predecessor entities prior to the reorganization was the principal purpose of the reorganization.

A reorganization or liquidation may prompt a tax audit in respect of the three calendar years preceding the year in which the decision was made to carry out the audit, regardless of whether those years have been audited before.





# 12

## Customs



## Overview

Customs regulation in Russia is generally based on international standards and Russian customs legislation contains some provisions that are similar to the provisions of the EU Customs Code. The Russian Federation is a member of the World Customs Organization, the International Convention on the Harmonized Commodity Description and Coding System (Brussels, 1983), the Convention on Temporary Admission (Istanbul, 1990), the Convention on the Simplification and Harmonization of Customs Procedures (Kyoto, 1973) and many others. Russia joined the World Trade Organization in August 2012. It should be noted that, in practice, those conventions and WCO documents constitute soft law in Russia. Acts of the EAEU Commission and other EAEU acts may have priority.

## Eurasian Economic Union of Russia, Belarus, Kazakhstan, Armenia and Kyrgyzstan

Russia has formed the Eurasian Economic Union (EAEU) with Belarus, Kazakhstan, Armenia and Kyrgyzstan. The EAEU represents the next stage of integration among those countries following the creation of the Customs Union and the Unified Economic Space. The unified customs legislation of the EAEU, i.e. the Customs Code of the EAEU, international agreements and decisions of the Customs Union/EAEU Commission, the Unified Customs Tariff and the unified system of non-tariff measures (licensing requirements for

import operations), is directly applicable in Russia. The EAEU provides for the free movement of goods within its member countries.

On 1 January 2018 the new Customs Code of the EAEU entered into force, replacing the Customs Code of the Customs Union. Current customs regulation within the EAEU is governed by the Customs Code of the EAEU and international agreements between the member states. At the same time a number of international agreements were annulled, since their provisions have been incorporated into the Customs Code of the EAEU. The implementation of the provisions of the Customs Code of the EAEU also triggered amendments of other EAEU and the Russian customs law.

## Import duties

Imported goods are generally subject to import customs duties and import VAT. Certain categories of goods (such as alcohol, tobacco, personal cars, gasoline) are also subject to excise duties (see “Other taxes” on [page 92](#)).

Generally, import customs duty rates vary from 0% to 15% of the customs value of goods. Import VAT is generally 20% (subject to certain exceptions) and is calculated on the basis of the sum of the customs value and import customs duty. Import VAT paid by the importer may generally be offset against output VAT if general conditions for VAT recovery are met.

Current customs tariffs set 0% duty rates for books, certain types of medicines,

certain machinery and some other goods. Humanitarian aid, goods needed for the relief of natural calamities, accidents and disasters and diplomatic goods are exempt from import customs duties and import VAT.

## Export duties

Export duties are set by the Government of the Russian Federation on a narrow range of goods, including tuna, natural fuel, some types of wood, animal hides and crops.

## Customs value

Customs valuation in Russia is based on GATT/WTO rules. The customs value of imported goods is usually determined as the value of the goods stated in the invoice plus certain other costs associated with the importation of the goods but not included in the transaction price. These additional costs are typically the cost of delivery of the goods to the border (e.g., transportation and insurance costs), royalties or other payments for use of intellectual property, the cost of materials provided free of charge by the purchaser to the seller, etc. This method of calculation of the customs value of imported goods is called the transaction value method.

If the customs value cannot be calculated using the transaction value method, other methods may be applied: the method based on the transaction value of identical or similar goods, the deductive method, the computed method or the fall-back method.

## Latest trends regarding customs valuation

The customs value of goods supplied in related-party transactions is closely monitored by the customs authorities. Since July 2019 it has been obligatory to indicate in the customs value declaration whether the transaction value of imported goods is close to one of the possible test values established by law. In practice, importers almost always indicate that the customs value is close to one of the test values, although they do not actually calculate them. Obviously, there must be proper evidence for this claim, since the customs authorities may request relevant supporting documents and information. In order to prove that the relationship between the importer and the supplier did not influence the price, the calculated test value must be equal or close to the transaction value of the imported goods.

Recent practice also demonstrates that the customs authorities have begun to include dividends paid by importers to related suppliers (i.e., foreign founders) in customs value and to charge additional customs payments accordingly. This may happen if the customs authorities decide that the dividends in question are related to the imported goods and must be added to the customs value as a part of income received from subsequent sales of the imported goods that is directly or indirectly due to the seller. Although recent case law on the legitimacy of including dividends in the customs value

of imported goods has been favourable, the number of customs audits on this issue is increasing.

## Customs coding

The Unified Customs Nomenclature of the EAEU is applicable in Russia. This nomenclature is based on the Harmonized Commodity Description and Coding System. Therefore, the first six digits of the commodity code should be identical in Russia and in the EU, although there are some differences in practice. It is possible to obtain a binding decision on the classification of goods from the customs authorities.

## Customs procedures

All cross-border transfers of goods and vehicles in Russia are carried out under one of the customs procedures prescribed by the customs legislation of the EAEU. Each customs procedure establishes different conditions for clearance, which have a considerable effect on tariff and non-tariff barriers for import and export transactions. Below is a summary of the main customs procedures.

In 2021, the Eurasian Economic Commission of the EAEU plans to prepare amendments to the Unified Customs Nomenclature of the EAEU and the Unified Customs Tariff in connection with the adoption of the 2022 edition of the HS Nomenclature, which includes a total of 351 sets of amendments covering a wide range of products.

## Release for domestic consumption

The customs procedure of release for domestic consumption is used when goods are imported into Russia without the intention of their being re-exported. This is the most frequently used and most straightforward procedure. Under this procedure, after the payment of customs duty and import VAT and the fulfilment of other necessary formalities, the goods are considered to be in free circulation in the EAEU.

## Bonded warehouse

When goods are imported under the bonded warehouse customs procedure, the imported goods are kept in a special warehouse under the supervision of the customs authorities (customs bonded warehouse) until they are released for free circulation (or under another procedure) or are re-exported out of Russia. The payment of customs duties and import VAT is postponed until the goods are removed from the customs bonded warehouse.

Goods kept in a customs bonded warehouse must remain in an unchanged condition, i.e., it is prohibited to manufacture, assemble or transform goods stored in a customs bonded warehouse.

The period of storage of goods in a customs warehouse may not exceed three years. After the storage period has expired, the goods must be placed under another customs procedure. If the goods are released for domestic consumption, customs duties and VAT must be paid. If



the goods are re-exported to a country outside the EAEU, no import customs duty or import VAT are due.

### **Temporary importation**

The temporary importation procedure is a customs procedure under which the use of goods in Russia is permitted with full or partial exemption from import customs duties and import VAT. At the time goods are imported into Russia it is intended that the goods will remain in Russia for a limited period of time and will then be re-exported.

The total period of temporary importation may not exceed two years (there are some exceptions).

A full exemption is granted in limited cases for certain goods. Typical examples of temporary importation with full exemption are imports of goods for an exhibition or for testing in Russia. Some types of vessels and aircraft are also granted full exemption. Usually for these types of goods the period of temporary importation may be shorter or longer than 2 years.

A partial exemption is granted in other situations when full exemption is not applicable. Under a partial exemption, the importer has to pay customs payments in monthly instalments of 3% of the total amount calculated as if the goods were released for free circulation. These amounts are not refunded if the goods are re-exported.

Once the temporary importation period has expired, the goods may either be re-exported out of Russia or released for free circulation in Russia. In the first case, the customs payments made

are not refundable. If the goods are eventually released for free circulation, the outstanding amount of customs payments must be paid together with late payment interest.

This customs procedure is widely used in practice, particularly in the case of importation for leasing operations in Russia.

### **Processing customs procedures**

There are three different processing customs procedures:

**1. Inward Processing.** Under this customs procedure, companies whose business involves the processing of goods in Russia may, subject to certain conditions, import goods into Russia for processing without the payment of import customs duty and import VAT. A bank guarantee may be required to secure the payment of customs duties and taxes which may become due in the event that the conditions of the customs procedure are violated.

Once the goods have been processed into finished products, they must be exported. If the finished products are released for free circulation in Russia, import customs duty and import VAT must be paid on the value of the raw materials together with late payment interest.

**2. Processing of goods for domestic consumption.** Under this customs procedure, import customs duties are due only once the finished products are released for free circulation on the Russian market.

Thus, import customs duties apply to the finished goods. Raw materials imported for processing are exempt from import customs duties but are subject to import VAT. The procedure is applicable only to goods included in the list established by the Government. It is possible for the list to be extended on the application of an interested party (parties).

**3. Outward Processing.** The customs procedure of processing of goods outside Russia allows goods to be exported for processing and subsequently re-imported into Russia. Import customs duties and import VAT are due only on the value added by the processing operations but not on the value of the imported goods. This customs procedure is useful for goods that need to be exported for repair outside Russia.

## **CIS free trade regime**

According to the free trade regime among CIS countries, goods originating and imported into Russia from one of the CIS countries are exempt from customs duties. In order to qualify for this exemption, the goods must be imported under a contract concluded between CIS residents and the goods must be shipped directly from the territory of a CIS country. An additional requirement is that the seller must be the owner of the goods. The origin of goods must be confirmed by a special certificate of origin. VAT and excise duties (if applicable) are due. As from 1 January 2016 the free trade regime with Ukraine was suspended.

## Free trade with other countries

**Vietnam.** On 29 May 2015, a Free Trade Agreement (FTA) was signed between Vietnam and the EAEU. It is the first FTA concluded by the EAEU with an external trade partner. The agreement envisages the gradual bilateral reduction of import duty rates for goods originating in EAEU countries and Vietnam during the transitional period, which will be 5-10 years depending on the type of goods. The agreement entered into force in October 2016.

**Iran.** On 27 October 2019, the Interim Agreement leading to the formation of a free trade area between the EAEU states and the Islamic Republic of Iran entered into force. Under the Agreement import customs duty rates between the EAEU countries and Iran will be reduced or eliminated on a limited range of goods. Moreover, unjustified non-tariff measures restricting trade must not be applied to goods listed in the Agreement. The Agreement is valid for 3 years. The parties must conclude a full-fledged FTA during this period.

**Singapore.** The FTA between the EAEU member states and the Republic of Singapore was signed on 1 October 2019. It provides a free trade regime for the importation into Singapore of all goods originating in EAEU countries. The EAEU in turn plans to eliminate import customs duties for 40% of Singapore's trade nomenclature once the Agreement enters into force. It is expected that within 5-10 years up to 87% of Singaporean goods will be exempted from customs duties. The Agreement will enter into force after all the relevant internal legal procedures have been completed.

**Serbia.** On 25 October 2019, the Free Trade Agreement between the EAEU and the Republic of Serbia was signed. There have already been bilateral FTAs between Serbia and Russia, Kazakhstan and Belarus. The new unified Agreement will extend the preferential trade regime to Armenia and Kyrgyzstan. The Agreement will enter into force 60 days after the completion of internal legal procedures by the EAEU member states and Serbia.

Currently there are also negotiations on the conclusion of FTAs with Egypt, India, Turkey, Republic of Korea, Israel.

## Tariff preferences for goods originating from developing and/or least developed countries

Goods originating from developing countries and imported into the EAEU attract reduced customs duty rates equal to 75% of the duty rates of the EAEU Common Customs Tariff. Goods originating from least developed countries and imported into the EAEU attract a 0% import customs duty rate. In order to qualify for such preferential treatment, the countries and the goods must be included in a special list established by the EAEU. The goods must also be shipped directly from developing/least developed countries to the EAEU. The origin of goods must be confirmed by a special certificate of origin.

## Import permissions

There are numerous requirements to receive authorization documents before importing goods into Russia. These include licences, certificates and declarations of conformity, among others. The set of authorization documents required to be obtained for a specific imported product depends on its customs code, description and characteristics. Some goods (e.g., medicines, shoes, etc.) are subject to mandatory marking before they are released in Russia.

## **Categorization of companies**

In 2020, a new automatic system for categorizing companies engaged in foreign trade activities came into operation. The customs authorities divide companies into three groups: high, medium and low risk. Companies are assessed based on set criteria and conditions. The risk category determines the amount of customs control measures to be applied to the company's shipments. If the company is classified as low risk, then only one delivery out of fifty will be subject to customs control.

## **Customs control**

According to customs legislation, the customs authorities carry out customs control not only at the time of the customs clearance of goods but also during a three-year period after goods have been released. During this post-entry control period, the customs authorities may request additional documents and explanations regarding customs valuation, tariff codes, etc. If the customs authorities identify mistakes, they may charge additional customs payments, late payment interest and, in some cases, fines.





## How can EY help?

In today's global economy, moving goods internationally can be a complex and costly activity. More than ever before, effective management of global trade issues is crucial to maintaining a competitive advantage.

Our team of global trade professionals can help you to operate more effectively in moving goods around the world.

*We offer a wide range of services, including the following:*

### 1. Management of import/export and customs clearance processes:

- ▶ Assistance in selecting the optimal customs procedure
- ▶ Structuring of supplies where the consignor and consignee are resident in different countries
- ▶ Analysis of customs consequences and opportunities to claim customs benefits and tariff preferences
- ▶ Development of a step-by-step action plan for importing/exporting goods from/into the EAEU
- ▶ Structuring of supplies in trade with EAEU member states where goods are imported from a third country

### 2. Management of customs payments:

- ▶ Determination of customs value
- ▶ Confirmation of customs value (calculation of test values, preparation of responses to customs authorities' enquiries)
- ▶ Dividends and transportation deductions

### 3. Customs procedures and simplifications:

- ▶ Analysis of special simplifications, identification of potential practical difficulties in applying them and provision of recommendations on addressing those difficulties

- ▶ Analysis of how to apply the free customs zone procedure when importing goods to an priority development zone and when selling goods.

### 4. Simplifications for AEOs

- ▶ Evaluation of whether a company meets the AEO requirements based on an analysis of its current business processes, identification of weaknesses and development of remedial recommendations
- ▶ Assistance in obtaining AEO status, including evaluation of qualification for that status

### 5. Classification of goods:

- ▶ Review of classification codes applied
- ▶ Assistance in obtaining preliminary decisions on the classification of goods
- ▶ Analysis of customs risks that may arise as a result of declaring incorrect classification codes.

### 6. Proof of origin:

- ▶ Analysis of compliance with the origin criteria for the purposes of public procurement in Russia and export to the CIS
- ▶ Overview of the procedure for obtaining an ST-1 certificate

- ▶ Assistance in confirming 'Made in Russia' status.

### 7. Review of compliance with customs legislation when performing import and export operations:

- ▶ Review of the company's foreign economic activity function for a certain period
- ▶ Customs compliance
- ▶ Health check.

### 8. Recovery of customs overpayments:

- ▶ Assistance in securing refunds of overpayments, including overpaid import VAT
- ▶ Assistance in amending customs declarations.

### 9. Licensing and similar arrangements (franchises, concessions):

- ▶ Analysis of whether it is necessary to include license fee payments in the customs value of imported goods
- ▶ Assessment of customs risks that may arise due to ineffective administration of the licensing structure
- ▶ Confirmation of the market level of a license fee rate
- ▶ Advice on customs value issues regarding the inclusion of VAT in the amount of the license fee included in customs value

## **10. Data Control and Analysis**

Customs tool: a solution designed for the automated processing and checking of customs declarations, which involves:

- ▶ An automated review of customs declarations based on selected parameters
- ▶ Generation of reports based on data from customs declarations
- ▶ Automatic identification of errors in approaches used by different customs brokers based on selected criteria (for example, tariff classification of goods)
- ▶ Monitoring of expenses associated with customs broker services.

## **11. Appealing against actions/decisions of the customs authorities and administrative rulings to courts and higher customs authorities; practical assistance in dealing with the customs authorities**

- ▶ Support for companies in relation to administrative appeals
- ▶ Representation of companies in arbitration courts in disputes with the customs authorities.

## **12. Protection of intellectual property:**

- ▶ Registering trademarks in the Customs Register of Intellectual Property (TROIS)
- ▶ TROIS administration and communication with the customs authorities
- ▶ Assistance in the development of risk profiles for administration of parallel imports.

## **13. Labelling and traceability:**

- ▶ Analysis of business processes
- ▶ Assessment of the impact of Track & Trace operations on current business processes, including their timing
- ▶ Analysis of additional Track & Trace operations and their incorporation into the operations of company departments
- ▶ Estimation of additional labour costs for a company
- ▶ Evaluation of options to automate Track & Trace operations.

## **14. Assistance to companies in obtaining subsidies, benefits and other government support:**

- ▶ Development of appropriate support claims and discussion and approval thereof with the relevant federal executive authorities
- ▶ Development of a legal framework for claiming support
- ▶ Assessment of whether the proposed forms of support comply with WTO rules
- ▶ Assistance in obtaining subsidies on a regular basis, preparation of required documents and support in submitting them to the relevant federal executive authorities.

# 13

## Transfer Pricing





## Overview

Substantial transfer pricing (TP) regulations are contained in Articles 105.1 to 105.25 of the Tax Code (which were introduced by Federal Law № 227-FZ of 18 July 2011 and have applied since 1 January 2012). Even though Russia is not a member of the OECD, the Russian transfer pricing regulations are largely based on the principles laid down in the OECD Guidelines, although the Guidelines themselves do not have force of law. In practice, the law prevails if there are any differences with the OECD Guidelines. The Russian TP rules are driven by the arm's length principle and accord priority to the substance of a transaction over its form.

There is no system of rulings in Russia. Private letters issued by the Federal Tax Service (FTS) or the Russian Ministry of Finance at the request of taxpayers are not binding on the tax authorities or companies.

Besides the above-mentioned articles of the Tax Code, the Russian Ministry of Finance or the FTS regularly issue letters clarifying their position on the application of the arm's-length principle in general and in response to specific questions from taxpayers regarding the application of current regulations. These letters set out the formal position of the Ministry of Finance and the FTS but are not legally binding on taxpayers.

Russia adopted BEPS Action 13 documentation requirements in November 2017 (which were introduced by Federal Law No. 340-FZ of 27 November 2017 and have applied to financial years starting on or after 1 January 2017, with the option to commence country-by-country reporting from FY 2016).

## Scope of TP control

The Russian TP rules focus primarily on related-party transactions, but certain third-party transactions are also subject to TP control. Starting from 2019, a threshold of RUB 60 million (approx. US\$ 829,646) applies for cross-border transactions to be classified as controlled for transfer pricing purposes. Besides related-party transactions, cross-border transactions between unrelated companies involving the sale of global exchange-traded commodities and transactions in which any of the parties belongs to a blacklisted jurisdiction<sup>20</sup> are subject to TP control with the same materiality limits.

Starting from 1 January 2019, a significant number of domestic transactions were excluded from TP control in Russia. Related-party transactions remaining under TP control are those that exceed RUB 1 billion (approx. US\$ 13,827,433) per year and meet one of the following conditions:

- ▶ The parties to the transaction apply different tax rates on profits derived from that transaction
- ▶ One of the parties pays mineral extraction tax at ad valorem rates
- ▶ One party applies or both parties apply a special tax regime (for example, the unified tax on imputed income or the unified agricultural tax)
- ▶ One of the parties is exempt from profits tax
- ▶ One of the parties is an operator or holder of a licence to develop a new offshore deposit
- ▶ One or both parties are residents of the Skolkovo research centre
- ▶ One or both parties apply an investment tax deduction for profits tax purposes
- ▶ One of the parties pays tax on additional income from hydrocarbon extraction on income from the transaction

Where domestic transactions fall outside the scope of transfer pricing control, there is still a possibility that the local tax authorities might review them from the perspective of the unjustified tax benefit concept. If this happens, the pricing approach in the transactions may be examined using TP methods.

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<sup>20</sup> Please refer to Appendix 5 for a list of these locations.

Certain domestic transactions are not subject to TP control:

- ▶ Transactions between members of a domestic consolidated group of taxpayers
- ▶ Transactions where both parties are registered in the same region of Russia, neither party has economically autonomous subdivisions in other regions of Russia or pays profits tax in other regions, neither party has tax losses and there are no other grounds for the transaction to be deemed controlled
- ▶ Transactions where two of the parties are operators or licence holders in relation to a project involving hydrocarbon extraction activities at the same field on Russia's continental shelf
- ▶ Interbank credits (deposits) granted for up to 7 days
- ▶ Transactions relating to military and technical co-operation between Russia and foreign countries
- ▶ Transactions involving the provision of guarantees if all parties to the transaction are Russian legal entities which are not banks
- ▶ Transactions involving interest-free loans between Russian related parties
- ▶ Assignment of rights (cession) by banks as part of bankruptcy prevention measures and enforcement of banking regulations by the Bank of Russia

For the purposes of the Tax Code, the main criterion for two entities to be

regarded as related parties is the 25% ownership threshold, i.e., if one party directly or indirectly controls more than 25% of the other party. There are numerous other conditions, and the courts can also declare companies and individuals to be related on any other grounds if it is proven that the relationship between the parties influenced the conditions and results of transactions.

## TP methods

The Tax Code includes five methods similar to those used in international transfer pricing practice, including comparable uncontrolled price (CUP), resale minus, cost plus, transactional net margin and profit split. The CUP method has first priority, whereas the profit split method is regarded as the method of last resort. The resale minus method has first priority for a routine distributor reselling goods to unrelated customers.

It is also permitted to use an independent valuation report for one-off transactions where none of the five transfer pricing methods can be applied.

An interest rate is considered to be at arm's length if it is within the safe harbour ranges specified in the Tax Code. The safe harbour ranges vary depending on the currency of the loan and whether it is a cross-border or a domestic transaction. Safe harbours are stipulated for financial transactions (minimum and maximum interest rates). If the interest rate is outside the safe harbour, the taxpayer may carry out an economic study to justify the rate.

As part of the implementation of BEPS Action 8 requirements addressing transfer pricing implications related to intangible assets, there is a list of functions and risks that must be taken into account when conducting a functional analysis in relation to intangibles. These relate to the development, enhancement, maintenance, protection and exploitation of intangibles (also known as DEMPE functions and associated risks). The Tax Code also establishes the characteristics of intangible assets that must be taken into account in assessing the comparability of related transactions involving such assets: type of intangible asset, exclusivity, conditions of legal protection (existence and duration), territorial extent of the right to use the intangible asset, useful life, life cycle stage (development, enhancement, exploitation), the rights and functions of the parties in connection with the increase in value of intangibles as a result of their enhancement, and the possibility of deriving income from the use of the intangible assets.

## Documentation requirements

### ***Notification of controlled transactions***

Information on controlled transactions must be submitted to the tax authorities on an annual basis using a TP notification. The information must be submitted no later than 20 May of the year following the year in which the controlled transactions took place. All controlled transactions must be reported in the TP notification.



### ***TP documentation***

The tax authorities may request TP documentation proving that transfer prices are at arm's length. That documentation must be submitted to the tax authorities within 30 business days of the request being made by the tax authorities, which may not be earlier than 1 June of the year following the reporting year. Broadly speaking, Russian TP documentation should contain information similar to that recommended by the OECD TP Guidelines. A comparability analysis based on Russian data (also in line with the search strategy prescribed in the Tax Code) is a must where the tested party is located in Russia. Foreign comparable

data will be accepted only in the absence of reliable information within Russia. The transfer pricing documentation must be submitted in the local language.

Symmetrical adjustments are available for domestic transactions. The right of other parties to a controlled transaction to make symmetrical adjustments arises (1) where a decision of a federal tax authority to charge additional tax has been complied with by a party to a controlled transaction which was subject to tax assessment, OR (2) where a party to a controlled transaction has made a voluntary adjustment by recording it in the tax return and paid additional tax if applicable.

TP documentation is not required for third-party transactions, transactions where the prices conform to a regulated price or a price prescribed by antimonopoly authorities, transactions involving securities and derivatives traded on the organized securities market and transactions covered by an advance pricing agreement.

### ***BEPS Action 13 reporting***

Russia BEPS Action 13 documentation has applied to financial years starting on or after 1 January 2017 with the option to file Country-by-Country (CbC) reports commencing from the 2016 financial year. A three-tier reporting system has been introduced which includes a Local



File, a Master File and a CbC report. The new reporting requirements apply to multinational groups with consolidated revenue exceeding a certain threshold. The threshold references the CbC reporting requirements in the jurisdiction of the ultimate parent entity (UPE). If the UPE is a Russian taxpayer, the threshold is set at RUB 50 billion (approx. US\$ 691 million). If the new requirements apply to the group, the following filings must be prepared:

► **CbC reporting notification.**

A CbC reporting notification must be submitted by each Russian member of the qualifying multinational group within 8 months after the end of the reporting financial year for the UPE. The notification must adhere to the requirements stated by the Tax Code and be submitted using the XML format established by the FTS.

► **CbCR report.** A CbC report must be submitted no later than 12 months after the end of the reporting financial year. Normally, a CbC report must be submitted by the UPE (or a designated surrogate parent entity) in its home location and then automatically exchanged with the FTS. If Russia does not activate automatic exchange with the UPE/surrogate entity's jurisdiction by the CbC report filing deadline, Russian members of the group will be required to file a CbC report with the Russian tax authorities directly upon request.

► **Master file.** A master file may be requested by the Russian tax authorities from a Russian member of a qualifying multinational group after 12 months but not later than 36 months from the last day of the reporting financial period. It must

be provided in the Russian language within 3 months of a request being received. The first master file may be requested for financial reporting years commencing in 2017. The content of the master file must adhere to the requirements stated in the Russian Tax Code and is broadly similar to that specified in the OECD BEPS Action 13 report, although there are some differences.

► **Local file.** The local file is also known as national TP documentation which has replaced traditional TP documentation for cross-border transactions of Russian members of qualifying groups. A local file may be requested by the Russian tax authorities after 1 June of the year following the reporting calendar year. An extension (31 December of the year following the reporting calendar



year) is available for 2018 and 2019. The local file must be provided to the tax authorities within 30 business days upon request. The local file must be provided in the Russian language. The content of the local file must adhere to the requirements of the Russian Tax Code subject to certain special considerations. The first local file may be requested for 2018.

## TP audits

The FTS is entitled to conduct a TP audit of controlled transactions. The general rule is that a TP audit may cover the three preceding calendar years. Controlled transactions may be audited only once for a specific calendar year.

TP matters in controlled transactions are subject to special transfer pricing audits, which are separate from general tax audits and must be performed by the FTS rather than local tax authorities. To date, TP audits have focused mainly on cross-border commodity transactions and transactions involving low-tax jurisdictions. Additional high-risk factors include intercompany service fees, management fees, royalties and losses, as well as significant reductions in a tax base and deviations from industry-wide benchmarks. Some domestic transactions may also be regarded as high-risk if they involve entities resident in special economic zones, if they are subject to advantageous tax regimes or if they involve loss-making entities. Transactions that are viewed by the tax authorities as leading to the receipt of an unjustified tax benefit may also be scrutinized using the TP approach.

## Penalties

The Tax Code establishes a 40% (not less than RUB 30,000 (approx. US\$ 415)) penalty in the event that a taxpayer's income is adjusted as a result of a TP audit (based on the amount of unpaid tax) and if the taxpayer did not provide appropriate TP documentation supporting the prices in a controlled transaction.

The fine for non-submission of a notification of controlled transactions is RUB 5,000 (approx. US\$ 69).

The Tax Code establishes the following penalties in relation to CbC reporting:

- ▶ Failure to submit/late submission of or submission of inaccurate information in a CbC reporting notification may result in a penalty of RUB 50,000 (approx. US\$ 691) (applies for financial years starting in 2020)
- ▶ Failure to submit/late submission of or submission of inaccurate information in a CbC report may result in a penalty of RUB 100,000 (approx. US\$ 1,383) (applies for financial years starting in 2020)
- ▶ Failure to submit/late submission of a master file may result in a penalty of RUB 100,000 (approx. US\$ 1,383) (applies for financial years starting in 2020)
- ▶ Failure to submit/late submission of a local file may result in a penalty of RUB 100,000 (approx. US\$ 1,383) (applies for financial years starting in 2018)

## Penalty relief

Penalties will be imposed if a taxpayer's taxable income is adjusted as a result of a TP audit. Penalties cannot be imposed if prices were established in accordance with an applicable advance pricing agreement (APA) or if the taxpayer provided compliant TP documentation supporting the prices in a controlled transaction.

If an adjustment is made by the tax authority, the available dispute resolution mechanism is through litigation or Mutual Agreement Procedure ("MAP").

## Advance pricing agreements

The Tax Code allows for the conclusion of an APA with the Russian tax authorities. An APA is an arrangement that determines, in advance of controlled transactions, an appropriate set of criteria, e.g., TP method, comparables and adjustments thereto, and critical assumptions as to future events for the determination of the TP for those transactions over a fixed period. An APA may be unilateral involving the FTS and a taxpayer or multilateral involving the agreement of two or more tax administrations. Only Russian entities are eligible to conclude an APA, and they must also be classed as major taxpayers. The Tax Code provides for the conclusion of multilateral APAs when the transaction parties are located in a jurisdiction with which Russia has a double tax treaty.

A procedure establishing the process for managing bilateral and multilateral APAs came into effect from June 2018. The adoption of the procedure provides a practical framework for the conclusion» of APAs with the involvement of one or more foreign competent authorities. APAs are available for up to a three-year term. Russia is now considering changes to the current bilateral APA rules which, among other things, may allow the acceptance of TP methods used in a foreign jurisdiction and an extension of the time allowed for the tax authorities to consider an APA to 27 months plus time taken by the competent tax authorities of another state to respond to information requests from Russia as part of the applicable MAP.



## Mutual Agreement Procedure

MAP is a government-to-government process of negotiation to resolve taxation matters which is described in Article 25 of the OECD Model Tax Convention as well as in various double tax treaties. In January 2019, the Russian Ministry of Finance issued MAP guidelines for taxpayers, setting out recommendations on initiating and conducting MAPs with the competent authorities of tax treaty partner states. The document is largely based on the standard MAP provisions contained in Russian tax treaties, but includes a number of important technical clarifications, providing more detailed guidance, for instance, on the rights and obligations of persons who have the right to initiate the mutual agreement

procedure and what action is required and what documents need to be provided under the procedure.

Despite the importance of the matters it deals with, the MAP guidelines are not a regulatory act of the Ministry of Finance, but rather a set of recommendations, i.e. essentially a “framework” document which a competent authority is entitled, but not obliged, to refer to in dealing with matters relating to the initiation and conduct of mutual agreement procedures with competent authorities of tax treaty partner states.

From January 2020, the Tax Code includes a number of reference clauses to the effect that the conduct of MAP 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 (Articles 142.7 to 142.8 of the Tax Code). Detailed rules on the application of MAP are laid down in a Ministry of Finance order dated 11 June 2020 (entered into force in October 2020). According to that order, Russian taxpayers are allowed to submit a MAP request within three years from the date of receipt of a report on the results of a tax audit, or a reasoned opinion of a tax authority in the context of tax monitoring, or a report issued by the tax authority of a foreign state that is a party to the applicable DTT, which, in the taxpayer’s opinion, results in taxation not in accordance with the DTT. The Ministry of Finance must review the application within 90 days and make a formal decision on whether or not it agrees to initiating MAP.



## How can EY help?

### *Transfer pricing compliance and documentation*

The tax authorities are focusing more widely and intensely on transfer pricing issues. Documenting intercompany transactions is the first line of defence when your transfer pricing practices are challenged. Whether you choose to apply a globally centralized approach or a decentralized approach to your documentation needs, we have a dedicated team to support you in the transfer pricing documentation process.

### *Transfer pricing implementation – intercompany effectiveness*

Operationalizing transfer pricing policies is a big challenge for many multinationals. EY has developed a structured and scalable framework for improving transfer pricing

implementation and building integrated systems and processes across tax, business units and operations. Our flexible approach can help you develop sustainable practices to execute, monitor and report intercompany transactions.

### *Transfer pricing planning and operating model effectiveness*

Our multidisciplinary operating model effectiveness (OME) team works with you on operating model design, business restructuring, systems implications, transfer pricing, direct and indirect tax, customs, human resources, finance, and accounting. We can help you build and implement the model that makes sense for your business, improve your processes and manage the cost of trade.

### *Transfer pricing controversy*

Tax authorities are focusing more closely on cross-border situations and transactions, targeting transfer pricing and supply chains. EY assists clients in building controversy strategies that help satisfy their objectives. Such strategies often involve robust up-front planning, preventive (transfer pricing) controversy advice where needed, consideration of advance (pricing) agreements (APA), audit defence work followed by a domestic administrative appeal, review of alternative dispute resolution opportunities, preparation and implementation of a request for competent authority assistance under the mutual agreement procedure (MAP) article in a tax treaty, and assistance in litigation.

# 14 Investment Promotion Measures



The Tax Code allows for special privileges as well as reduced rates of profits tax and corporate property tax to be set for participants in special investment contracts (SPICs), investment protection and promotion agreements (IPPAs) and regional investment projects (RIPs) and for residents of special economic zones (SEZs).

## Special economic zones (SEZs)

SEZs are defined as territorial areas with a special regime for carrying on entrepreneurial activity and special business incentives, including in particular certain tax and customs privileges. Five types of zones are now envisaged by the law:

- ▶ Industrial production SEZs
- ▶ Technology development SEZs
- ▶ Tourism and recreation SEZs
- ▶ Port SEZs
- ▶ Specially regulated SEZs

The rate of profits tax payable to the federal budget for residents of an SEZ is set at 2%, except for residents of a technology development SEZ and residents of tourism and recreation SEZs that have been combined into a cluster by decision of the Russian Government, for which the rate of tax payable to the federal budget is set at 0%.

To enjoy the benefits of an SEZ, it is necessary to be a resident of the SEZ, i.e., to be registered in the territory of the SEZ, conclude a special agreement with the SEZ administrative bodies and fulfil certain conditions relating to activity and level of investment in the SEZ.

Regional laws may set a reduced rate of profits tax payable to the regional budget

for residents of an SEZ with respect to activities carried on in the territory of the SEZ, on condition that they maintain separate records of income received/expenses incurred in connection with activities inside and outside the SEZ.

SEZ residents are also exempt from assets tax on assets recorded on their balance sheet that were created or acquired for the purposes of carrying on activities in the SEZ, are used in the SEZ within the framework of the agreement on the creation of the SEZ and are located in the territory of the SEZ. The exemption applies for 10 years from the month following the month in which the assets were registered.

In certain cases, relief in respect of other taxes may also be established for SEZ residents.

While activities related to an SEZ are subject to separate accounting, it should be noted that neither the Federal Tax Service nor the Finance Ministry have yet established (or recommended) approaches to the organization of separate accounting. Taxpayers must therefore develop their own methodology. We would be happy to assist you in this matter.

## Special investment contracts (SPICs)

Under the new SPIC rules (so-called SPIC 2.0), the investor (a legal entity

or individual entrepreneur) agrees to implement or develop and implement a technology recognised by the Russian Government as an advanced technology for the purpose of launching mass production of industrial products, and the state, represented by the Russian Federation, a Russian region or a municipality, agrees to grant it various benefits, including guaranteed stability of business conditions, tax incentives and reliefs.

A SPIC is concluded on a competitive selection basis through public or private tenders (multiple winners possible). In exceptional cases a SPIC may be concluded without a tender by decision of the Government or the President. A SPIC may be concluded:

- ▶ no later than 31 December 2030
- ▶ for effective periods:
  - up to 15 years, if the investment amount is less than RUB 50bn (less than US\$ 691 m)
  - up to 20 years, if the investment amount is more than RUB 50bn (more than US\$ 691 m)

The effective period of a SPIC may be extended by the Government of the Russian Federation if the investor is subject to sanctions imposed by a foreign state, state association and/or union of foreign states.



A SPIC may be concluded only if incentive measures for SPIC participants are laid down in regional legislation.

Under a SPIC, the Investor is obliged to carry out an investment project involving the implementation of a technology or the development and implementation of a technology for the purpose of launching the mass production of industrial products based on that technology (which must be included in the Government-approved List of Advanced Technologies) in the territory of Russia / on the continental shelf of Russia / in the exclusive economic zone of Russia by investing its own or raised funds,

Public entities are obliged, within the bounds of their powers and in accordance with the terms of the SPIC, to guarantee the stability of business conditions for the investor and to apply industry incentives provided for in the SPIC in accordance with federal, regional and municipal laws and regulations.

Under the SPIC regulations, a technology is defined as:

- ▶ a combination of IP assets presented in an objective form which may form a basis for the production of products and includes any combination of inventions, utility models, industrial samples, computer programmes and other IP assets protected by Chapter IV of the Civil Code,
- ▶ non-protected IP assets, including technical data and information

Currently, an investor may have its technology included in the list of advanced technologies in accordance

with the procedure for the updating of that list by completing an application with a description of its technology explaining what makes the technology advanced and relevant.

Under a SPIC, an investor may apply for the following non-tax support measures:

- ▶ Subsidies intended solely for SPIC participants
- ▶ Accelerated depreciation (under a SPIC the investor may issue certificates to its customers confirming the possibility of applying accelerated depreciation)
- ▶ Granting of “made in Russia” status to the Investor’s products (an accelerated and simplified procedure for obtaining the status of products made in Russia)
- ▶ Stabilization clause (stability of business conditions for the investor)
- ▶ Other measures required for the implementation of an investment project (e.g., the granting of special conditions for the lease of land plots owned by the Russian Federation, regions of the Russian Federation or municipalities)

#### ***Tax reliefs for SPIC investors***

For participants in a SPIC, the rate of profits tax payable to the federal budget may be reduced to 0%. The rate of tax payable to a regional budget is set by a regional law and may likewise be reduced to 0%.

Commencing from 1 January 2020, these reduced tax rates apply:

- 1) To the entire tax base provided that income from sales of goods manufactured within the framework of the SPIC accounts for at least 90% of all taxable income (not including income in the form of positive exchange differences), or
- 2) To the tax base relating to SPIC activities provided that separate records are maintained of income received/expenses incurred in connection with SPIC activities and in connection with other activities.

The reduced rate is applicable starting in the tax period in which the first profit is received from SPIC activities and ending in the tax period in which the total amount of budget expenditure and unreceived revenue attributable to the application of SPIC incentives exceeds 50% of capital investments provided for in the SPIC (or in which the taxpayer loses the status of participant in a SPIC). This calculation is made using the methodology specified in clause 8 of part 2 of Article 18.3 of Federal Law No. 488-FZ of 31 December 2014 “Concerning Industrial Policy in the Russian Federation”.

As a rule, these provisions apply to SPICs concluded from 1 January 2020 onwards. There is a transitional provision according to which, if certain conditions are met, the new provisions of the Tax Code concerning the application of reduced tax rates may also be applied by participants in SPICs concluded from 1 January 2017 onwards which provide for a preferential rate to be applied to the tax base for SPIC activities on condition that separate records are maintained. The law

does not lay down transitional provisions for SPICs concluded before 1 January 2017 or for those concluded after that date if the taxpayer proposes to use the 90% income ratio as the basis for applying the reduced rate of profits tax.

The Tax Code also imposes restrictions on increasing and/or abolishing reduced tax rates established for SPIC participants.

Regional laws may also set a reduced rate of corporate property tax for SPIC participants in relation to assets created or acquired within the framework of a SPIC.

### **Investor obligations**

In order to apply tax reliefs, the SPIC investor must:

- ▶ not be a member of a consolidated group of taxpayers
- ▶ not be a resident of any type of special economic zone (SEZ) and/or a resident of the Vladivostok free port and/or a priority social and economic development area (PSEDA)
- ▶ not be a participant (or a successor of a participant) in a regional investment project (RIP)
- ▶ not apply special tax regimes

Please note that there are no minimum investment requirements for the conclusion of a SPIC.

When concluding a SPIC, the investor assumes the following obligations:

- ▶ to implement or develop and implement a technology included in the list of advanced technologies approved by the Government of the

Russian Federation for the purpose of launching mass production of industrial products in Russia/on the continental shelf of Russia/in the exclusive economic zone of Russia

- ▶ to achieve certain performance indicators during the effective period of the SPIC (production volumes and sales, amount of tax payments, number of jobs created, etc.)

While activities related to a SPIC are subject to separate accounting, it should be noted that neither the Federal Tax Service nor the Finance Ministry have yet established (or recommended) approaches to the organization of separate accounting. Taxpayers must therefore develop their own methodology. We would be happy to assist you in this matter.

## **Regional investment projects (RIPs)**

An RIP is an investment project that is aimed at organizing the production of goods in the territory of a Russian region and is incentivized by tax reliefs depending on the amount of capital investments: (i) at least RUB 50m (approx. US\$ 691,372 m) over a three-year period with tax benefits valid until 1 January 2029, or (ii) at least RUB 500m (approx. US\$ 7 m) over a five-year period with tax benefits valid until 1 January 2031.

### **Available tax benefits**

For participants in a regional investment project (RIP), the rate of profits tax payable to the federal budget may be

reduced to 0%. A regional law may also set a reduced rate of tax payable to the regional budget.

These reduced tax rates are effective for a period that is dependent on the type of organization and regional investment project and apply:

1. To the entire tax base provided that income from sales of goods manufactured within the framework of the RIP accounts for at least 90% of all taxable income (not including income in the form of positive exchange differences), or
2. To the tax base relating to RIP activities provided that separate records are maintained of income received/expenses incurred in connection with RIP activities and in connection with other activities

Regional laws may also set a reduced rate of corporate property tax for RIP participants in relation to assets created or acquired within the framework of a RIP.

### **Investor obligations**

To participate in an RIP investors must meet the following requirements:

- ▶ They must invest not less than RUB 50m (approx. US\$ 691,372 m) over a three-year period or not less than RUB 500 m (approx. US\$ 7 m) over a five-year period
- ▶ The RIP must account for at least 90% of the company's income
- ▶ The investor must not be a resident of an SEZ or a member of a consolidated group of taxpayers



- ▶ The purpose of the RIP must not be the extraction of oil or natural gas and/or the refinement of oil, the provision of vehicle-related services or the manufacture of excisable goods (excluding cars and motorcycles), or activities for which a profits tax rate of 0% is set

While activities related to a RIP are subject to separate accounting, it should be noted that neither the Federal Tax Service nor the Finance Ministry have yet established (or recommended) approaches to the organization of separate accounting. Taxpayers must therefore develop their own methodology. We would be happy to assist you in this matter.

## Investment protection and promotion agreements (IPPAs)

In addition to RIPs and SPICs, another special investment framework for organizations that carry out investment projects in the territory of the Russian Federation is the investment protection and promotion agreement (IPPA).

In accordance with Federal Law No. 69-FZ of 01.04.2020 «On the Protection and Promotion of Capital Investments in the Russian Federation» (hereinafter – “Law No. 69-FZ”, “the Federal Law”), an IPPA is an agreement between an entity executing a project and (1) Russia and a constituent region of Russia, or (2)

only a constituent region, or (3) Russia, a constituent region and a municipality, under which:

- ▶ Russia and/or a constituent region and/or a municipality undertake to guarantee the non-application of decisions/acts of state authorities that worsen the conditions for doing business,
- ▶ and the entity executing the project has the right to demand the non-application of such decisions/acts

Under Law No. 69-FZ, Russia and/or a municipality may participate in an IPPA only subject to the participation of a constituent region of Russia as a party to the IPPA.



It is important to note that IPPAs may be concluded only in relation to new investment projects. A new investment project is a project in relation to which the entity executing the project made:

- ▶ a decision on approval of the capital expenditure budget prior to the entry into force of the Federal Law but not earlier than 7 May 2018 and submitted an application for the execution of the project not later than 31 December 2021
- ▶ a decision on approval of the capital expenditure budget after the date of entry into force of the Federal Law and submitted an application for the execution of the project not later than one calendar year after that decision was made

The Federal Law establishes a list of sectors in which IPPAs cannot be concluded. This includes the gaming business, the manufacture of tobacco products, alcoholic products and liquid fuel (excluding the manufacture of liquid fuel from coal and at petroleum re-refining plants), oil and gas extraction, including associated petroleum gas (with the exception of gas liquefaction projects), wholesale and retail trade, the banking sector, and the construction (modernization, reconstruction) of business centres, shopping malls and residential buildings.

Law No. 69-FZ prescribes two ways in which an IPPA may be concluded: a private project initiative (instigated by the investor by means of an application) and a public project initiative (instigated by a public entity by means of a tender).

An application to conclude an IPPA must be accompanied by a business plan, a financial model and a number of other documents (such as the applicant's decision on approval of the capital expenditure budget, a construction permit (if applicable) and a list of enabling and/or associated infrastructure).

The time limit for consideration of an application is 30 working days from the date of submission, which may be extended to 45 working days if the application includes a petition for a previously concluded agreement to be recognised as a related agreement and/or for the inclusion in the IPPA of a commitment by Russia and a constituent region not to allow the deterioration of the financial indicators of the investment project (if the investment project involves capital investments in excess of RUB 300 billion).

The Federal Law lays down a range of grounds for refusing to conclude an IPPA, including: (1) failure of an application and accompanying documents to meet legislative requirements, (2) failure of an investment project to meet established requirements (e.g., the project is not a "new investment project"), (3) improper submission of an application, and other formal grounds.

In the case of a public project initiative for the conclusion of an IPPA, the public entity prepares and publishes a declaration concerning the execution of an investment project, giving key information about the investment project, the amount of required capital investments, what state support

measures are available and how they are granted, and other information. The winner of the public project initiative tender is the bidder that offers the best terms for the execution of the project, and specifically: (1) the highest amount of capital investments, (2) the lowest level of state support measures and (3) the shortest timeframe for execution. Law No. 69-FZ does not allow for multiple winners.

The Federal Law does not specify minimum and maximum timeframes for or amounts of capital investments under an IPPA. However, the amount of capital investments has a direct bearing on the effective period of the stabilization clause and the period and extent of state support measures.

According to Law No. 69-FZ, an IPPA must include:

- ▶ a description of the investment project to be executed (including descriptions of goods, work, services or results of intellectual activity, information on the anticipated volume thereof and relevant industrial and environmental requirements)
- ▶ the stages of execution of the project, indicating the time limit for obtaining required permits, registering rights, bringing facilities into operation and making capital investments
- ▶ information on maximum acceptable deviations from the set parameters for the investment project (no more than 25 percent)
- ▶ the effective period of the stabilization clause

- ▶ the terms of related agreements, including the timing and amounts of subsidies and budget investments

### Access to subsidies

Under Law No. 69-FZ, an IPPA allows for the receipt of state support measures in the form of reimbursement for costs incurred in relation to enabling and associated infrastructure.

Associated infrastructure means elements of transport, power, utility, social and digital infrastructures that are used both for the execution of the investment project and for other purposes, while enabling infrastructure means facilities that are used solely for the execution of the investment project.

State support in the context of an IPPA is granted in relation to costs:

- ▶ for the creation, modernization and/or reconstruction of enabling and/or associated infrastructure (or for reconstruction in the case of state- or municipally owned facilities)
- ▶ for the payment of interest on credits and loans and coupon income on bonded loans raised for the creation/ construction, modernization and/or reconstruction of enabling and/or associated infrastructure needed for the execution of the investment project (or for reconstruction in the case of state- or municipally owned facilities)

It is established in this respect that the above-mentioned state support measures may not amount to more than: (1) 50 per cent of costs actually incurred for enabling infrastructure, (2) 100 per cent for associated infrastructure, (3)

the amount of mandatory payments (including profits tax, corporate property tax, transport tax, VAT, customs duties and excise duties (in the case of cars and motorcycles)).

The maximum period of cost reimbursement is 5 years for enabling infrastructure and 10 years for associated infrastructure. These periods may be extended by one year if contracts are concluded with small and medium-sized enterprises. The period begins to run from the date on which cost reimbursement begins.

The following requirements must simultaneously be met in order for state support to be granted:

- ▶ all property rights (including intellectual property in some cases) that arose in the course of the execution of the investment project and were required to be registered have been registered, immovable facilities have been brought into use and the company does not have any outstanding mandatory payments
- ▶ cost reimbursement limits (maximum budget expenditure) are observed
- ▶ it has been checked that investment programmes of regulated entities and/or, where applicable, programmes for the development of particular sectors do not contain projects relating to enabling and/or associated infrastructure. Law No. 69-FZ allows state support measures to be granted in relation to infrastructure included in investment programmes of regulated entities if they are funded wholly by the entity executing the project

- ▶ an assessment has been made of options for financing costs relating to enabling and/or associated infrastructure needed for the execution of the investment project. The assessment involves comparing two options: (a) the granting of support measures to the entity executing the project and (b) the creation of facilities using budget funds

### Stabilization clause

The Federal Law contains detailed regulations on the application of the stabilization clause.

The worsening of conditions is defined as:

- ▶ increases in the time required for compulsory procedures and/or in the number of such procedures
- ▶ increases in payments required to execute the project
- ▶ additional requirements and prohibitions

Specific provisions regarding the effective period of the stabilization clause are laid down for different types of acts of state authorities. For example:

- ▶ acts that increase rates of export customs duties do not apply for the entire duration of the IPPA
- ▶ acts that amend a decision to grant a state support measure and alter the timing and (or) amount of the state support measure do not apply for the effective period of state support measures as specified in the IPPA
- ▶ acts that abolish grounds for the acquisition of rights to publicly owned land parcels or alter the way in which rent is calculated for such land parcels

do not apply for 3 years after their entry into force if the IPPA is in effect during that period

- ▶ acts that increase the rates or extend the assessment base used to determine the amount of the charge for negative environmental impact, the charge for the use of bodies of water, the recycling levy and the environmental levy do not apply for 3 years after their entry into force if the IPPA is in effect during that period

It is also established that provisions of tax laws apply to an entity executing a project subject to the special considerations laid down in those laws.

Stability is guaranteed only for those activities of an investor that relate to an investment project. If the investor has activities besides the investment project, it must keep separate records of products and other indicators.

The Federal Law sets out a number of exceptional cases in which the stabilization clause does not apply or where the investor may select only some acts that will not apply.

The effective period of the stabilization clause may not exceed:

- ▶ 6 years for investment projects with capital investments not exceeding RUB 5 billion
- ▶ 15 years if capital investments are greater than RUB 5 billion but less than RUB 10 billion
- ▶ 20 years if capital investments are above RUB 10 billion

In some cases, the effective period may be extended once by 6 years.

An IPPA grants an investor the right to claim damages from a public entity in the event of a breach of the stabilization clause.

### **Other key conditions**

Under Law No. 69-FZ, an investor is required to prepare and submit reports on the completion of a stage of the investment project not later than 1 March of the year following the year in which that stage was due to be completed.

An IPPA may be terminated on the initiative of a public entity without recourse to the courts in the following cases:

- ▶ if capital investments are not made
- ▶ if certain legal conditions laid down in the IPPA are not met within 2 years (with allowance for acceptable deviations)
- ▶ if an offence is committed which has resulted in the suspension of the investor's activities or the disqualification of its officers

Notably, an investor has the right to transfer its rights and obligations under an IPPA subject to the consent of the public entity and provided that the other company meets the same requirements. An investor also has the right to assign monetary claims under an IPPA or to pledge them to any third party.

In the event of a violation of the terms of a related agreement (such as an agreement on the granting of a subsidy), money must be repaid in the manner prescribed by budget legislation. Violation of an IPPA gives rise to liability equal to the amount of

## How can EY help?

*In view of the above-mentioned measures proposed by the government to encourage investment activities we are happy to assist companies with the following:*

- ▶ Choosing the most appropriate region for investments based on various factors and/or the type of special investment regime/investment contract to use
- ▶ Preparation of the company's business plan for the conclusion of an investment contract
- ▶ Support in preparing and concluding an investment contract with the authorities (including collection, preparation and submission of necessary documents, preparation of a financial model, determination of the potential period of application of tax benefits, communication with the authorities, analysis of the relevant draft investment contract)
- ▶ Reviewing or developing a methodology for separate tax accounting as necessary for the application of tax benefits relating to an investment contract
- ▶ Any further support relating to investment contracts concluded.

losses suffered by the public entity. The amount of losses is determined using a methodology to be approved by the government.

Should a dispute arise over the execution of an investment project, the parties have the right to refer it for review in accordance with arbitration/mediation agreements.



# 15 Offshore oil and gas developments



Special tax and customs regimes apply to certain offshore hydrocarbon development projects. Concepts such as “operator”, “offshore hydrocarbon deposit” and “hydrocarbon extraction activities” are now incorporated in the Tax Code and customs legislation, allowing special profits tax, mineral extraction tax and customs regimes to be established for qualifying activities. Such activities when performed by the holder of the relevant mineral licence or a qualifying operator are subject to special ring-fencing rules which prevent losses from other activities from reducing taxable income from a new offshore hydrocarbon deposit and limit the extent to which losses from one such deposit can reduce taxable income from others.

## How can EY help?

*We have extensive practical experience of advising on the development of tax accounting methodologies in relation to hydrocarbon exploration and development activities on the continental shelf<sup>21</sup> and would be happy to assist with the following:*

- ▶ assessing the tax burden on potential and existing projects for the development of hydrocarbon deposits on the continental shelf
- ▶ checking that all available tax reliefs are used and checking compliance with special tax rules for activities involving hydrocarbon deposits on the continental shelf
- ▶ guidance on organizing separate records of income and expenses for profits tax purposes in relation to activities involving hydrocarbon deposits on the continental shelf, as well as special accounting arrangements for other taxes and customs duties



<sup>21</sup> For reference: in 2014 EY was involved in a project to develop tax accounting procedures for 4 JVs of a major oil company in relation to activities on the shelf, including procedures for maintaining separate records.



# Financial reporting and auditing





## Sources of accounting principles

Regulatory bodies responsible for overseeing Russian accounting principles include the Ministry of Finance, the Central Bank and the Federal Tax Service.

Accounting regulations for Russian legal entities are based on the Civil Code, the Federal Law on Accounting, the Federal Law on Consolidated Financial Statements, accounting statutes (i.e., standards (PBUs)), and other laws and accounting regulations (collectively making up Russian accounting standards, or RAS). With the adoption in 2010 of the Federal Law on Consolidated Financial Statements, International Financial Reporting Standards (IFRS) were introduced in Russian legislation for the purposes of consolidated financial reporting by certain companies (see next section for further details).

The Chart of Accounts for Bookkeeping for the Financial and Economic Activities of Enterprises and the Instruction on its Application describes bookkeeping methods in detail.

Accounting standard (PBU) No. 1/2008 – Accounting Policies of an Organization – allows for the development of appropriate methods based on Russian accounting standards and IFRS where accounting methods do not exist in the current accounting legislation.

Most PBUs are based in large part on IAS and IFRS. Some IFRSs, however, have no comparable PBU standard, and some PBUs that are based on IFRS have not been updated for recent changes to the comparable IFRS. Therefore, the Russian accounting system continues to differ from IFRS as well as from accounting principles generally accepted in the US (US GAAP).

Financial accounting and reporting are separate and distinct from tax accounting and reporting. Financial accounting and reporting are regulated by federal accounting standards (FSBUs) issued by the Ministry of Finance, which provides guidance on accounting matters. Also, several new FSBUs are currently under development.

### Basic concepts

Applicable accounting concepts and principles include accruals, going concern, prudence, completeness, timeliness, relevance, substance over form, matching revenues and expenses, comparability, consistency and rationality. However, the application of these principles may differ from practices common in other countries. For example, Russian accounting tends in practice to focus on form rather than substance; the laws are very specific as to the documents required to support a transaction, and this emphasis on legal form may to some extent override the application of other accounting principles.

## Differences between IFRS and Russian accounting principles

The major differences are as follows:

- ▶ Definition of reporting and functional currency
- ▶ Supporting documents in prescribed forms required for both accounting and tax purposes
- ▶ The inflation concept is not recognised
- ▶ There are no rules for business combinations and purchase price allocation
- ▶ The goodwill concept is not properly provided for and is not applied
- ▶ The fair value concept is applied rarely and is not fundamental to accounting guidelines; non-current assets and non-current liabilities are stated at historical value with few exceptions
- ▶ The impairment concept is not applied to fixed assets
- ▶ Differences in accounting for capital and reserves

## Applicability of IFRS for consolidated financial statements of public companies in Russia

The Federal Law on Consolidated Financial Statements (Law No. 208-FZ) requires the mandatory application of IFRS for the preparation and presentation of consolidated financial statements by certain Russian entities, including credit institutions, insurance companies, listed companies, non-state pension funds, management companies of investment funds, mutual funds and non-state pension funds, and clearing institutions.

In addition, pursuant to Law No. 208-FZ, the Russian government issued a directive requiring certain state unitary enterprises and state-owned public joint stock companies to present their consolidated financial statements in accordance with IFRS.

Russian entities that are otherwise within the scope of Law No. 208-FZ but have no subsidiaries are also required to present IFRS financial statements in addition to single-entity financial statements prepared under RAS<sup>22</sup>. Credit institutions and listed companies are required to present half-year interim consolidated financial statements under IFRS.

Where other federal laws require the preparation, presentation and/or disclosure of consolidated financial statements or where the statutory documents of a company that does not fall within the scope of Law No. 208-FZ require the preparation, presentation and/or disclosure of consolidated financial statements, those statements must be prepared in accordance with Law No. 208-FZ.

### Endorsement of IFRS in Russia

Law No. 208-FZ states that IFRS and Interpretations of IFRS issued by the IFRS Foundation and endorsed by the Russian Government in consultation with the Central Bank are applicable in Russia. A decision to endorse an individual IFRS or Interpretation of an IFRS in Russia is made with regard to that standard or interpretation as a whole. If certain provisions of a standard or interpretation are considered unsuitable for application in Russia, the standard or interpretation will be adopted in Russia with the provisions in question “carved out”.

There is an IFRS endorsement process in Russia. Individual IFRS standards (including interpretations) become mandatory starting from the effective date specified in the IFRS or from the date of its endorsement if this is later. IFRS standards may be voluntarily applied after they are endorsed but

before their effective date. In practice, the time period between the IASB issuing a new or amended standard and its endorsement in Russia is not significant, which allows Russian companies to adopt IFRS standards and amendments early.

The IFRS endorsement process involves an analysis of the Russian language text of an IFRS, provided by the IFRS Foundation, by the National Organization for Financial Accounting and Reporting Standards (NOFA), an independent, non-commercial organization designated by the Russian Ministry of Finance. NOFA carries out an analysis of an individual IFRS's suitability for the Russian financial reporting system and advises the Ministry of Finance whether it should be endorsed as issued by the IASB or whether certain requirements should be “carved out” to meet the needs of the financial reporting system in Russia. The Ministry of Finance, after consultation with the Russian Central Bank, makes the final decision on endorsement and publication of the IFRS.

At the time of writing, the Ministry of Finance has endorsed, without any “carve-outs”, all IFRS standards effective from 1 January 2020. IFRS 17 – *Insurance Contracts* – has also been endorsed and is therefore available for early adoption by Russian companies.

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<sup>22</sup> Except for banks that hold only a basic license

## **Presentation of annual IFRS consolidated financial statements: deadlines and addressees**

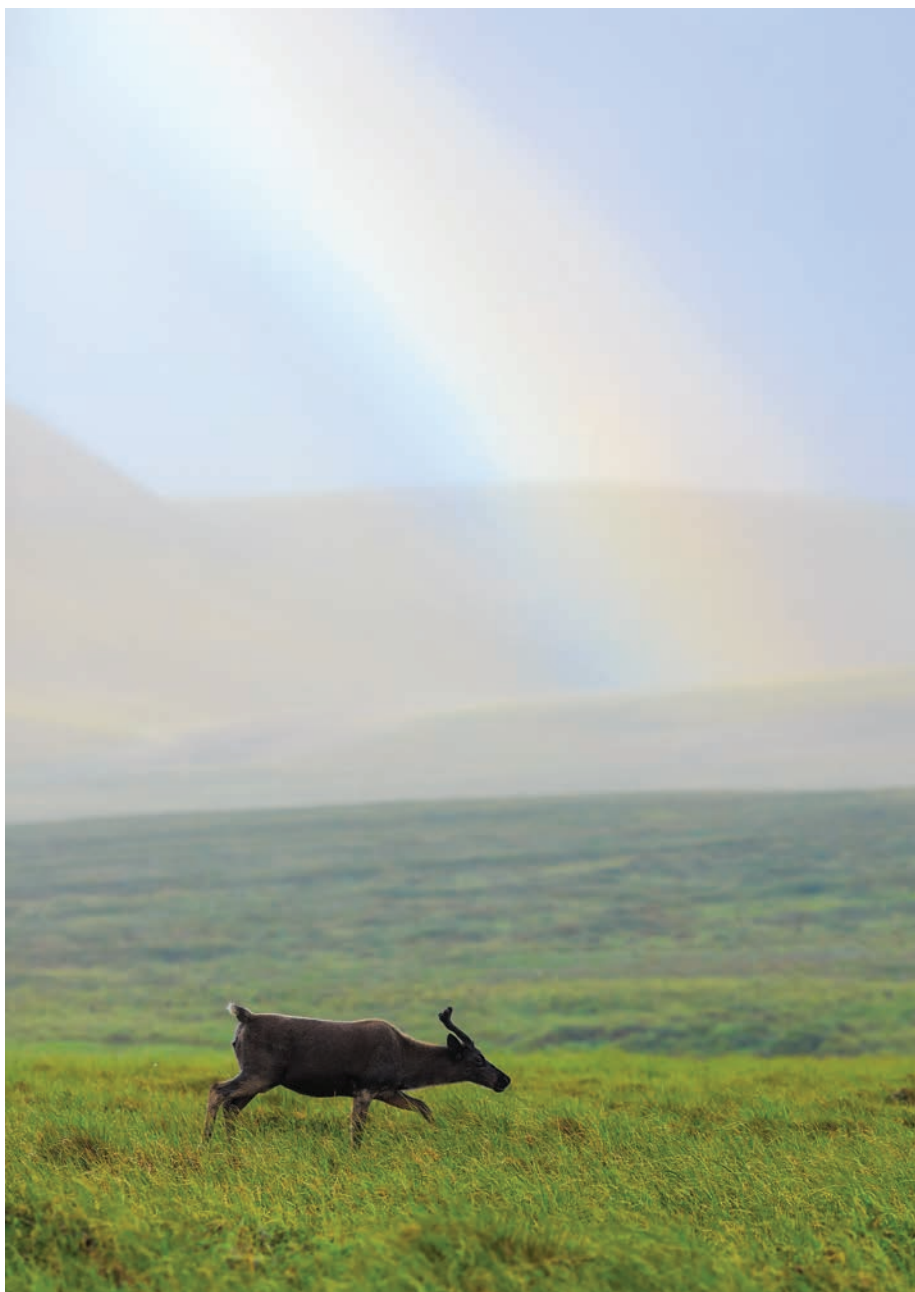
Annual consolidated financial statements must be presented to the company's participants (including shareholders) prior to a general meeting, but no later than 120 days from the end of the year for which the statements have been prepared. Annual consolidated financial statements must also be filed with the Central Bank.

Interim consolidated financial statements must be presented to the company's participants or shareholders, if such presentation is required by the company's constituent documents, no later than 60 days from the end of the period for which the statements have been prepared. In cases provided by law such financial statements must also be filed with the Central Bank.

## **Audit or review of IFRS consolidated financial statements**

Annual IFRS consolidated financial statements are subject to mandatory audit. An audit opinion must be presented and published together with the consolidated financial statements.

Interim IFRS consolidated financial statements for the first half of the reporting year which are legally required to be disclosed are subject to mandatory audit or review as prescribed by audit standards. An audit opinion or review report must be presented and disclosed together with the interim consolidated financial statements.







### **Disclosure of IFRS consolidated financial statements**

Companies must disclose their annual consolidated financial statements together with audit reports on those financial statements not later than 30 days after the last date they must be presented to the company's participants or shareholders, unless legislation requires otherwise. Consolidated financial statements are considered disclosed if:

- ▶ They have been placed on information networks available to the general public (e.g., the Internet), and/or
- ▶ They have been published in mass media available to those interested in the financial statements, and/or

- ▶ Other steps have been taken to make the financial statements available to any interested party

Certain types of organizations are also required to disclose their interim IFRS consolidated financial statements.

A company must indicate on its official website where the consolidated financial statements are disclosed if they are not disclosed on the website itself. If consolidated financial statements together with related audit or review reports are disclosed in publicly available sources, they must remain available to interested parties for three years from the date of their initial disclosure.

### **Significant accounting concepts for investors**

Since the official endorsement of IFRS in Russia, consolidated financial statements of public companies have been prepared under IFRS. Accounting principles for specified accounts and business transactions under PBU are discussed below.

#### **Books and records**

According to the general provisions of accounting standards, including the Statute on Accounting and Reporting in Russia (PBU No. 4/99), the main aim of accounting records is to provide full and accurate information on the activities

of an enterprise and its assets and liabilities. Financial statements are for internal use by a company's managers, shareholders and owners and external use by investors, creditors and other users. The Federal Law on Accounting requires an enterprise to refer to the accounting legislation in defining its accounting policies, which should reflect the structure, industry and other particular features of its operations, as well as its accounting methods.

The Federal Law on Accounting applies to all organizations located in Russia and to branches and representative offices of foreign companies, unless otherwise stipulated in international treaties to which Russia is a party. However, the Statute on Accounting and Reporting allows representative offices of foreign companies to maintain their accounting records in accordance with their home country's accounting regulations as long as they do not conflict with IFRS.

### **Foreign currency transactions**

All bookkeeping entries must be recorded in roubles, which is also the reporting currency, subject to certain specific requirements, for activities outside of Russian Federation. Although Russia is not considered a highly inflationary economy, due to its inflationary past rouble amounts require analysis in order to better understand the financial position and results of operations. For bookkeeping purposes, foreign currency transactions are converted to roubles using the exchange rate set by the Central Bank at the date of the transaction. Monetary

assets and liabilities, other than advance payments, which are recorded in roubles but denominated in hard currency are revalued at the exchange rate on the reporting date; if the parties have agreed to use another exchange rate, that exchange rate should be used for accounting purposes.

### **Fixed assets**

Fixed assets are recorded at historical cost and are depreciated using four permitted methods, with the straight-line method being the most frequently used. The useful life of a fixed asset is determined at the acquisition date and is equal to the period of expected use. Revaluations of fixed assets to adjusted market value are allowed (but not required) once a year as at the end of the reporting year. A company may revalue groups of similar fixed assets not more often than annually. Land and natural resources are not subject to revaluation.

Companies may apply different useful lives for accounting and tax records.

### **Inventory**

Inventory is carried at cost. Inventory should be written down at year end if the realizable value is lower than cost. The realizable value is measured without deduction of selling costs.

The permitted accounting methods for determining cost are:

- ▶ Average cost
- ▶ Specific identification
- ▶ First-in, first-out (FIFO)

- ▶ The most commonly used method is average cost. The cost of manufactured inventory must include direct costs and allocated indirect manufacturing costs.

### **Investments**

Investments are initially recorded at the amount of actual expenditure. Investments with determinable current market value must be revalued to market value at least annually. Investments without determinable current market value must be recorded at cost and tested for impairment.

### **Bank transactions**

A company's cash balance with banks can only reflect activity recorded by a bank. Since the bank statement and related supporting documents are the source for entries in a company's books, there is no need to perform a reconciliation of the books to the bank statement.

### **Tax liability**

PBU No. 18 - Accounting for Deferred Income Taxes - addresses accounting for deferred taxes and the identification of temporary and permanent differences between tax and book bases.

### **Capital and reserves**

Shareholders' capital is the entire amount of capital authorized by a company's charter. Any uncontributed portion of registered shares is recorded as a receivable from shareholders and included in current assets. Treasury shares are shown as a negative amount in the capital and reserves section of the balance sheet.

Companies may set up a reserve fund from retained earnings. The purpose of the reserve fund is to cover accumulated losses or buy back the company's shares. JSCs must create such a reserve fund amounting to not less than 5% of the authorized capital.

### **Net income**

Although it is based on the accruals method, Russian accounting can differ from IFRS in regard to recognition of revenue and expenses.

Financial statements cannot be revised once they have been approved by shareholders, and any material errors pertaining to prior periods for which financial statements have already been approved are retrospectively corrected in the financial statements for the current period.

If a material error is found after year end, but before approval by the annual shareholders' meeting, it is corrected in the accounting records for December of the year in which it occurred.

For tax purposes, companies need to resubmit previously filed tax returns to correct the effects of any past errors.

## **Disclosure, reporting and filing requirements**

### **Disclosure requirements**

All statements must be prepared in the Russian language and use roubles as the reporting currency.

The annual financial statements in Russia consist of the following:

- ▶ A balance sheet including three columns: for the current reporting year and the two preceding years
- ▶ A statement of financial results
- ▶ Appendices to the balance sheet and statement of financial results

The formats of the balance sheet, statement of financial results and appendices are prescribed by PBU No. 4 -Accounting Statements of an Organization. Appendices to the financial statements must include the following information:

- ▶ Cash flow statement
- ▶ Statement of changes in shareholders' equity
- ▶ Notes to the financial statements
- ▶ Summary of accounting policies in the notes to the financial statements
- ▶ A description of all departures from mandatory accounting requirements when a fair presentation cannot be achieved through their application
- ▶ Additional details on significant accounts (intangible assets, fixed assets, investments, debtors, creditors, shareholders' equity, revenues, cost and expenses)
- ▶ Disclosure of commitments, contingencies, important subsequent events, guarantees, related parties, beneficial owners, earnings per share and operating segment information
- ▶ Discussion and analysis of the financial results, future plans and risk management and of information considered important by management

- ▶ Disclosure of the company's environmental activity
- ▶ Disclosure of innovations and modernization
- ▶ Disclosure of risks associated with the company's activities
- ▶ Supplementary information

Quarterly financial reports where required to be prepared must include a balance sheet and statement of financial results.

### **Reporting and filing requirements**

The reporting year for all enterprises is from 1 January to 31 December. For newly established legal entities, the first accounting year is the period from the date of their state registration until 31 December of the same year or, for enterprises established after 1 October, until 31 December of the following year. Annual financial statements (balance sheet, statement of financial results, appendices to the balance sheet and statement of financial results) must be submitted to the tax inspectorate within 90 days of the end of the reporting year.

After that, annual financial statements of most companies are available through the state information resource for financial statements.

Financial reports must be signed by the company's general director. Participants in limited liability companies must approve the annual financial statements by 30 April following year end, shareholders of joint stock companies by 30 June following the year end.



Annual reports must be examined and approved according to the company's corporate charter.

Public companies, banks, insurance companies and investment funds must present their annual reports to the general public by 30 June after the close of the fiscal year.

All companies listed on the Russian Stock Exchange must submit quarterly financial reports (balance sheet, statement of financial results and required disclosures) and additional information to the Central Bank within 30 days of the close of

the quarter. The quarterly reports should also include interim and annual consolidated IFRS financial statements where these are required by law to be presented and disclosed.

### **Audit requirements**

Federal Law No. 307-FZ "On Auditing" prescribes criteria for compulsory audits of:

- ▶ Organizations whose securities are admitted to organized trading
- ▶ Banks, insurance companies, stock exchanges and investment institutions

- ▶ State and municipal unitary enterprises
- ▶ Companies with income from commercial activity and/or total assets exceeding a certain limit as at the end of the year preceding the reporting period (currently, income for the year >RUB 800 million (approx. US\$ 11 million) and total assets >RUB 400 million (approx. US\$ 5.5 million))
- ▶ Other cases where federal laws require an audit to be conducted



# 17

## Individuals



# Personal income tax

## General

Starting 2021, Russia applies a progressive scale of personal income tax rates for tax residents. The following tax brackets apply depending on the amount of the annual tax base:

- ▶ RUR 1 – 5,000,000 (approx. 69,137) – 13% tax
- ▶ RUR 5,000,001 and above - RUR 650,000 tax is payable on the first RUR 5,000,000 and a 15% rate applies to the amount exceeding RUR 5,000,000.

Income from the sale of property (except for securities), income equal to value of property received as gift and taxable amounts of insurance payments and pensions are still taxable at a flat rate of 13% (the progressive scale does not apply).

The tax rate for Russian tax non-residents is 30% (15% for certain types of income).

Please refer to the “Tax rates” section for information on certain specific types of income.

## Who is liable?

Payers of Russian personal income tax are defined as tax residents of Russia and non-resident individuals who receive income from Russian sources.

## Definition of resident

For tax purposes, individuals are considered resident if they are present in Russia for 183 days or more in a period of 12 consecutive months. However, the current interpretation of the Ministry of Finance of the Russian Federation and the tax authorities is to continue to assess an individual's residency status based on the number of days spent in a particular calendar year. Short-term leave (not exceeding 6 months) for medical treatment or educational purposes or the performance of employment or other work-related duties at offshore hydrocarbon fields may be treated as presence in Russia in certain cases.

Non-residents are those individuals who do not meet the aforementioned test.

A special provision was introduced for 2020 allowing individuals who spent from 90 to 182 days in Russia in 2020 to be considered Russian tax residents based on an application submitted to the tax authorities. (However, there is no

provision allowing individuals who spent 183 or more days in Russia due to the coronavirus pandemic to be considered non-residents).

The current position of the tax authorities is that both arrival and departure days count as full days in Russia for the purposes of the Russian tax residency test.

## Object of taxation

Russian tax residents are taxed in Russia on their worldwide income, including undistributed profit of controlled foreign companies (CFCs)<sup>23</sup>.

Individuals who are not tax residents are taxed on their Russian-source income, which includes but is not limited to the following:

- ▶ Remuneration for the performance of employment duties, services and activities in Russia (regardless of where paid)
- ▶ Dividends and interest paid by a Russian organization
- ▶ Insurance payouts made by a Russian organization
- ▶ Income from the sale of property in Russia and income from the sale of securities in Russia

<sup>23</sup> The CFC rules are not covered in this document. Please contact us if you would like more information about those rules.



Starting 1 January 2021, interest income on deposits with Russian banks is taxable as follows:

- ▶ The tax-exempt limit is calculated as RUR 1 million x the Russian Central Bank refinancing rate as at 1 January of the tax year (the tax-exempt amount for 2021 is 1 million x 4.25% = RUR 42,500).
- ▶ The amount in excess of the tax-exempt limit is taxed at 13% (15%) for both tax residents and non-residents.

Rouble accounts for which the interest rate is below 1% for the whole period and escrow accounts are not included in the tax calculation.

Interest paid in currency on accounts with Russian banks must be converted into roubles at the exchange rate of the Russian Central bank current on the date of payment.

Tax is calculated by the tax authorities based on information provided by the banks.

Interest income on foreign bank accounts is fully taxable for Russian tax residents.

## Tax rates

Rates of 13%, 15%, 30% and 35% are applicable based on the type of income and the taxpayer's residency status.

Investment income received by tax residents of the Russian Federation in foreign currency is generally taxed at 13% (15%), but special rules apply to the calculation of such income. Russian tax law requires income in

Type of income	Flat tax rate
All types of income for which no other rate is specified, including salary and other income earned by tax-resident individuals; employment income earned by any foreign individuals who qualify as “Highly Qualified Specialists” for immigration purposes, regardless of tax residency status*	13% up to annual income of RUR 5,000,000 and 15% on income above that threshold
Dividend income received by non-residents	15%
All taxable income (except for dividends, interest income on Russian bank accounts above the tax-exempt limits, and employment income received by individuals qualifying as Highly Qualified Specialists under the immigration rules) received by individuals who are not tax residents in Russia	30%
Certain prizes and deemed income from certain loans extended at a rate less than 2/3 of the refinancing rate for rouble loans or 9% for loans denominated in foreign currency**	35%

\* In accordance with the current position of the Ministry of Finance, employment income of Highly Qualified Specialists (to which a 13% tax rate is applied) is limited to base salary/remuneration received under local employment or civil agreements, vacation payouts, bonuses and business trip-related expenses. The application of the 13% tax rate to other income received by Highly Qualified Specialists may be challenged by the tax authorities.\*\*

- \*\* Material gain is exempt from taxation if the following conditions are met:
- the borrowed (credit) funds in question were received by the individual from an organization or a private entrepreneur which (who) is not a related party of the taxpayer or with which (whom) the taxpayer has an employment relationship
  - the saving in question is not material assistance or a form of compensation

Example of the calculation of taxable income for most individuals			
Income earned by:	Russian tax residents	Russian tax non-residents (except for those qualifying as Highly Qualified Specialists for immigration purposes)	Russian tax non-residents who qualify as Highly Qualified Specialists for immigration purposes
Employment income*	10,000	10,000	10,000*
Other income received in Russia***	2,000	2,000	2,000
Other income received outside Russia	200	n/a	n/a
Deductions	***	n/a	n/a
Taxable income	12,200	12,000	12,000
Tax rates applicable	13%	30%	13% is applied to 10,000 (employment income) and 30% is applied to 2,000 (other income) received in Russia)
Tax	1,586	3,600	1,900

- \* Employment income consists of compensation, whether received in cash or in kind, including but not limited to salary, bonuses and expatriate allowances.
- \*\* Rental income, capital gains, etc.
- \*\*\* The Russian Tax Code prescribes the following categories of deductions from the taxable base: standard, social, property-related, investment and professional. Standard deductions are very insignificant and are relevant only to taxpayers with low income levels.

foreign currency, whether received in the Russian Federation or abroad, to be converted into roubles for tax purposes using the Bank of Russia exchange rate in effect on the date on which the income was received (and on the date on which expenses were actually incurred, if applicable). This means that if \$1,000 was invested in a particular instrument when the exchange rate was RUB 60 per 1 \$, and then \$1,000 was withdrawn when the exchange rate was RUB 70/\$, then an amount equal to RUB 10 000, is also taxable as it represents the benefit generated from the difference in exchange rates.

## Tax collection procedure

For most taxpayers, tax is payable through withholding at source. Tax agents for the purposes of Russian personal income tax are Russian legal entities and permanent establishments of foreign legal entities from which, or as a result of relations with which, individuals receive income. Tax agents are required to withhold income tax at source on payments in accordance with the individual's resident status (or a special status), and remit the tax withheld to the Russian tax authorities on a monthly basis. Withholding applies to each payment through a tax agent.

The withholding tax rate depends on the tax residency status of an employee on each date of payment. For personal income tax purposes tax residency status is defined based on individual presence in Russia for 183 days or more in a period of 12 consecutive months preceding the date of payment. Final

personal tax obligations are determined based on the tax residency of the individual in the reporting calendar year, which depends on a 183-day period of presence in Russia in a particular reporting calendar year.

Any individual who has received income subject to tax in Russia where tax was not withheld at source (fully or partially) may be obliged to file a tax return (in some cases tax is payable based on a tax notice issued by the tax authorities). Individual filing obligations typically arise in one of the following situations:

- ▶ A Russian tax resident has received income from sources outside Russia (including remuneration, dividends, capital gains, interest income on a deposit with a foreign bank account, material benefit from a low-interest loan from a related party, etc.)
- ▶ An individual wishes to claim an exemption/credit under a double taxation treaty
- ▶ An individual has received income from the sale of property or property rights (if the property was owned by the individual for less than 3/5 years)
- ▶ An incorrect tax rate was applied by a Russian tax agent when withholding tax
- ▶ An individual has received Russian-source income that was not subject to withholding at source
- ▶ An individual has received Russian-source income from another individual under a civil agreement (e.g., a rental or sale agreement)
- ▶ An individual may also file a tax return on a voluntary basis where there is

no technical requirement to do so. In particular, this may be required in order to claim certain tax deductions that cannot be granted through payroll or in order to claim a refund of excess tax withheld, for example due to a change of tax residency status from non-resident to resident.

Annual tax returns are due no later than 30 April (no extensions are available) of the year following the reporting (calendar) year. The corresponding self-assessed tax in the declaration must be paid no later than 15 July of that following year. Foreign nationals permanently leaving Russia are required to file a tax return one month prior to their permanent departure and pay any tax due within 15 days of filing the return.

All tax payments must be made in roubles and must be made from the individual taxpayer's personal bank account or in cash via Sberbank. Currently it is possible for tax to be paid by third parties. If the tax due is to be settled from a foreign bank account, it is essential to confirm with each individual bank in advance that it is able to process payments in Russian roubles and that it has a correspondent relationship with the Russian banking system, otherwise payment may be delayed.

In some cases, annual income statements (income statement as part of the report 6-NDFL form) filed by tax agents (Russian companies or foreign companies with a registered presence in Russia) to tax authorities may contain information on amounts of taxes not withheld. In this scenario, the Russian tax authorities

issue a notification with a request for the individual to pay the amount of taxes not withheld by the tax agent. The payment deadline is 1 December of the year following the reporting year. In this case the individual would not need to submit a separate tax return to report the non-withheld amount.

A fine of 5% of the tax due per each full or partial month of delay is imposed for the submission of a tax return after the set deadline. The penalty is capped at 30% of the tax due and cannot be less than RUB 1,000 (approx. US\$ 13.8). Criminal sanctions may also be applied in rare cases. The late payment of tax is subject to interest penalties at a rate of 1/300 of the annual refinancing rate of the Central Bank of the Russian Federation for each day of late payment.

Non-payment or underpayment of tax attracts a fine of 20% (40% in the case of a wilful violation) of the underpaid amount.

A foreign citizen may not be allowed to enter the territory of the Russian Federation if he or she has an outstanding Russian tax liability. The entry ban lasts until the foreign citizen has fully paid the outstanding tax liability.

EY has extensive experience in personal income tax compliance and consulting services, helping Russian and foreign individuals with personal income tax matters at every stage of the tax process.

## Capital gains and losses

A capital gain on securities transactions is generally calculated as the difference between proceeds from the sale of securities and documented purchase

costs and expenses (including fees for services related to the purchase or sale of the securities). Tax is either withheld at source by the payer of income or paid by the taxpayer upon filing a tax return. Losses from the sale of securities may be offset against gains from securities of the same class. Certain losses may be carried forward for up to 10 years from the tax period in which they arose.

Since the taxation of stock options and other equity-based compensation is not directly addressed in the Tax Code, general tax principles and OECD guidelines are normally applied in such cases (although Russia is not a member of the OECD). This makes it essential to carry out a careful analysis of the Russian tax implications for this type of income in each individual case.

## Tax deductions

Tax-resident taxpayers are entitled to the following tax deductions:

- ▶ Educational fees for the taxpayer and his or her dependent children (under the age of 24) up to a maximum of RUB 50,000 (approx. US\$ 691) per annum per child in total for both parents; this deduction is only available if the expenses are paid to a licensed educational establishment (typically only Russian institutions will have such a licence)
- ▶ Expenses for medical services, medication and medical insurance contributions for the taxpayer and his or her spouse, parents and children, provided that the services are provided by a Russian licensed medical

institution; certain medical expenses associated with expensive types of medical treatment, a list of which is established by the Government, are tax-deductible without limitation

- ▶ Pension insurance contributions to licensed Russian non-state pension funds for the taxpayer and his or her spouse, parents and children, and/or additional insurance contributions paid by the taxpayer for the funded component of the state retirement pension
- ▶ The aggregate amount of the above so-called social tax deductions (medical, educational and pension insurance) may not exceed RUB 120,000 (approx. US\$ 1,659) per annum (except for expenses for children's education and high-cost medical treatment)
- ▶ Property purchase expenses relating to the construction or purchase of living premises in Russia (up to RUB 2 million (approx. US\$ 27,655)), plus mortgage interest or other bank interest paid on a loan to fund such acquisition or purchase, are deductible. The property deduction may be applied to several properties until the entire amount of the RUB 2 million (approx. US\$ 27,655) deduction has been used. The amount of deductible mortgage interest is limited to RUB 3 million (approx. US\$ 41,482). If a residential property is owned by several individuals (so-called shared ownership), each individual can claim a property tax deduction of RUB 2 million (approx. US\$ 27,655)
- ▶ The first RUB 1 million (approx.



US\$ 13,827) of income from the disposal of residential immovable property that has been owned by the taxpayer for less than five years is fully deductible against the sale proceeds (alternatively, the taxpayer may pay tax on the actual taxable gain, if any, equal to gross proceeds less documented expenses)

- ▶ The first RUB 250,000 (approx. US\$ 3,457) of income from the disposal of movable property (except securities) and of non-residential immovable property that has been owned by the taxpayer for less than three years is fully deductible against the sale proceeds (alternatively, the taxpayer may pay tax on the actual taxable gain, if any, equal to gross proceeds less documented expenses)
- ▶ Charitable contributions to scientific, cultural, educational, healthcare, religious and social security organizations financed by the state, limited to 25% of the taxpayer's annual income

Deductions for property purchase expenses, expenses related to pension insurance contributions to Russian non-state pension funds, medical expenses and professional tax deductions may be claimed through payroll. Other deductions may be claimed by the taxpayer only through the submission of a tax return.

Individual entrepreneurs and other individuals performing work or rendering services on a contractual basis may deduct related business expenses. Property tax paid by these taxpayers is deductible if the property is directly used in carrying on entrepreneurial activities.

Taxpayers who cannot document expenses incurred in connection with their entrepreneurial activities are allowed a standard professional tax deduction equal to 20% of total income received from entrepreneurial activities. The deduction may be obtained through a tax agent or upon filing a tax return (in the absence of a tax agent).

Taxpayers are also entitled to a variety of standard deductions (child deduction and deductions for certain disabled individuals, veterans and victims of natural disasters). However, the amount of such deductions is not material.

## Exemptions

Taxpayers are entitled to the following exemptions:

- ▶ On the sale of property:

If the immovable property has been owned by the taxpayer for less than 5 years, income from sale of the property is taxed at 13% (for tax residents) or 30% (for tax non-residents). If the property was inherited, privatized or acquired under a life care contract or was considered the sole accommodation of its owner at the time of its sale, the length of ownership of the property for subsequent tax-free sale is 3 years.

For other property (e.g., cars), the length of ownership for tax-free sale is 3 years.

Starting from 2019, tax non-residents are also entitled to a tax exemption for income from sale of movable and immovable property if the above requirements are met.

- ▶ State allowances (e.g., maternity

leave allowance), except for sickness allowances

- ▶ Severance payments up to 3 months' average earnings
- ▶ State pensions
- ▶ Payouts from certain insurance policies, including, in particular, obligatory insurance, life insurance policies, insurance covering damage to life or health and voluntary pension insurance
- ▶ Contributions to most medical insurance policies made by companies for the benefit of individuals
- ▶ Certain gifts received from individuals and legal entities (depending on specific circumstances such as the nature of a gift and its value)
- ▶ Income and items received by way of inheritance in most situations
- ▶ Specific types of material assistance

### See Appendix 6. Compliance calendar

- ▶ Standard tax return filing deadline – 30 April of the year following the reporting year
- ▶ Departure tax return filing deadline (expatriates only) – one month prior to departure from Russia
- ▶ Standard tax payment deadline – 15 July of the year following the reporting year
- ▶ Departure tax payment deadline (expatriates only) – within 2 weeks upon submission of a tax return

# Immigration

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In general, any foreign citizen who works in the Russian Federation must hold a work permit or licence, and any entity which employs or purchases work/services from a foreign citizen must hold a valid employer permit to engage such an individual (where applicable).

## Highly Qualified Specialists (HQS)

The term “Highly Qualified Specialist” is defined in Russian immigration legislation. An HQS is a foreign citizen earning not less than RUB 167,000 (approx. US\$ 2,309) per month for work performed in the Russian Federation (with minor exceptions for limited categories of employers).

A simplified quota-free one-step application procedure for work permits and visas is established for HQSs intending to work in Russia for Russian legal entities or Russian branches and representative offices of foreign legal entities. Such HQSs may apply for work permits and work visas valid for three years with the opportunity to extend their validity for subsequent three-year periods. By contrast, work permits and visas of other types available to other foreigners have a maximum one-year term<sup>24</sup>.

## Submission of forecasts of foreign labour needs (quota applications)

Under the current regulations, companies must report annually (the deadline varies by region) the number of foreign workers (including both employees and civil contractors, but excluding HQS, the citizens of the Eurasian Economic Union and CIS citizens) that they anticipate needing to hire in the following calendar year, specifying the precise position and citizenship of the anticipated foreign workers. This is effectively a quota application. A quota must be obtained before it is possible to submit a work permit application for any foreigner who is not an HQS and whose expected role does not fall within the limited range of specific quota-free job positions.

## Work permits

All expatriates working in Russia (except for certain specific categories) must hold valid work permits. A company planning to engage expatriates to work in Russia must assume responsibility for the work permit application process and bear in mind that, with the possible exception of HQSs, it will be a time- and resource-consuming process, and not without risk. For most non-CIS citizens, the application process (which can only begin after the necessary quota has been obtained by the employer) consists of three key steps. First, an employer submits to the Employment Centre the latest information on anticipated job vacancies for expatriate employees. Next, the employer applies to the Migration Service for a permit to engage foreign labour (a corporate permit). Finally, once a corporate permit has been issued, an individual work permit is applied for.

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<sup>24</sup> HQSs and their accompanying family members (if any) must have voluntary medical insurance during their stay in Russia. Immigration legislation also establishes a requirement for employers engaging HQSs to submit quarterly reports to the immigration authorities on salaries/remuneration paid to HQSs. The notification must be sent no later than the last working day of the month following the reporting quarter.

Most CIS citizens apply for work permits (licences) themselves under a simplified procedure.

Russia is also a party to treaties with France and Korea simplifying the Russian work permit application process.

From 1 January 2015, foreign citizens who apply for a work permit, licence, temporary residence permit or permanent residence permit are obliged to submit a certificate confirming knowledge of Russian language and history and the fundamental principles of Russian law. This requirement does not apply when obtaining work permits and permanent residence permits for highly qualified specialists.

## Work visas

Once an individual's work permit has been issued, the employer must arrange a work visa invitation. A single-entry work visa is initially issued by the Russian Consulate abroad and is valid for up to three months. Once the foreign individual arrives in Russia under the single-entry work visa, it should be replaced by a multiple-entry visa valid for the term of the individual's work permit, but not more than one year (unless he or she is an HQS).

## Notifications

Companies are required to notify the immigration authorities of the conclusion or termination of an employment agreement or civil contract with any category of foreign citizen within three business days after the date of the event.

## Registration and deregistration

The registration procedure involves the responsible hosting party notifying the appropriate territorial office of the Ministry of Internal Affairs within seven business days of a foreign citizen's arrival at the place of his/her stay in Russia, or arrival at a new location in Russia where the individual will stay for seven days or more.

The registration procedure for foreign individuals who obtained their work permits under the Russia-France agreement must take place within ten business days of the individual's arrival at the place of stay in Russia.

The registration procedure for citizens of Armenia, Kazakhstan and Kyrgyzstan must take place within 30 days after they enter Russia. The registration procedure for citizens of Ukraine, except for those who work in Russia, and citizens of Belarus must take place within 90 days after they enter Russia.

HQSs and accompanying family members are allowed to enter and stay in Russia without an obligation to register for 90 calendar days after entering Russia. Furthermore, they have no obligation to register if travelling to other regions of Russia from the one in which they are registered under the current regulations, provided that the period of stay in that other region does not exceed 30 calendar days.

The responsible hosting party will generally be the hotel, if the foreign citizen is staying at a hotel, the landlord of an apartment at which a foreign

citizen is staying, or the employer/inviting company if the accommodation provided to a foreign citizen for residence in Russia is owned or rented by the company.

Highly Qualified Specialists who own accommodation in Russia have the right to act as a hosting party for their accompanying family members.

De-registration takes place automatically at the time of departure from Russia or at the time of registration at a new place of stay by a new hosting party (in the case of a domestic trip).

## Sanctions for non-compliance with immigration legislation

Russian legislation imposes severe sanctions on companies, their executives and foreign citizens for non-compliance with immigration legislation. The upper end of financial sanctions applicable to a company can reach RUB 1,000,000 (approx. US \$13,827) (per foreign individual per violation). The worst-case scenario may include deportation of the individual from the country and suspension of the employer's business activities for up to 90 days and/or a ban on the company engaging any foreigners under the simplified HQS regime for up to two years. Financial sanctions, and even deportations, are increasingly being applied. In addition, a foreign citizen may not be allowed to enter the Russian Federation if he/she has been held liable for an administrative offence in Russia two or more times within three years. The entry ban lasts for three years from the date when the last decision



on the imposition of administrative sanctions came into force.

Punitive measures for violations incurred in the cities of federal significance (Moscow, St Petersburg, the Moscow Region and the Leningrad Region) are even tougher.

EY offers a full package of immigration services to support companies in all aspects of the employment of foreign personnel in various regions of Russia and throughout the CIS.

## Mandatory Notification of Second Citizenship

Under the federal law on citizenship of the Russian Federation, Russian citizens

are obliged to notify the Ministry of Internal Affairs if they have:

- ▶ citizenship of another state
- ▶ a residence permit or permanent leave to remain in a foreign state

The time limit for submitting the notification is 60 days from the day on which a Russian citizen received a second citizenship or permanent leave to remain in a foreign state.

## Liability

Administrative and criminal charges will be brought against an individual who fails to comply with the notification requirements.

Administrative liability in the form of a fine amounting to RUB 1,000 (approx. US\$ 13,8) is imposed for violating the notification procedure (failing to meet the 60-day deadline or providing incomplete or inaccurate information), while criminal liability is imposed for failing to give notification. The difference between failure to meet the 60-day deadline and failure to give notification requires clarification.

Criminal liability for failing to give notification is quite severe: the offender may incur a fine equal to his income for up to one year or punishment in the form of up to 400 hours' compulsory labour.

## How can EY help?

EY takes an effective and innovative approach to customer service and observes the highest standards of quality control and information security in providing services to individuals and employers.

### We would be happy to assist you with:

- ▶ Analysis of personal tax filing obligations in Russia, preparation of Russian tax returns and calculation of Russian tax liability
- ▶ Assistance with in-person tax return submission
- ▶ Assistance with the tax payment/tax refund process: preparation of tax payment instructions and tax refund applications, support in verifying the correct allocation of tax payments
- ▶ Assistance in opening and managing an online taxpayer account
- ▶ Individual tax planning
- ▶ Communication with the tax authorities regarding the application of international tax legislation and double tax treaties
- ▶ Assistance with tax audits and querying of late payment interest and fines
- ▶ Applying for tax compliance and tax residency certificates
- ▶ Payroll and HR compliance services
- ▶ Payroll and HR health-checks
- ▶ Advisory related to labour law, HR administration and employment taxes
- ▶ Work permit applications
- ▶ Applications for various types of visas (work visa, business visa, technical services visa)
- ▶ Submission of various notifications required under immigration law
- ▶ Immigration health-checks

# Social security

Social contributions in Russia are the sole responsibility of the employer. There are no “matching” employee contributions. Employer contributions cover obligatory pension, medical and social insurance. On a voluntary basis, additional pension contributions may be paid by individuals or by their employers (e.g., as a part of a social package) to non-state funds or insurance companies. The tax authorities are responsible for administering social contributions.

Social contributions must be accrued on payments made to individuals in the context of employment relations and civil contracts for the performance of work or the rendering of services (except for individual entrepreneurs), and copyright agreements. Generally, the tax base includes remuneration and most benefits provided to employees.

The legislation also sets out a closed list of payroll items which are exempt from social contributions. This list includes the majority of social allowances, certain types of payments to employees of a compensatory nature (e.g., per diems within established limits, hotel costs, travel expenses), severance payments, voluntary medical insurance if an insurance agreement is concluded for a period over one year, certain types of material aid given to employees, etc.

## Exemptions

The following payments and benefits are not subject to social contributions:

- ▶ State allowances, including sick leave allowance
- ▶ Severance payments (up to statutory limits and subject to certain rules), except for compensation for unused vacation
- ▶ Fees for additional professional education, training and retraining of employees (subject to certain conditions)
- ▶ Reimbursement of business trip-related expenses
- ▶ Reimbursement of employees' interest expenses on loans for the acquisition
- ▶ or construction of a dwelling (subject to certain conditions)
- ▶ Expenses incurred by an individual for work performed or services rendered under civil contracts
- ▶ Contributions paid under voluntary medical insurance agreements concluded in respect of employees for at least one year either with an insurance company or directly with licensed medical institutions
- ▶ Contributions paid under voluntary insurance agreements (on specific types of insurance) concluded in respect of employees
- ▶ Pension insurance contributions paid in respect of employees under the non-state pension security agreements
- ▶ Specific types of material aid.

## Social contribution rates

In 2021 the following rates of social contributions have been set for all categories of payers (except for those entitled to preferential social security treatment):

Individual cumulative year-to-date income subject to social contributions	Pension Fund	Social Insurance Fund	Medical Insurance Fund	Total
Up to RUB 966,000 (approx. US\$ 13,357)	22.0 %	2.9 %	5.1 %	30.0 %
From RUB 966,000 (approx. US\$ 13,357) up to RUB 1,465,000 (approx. US\$ 20,257)	22.0%	0%	5.1%	27.1%
Over RUB 1,465,000 (approx. US\$ 20,257)	10%	0%	5.1%	15.1%

The law lays down special rules governing the charging of social contributions on payments made to expatriate employees temporarily staying in Russia:

- ▶ Payments to expatriate employees holding standard work permits are not subject to contributions to the Medical Insurance Fund, and subject to a lower rate of contributions to the Social Insurance Fund. Pension Fund contributions are charged in the normal manner.
- ▶ Payments to expatriate employees whose immigration status is Highly Qualified Specialist are not subject to social contributions (except for workplace accident insurance) as these categories of individuals are not covered by the Russian social security system.

The Russian social security system requires additional pension contributions to be paid by organizations that have employees eligible for early retirement (i.e., employees working in unsafe and hazardous conditions). Based on the results of a special workplace assessment procedure, certain job positions may be classified as work performed in unsafe and/or hazardous conditions. In this case, the employer must pay additional pension contributions on employment income of those special categories of employees. Depending on the class of professional risk assigned to employees, employers are obliged to pay additional

pension contributions at rates ranging from 2% to 8%.

The legislation also specifies certain categories of organizations that are entitled to apply lower rates of social contributions. These are organizations engaged in particular types of economic activity, including, but not limited to, the following:

- ▶ Certain types of IT companies
- ▶ Certain types of mass media companies
- ▶ Participants in the Skolkovo project
- ▶ Companies rendering engineering services
- ▶ Some others.

Information on assessed and paid contributions to the pension, social insurance and medical insurance funds must be submitted to the tax authorities. However, individual reports on period of employment and periods of absence, information on insured employees (SZV-M and SZV-STAZH forms) and the SZV-TD “electronic work record” (a form capturing major HR events concerning employees, such as recruitment, termination and change of job position) must be submitted to the Pension Fund.

Reports must be submitted quarterly (the reporting periods are the first quarter, six months and nine months and the full calendar year) and monthly (in the case of individual reports to the Pension Fund). Reports must be

submitted to the authorities electronically if the number of persons in respect of whom social contributions were paid (i.e., insured persons) exceeds 25.

Starting from 2021 social allowances are paid by the Social fund directly to employees.

## Workplace accident insurance

In addition to the aforementioned social contributions, all employers are required to pay insurance contributions against workplace accidents and occupational illness.

The rate of these contributions depends on a company's economic activity and may vary from 0.2% to 8.5%. The rate is generally 0.2% for most employers that predominantly or only employ office workers. The applicable rate is levied on the contributions base without any cap.

Contributions are assessed on all payments to individuals under employment agreements. Notably, employment income payable to foreign nationals is not exempt from these contributions. Otherwise, items exempt from these contributions are very similar to those envisaged for obligatory social contributions.

Information on workplace accident and occupational illness contributions assessed and paid must be submitted to the Social Insurance Fund on a quarterly basis.



# Russian labour law

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The Russian Labour Code forms the basis of labour relations in Russia, establishing procedures for hiring and dismissing employees as well as regulations concerning working time, vacations, business trips, salary payment and so on.

The Labour Code continues to be very protective of employees. If a conflict arises, an employee will be able to demand the application of any relevant protective provisions of the Labour Code, which will prevail over any conflicting provision of the individual's employment agreement. Moreover, the Labour Code establishes certain guarantees for some categories of employees that must be fulfilled by employers even if they are not specifically set out in employment agreements.

Labour law applies to all employees working in Russia regardless of their nationality or the country of incorporation of their employer. In other words, Russian labour law covers not only Russian citizens, but also expatriates working in Russia, regardless of where employment agreements were concluded. It is worth mentioning that Russian immigration rules and their practical administration, which have become increasingly complex, oblige employers to conclude local employment agreements with expatriates in order to obtain work permits.

Standard daily working hours are determined by the employer. The generally accepted standard is a five-day week with an eight-hour working day. Thus, the standard week is 40 working hours. A shortened work week is envisaged for particular categories of employees, for example women working in the Far North. Overtime work must not exceed 4 hours over 2 consecutive days and 120 hours over a year. Under Russian labour law, overtime work may only be required in exceptional cases with the written agreement of the employee. Certain employees may also work irregular working hours, in which case they must be compensated for this by at least three calendar days of additional paid vacation per year.

Employees must be granted at least 28 calendar (as opposed to working) days of paid vacation a year. Additional vacations are envisaged for certain categories of employees, i.e., those working irregular working hours, in harmful and hazardous conditions, or in the Far North or equated localities. According to Russian labour law, the monthly salary paid to an individual may not be less than the minimum salary

established by a regional agreement at the level of a constituent entity of Russia or, in the absence of such an agreement, by federal legislation.

As of 1 January 2021, the minimum monthly wage established by federal legislation amounted to RUB 12,792 (approx. US\$ 176). The minimum monthly wage in Moscow as of 1 January 2021 was set at RUB 20,589 (approx. US\$ 284). These amounts are periodically adjusted by the Government. The minimum wage is far below salaries offered in the market. In practice, the minimum wage serves more as a basis for the calculation of state social compensation payments than as a real minimum subsistence level.

In accordance with the requirements of Russian labour legislation, salary must be paid no less frequently than twice a month and paid in Russian roubles.

In addition to the conclusion of a written employment agreement with an employee (which must be in Russian or bilingual), recruitment must be documented internally by the employer through the issuance of a formal hiring

order stating the name, position and date of hiring of the new employee in addition to other HR documents.

The statutory guarantees and rights of employees may not be contractually limited, even at an employee's initiative. Under labour law, an employment agreement must generally be concluded for an indefinite term, and fixed-term employment agreements may be used only in limited cases.

An employer hiring an employee may wish to establish a probation period, which may have a maximum duration of three months for all employees except for a general director and chief accountant, for whom the probation period may be up to six months.

To comply with Russian labour law, every employer is obliged to maintain a large number of HR documents aimed at documenting various HR events (hiring, vacation, business trips, termination, etc.). These documents are subject to audit by the authorities. Russian labour legislation also prescribes the maintenance of a number of obligatory internal HR policies.

The Russian Labour Code envisages various grounds for termination. The following grounds are the most frequently used:

- ▶ At the employee's initiative
- ▶ By mutual consent of the employer and the employee
- ▶ At the initiative of the employer



Mutual consent is the most commonly used ground for termination as it enables termination of the agreement at any agreed date and on conditions agreed by both parties. This type of termination is also considered the most favourable option by employers, as it helps to mitigate the risks of subsequent disputes with a former employee.

An employee may terminate the employment relationship on their own initiative at any time with two weeks prior written notice to the employer.

Termination by the employer is restricted to an exhaustive list of reasons. Termination without a specific, expressly stated and valid reason is null and void. A termination may also be considered invalid because the employer has not complied with the termination procedure laid down in labour law. A court may reinstate an illegally dismissed employee in their former position with payment of salary with interest for the period of exclusion from the workplace, and may also impose additional liability for moral injury.

In certain limited circumstances an employer is allowed to dismiss an employee without a notice period or any severance pay. In all other cases, an employee is entitled to a notice period and severance pay, the duration and amount respectively depending on the circumstances of the employment and the termination.

Various post-employment restrictive covenants (confidentiality, non-competition, non-dealing with customers or suppliers, non-solicitation of remaining employees, etc.) are hard or impossible to enforce.

With effect from 1 January 2021, the Russian Labour Code has undergone significant amendment in the area of remote working arrangements. In general terms, the remote working rules allow employers to hire individuals to perform employment duties away from the location of the employer (i.e., at a location where the employer does not have a registered presence). The new regulations distinguish between different types of remote working arrangements (permanent, temporary, hybrid) and establish obligations of employers in relation to remote employees, particularly with regard to compensation for certain expenses. There are also provisions allowing HR documents to be exchanged with remote employees in electronic format, including cases where documents may be exchanged without a digital signature.

## Sanctions for non-compliance

Currently, fines for non-compliance with labour legislation are prescribed by the Administrative Offences Code and are imposed on responsible executives (i.e., the general director, the chief accountant, the HR director) in amounts

from RUB 1,000 to 5,000 (approx. US\$ 13.8 to 69). For legal entities, fines range from RUB 30,000 to 50,000 (approx. US\$ 415 to 691). For repeat violations the law establishes increased fines: RUB 10,000 - 20,000 (approx. US\$ 138 to 276.5) on responsible executive and RUB 50,000 - 70,000 (approx. US\$ 691 to 968) for legal entities. If a violation leads to underpayment of salary, the employer is likely to be obliged to repay the underpaid amount potentially together with interest for each day of the delay. Interest is calculated as 1/150 of the Central Bank's refinancing rate for each day of delay.

An alternative sanction may be applied in the form of the suspension of an organization's activity for up to 90 days (in practice this happens extremely rarely). Violation of labour laws and labour protection laws by a person who has been subjected to administrative penalties for a similar administrative offence in the past may result in disqualification for a period from one to three years. Suspension of a company's activity and disqualification of company executives may be enforced only through a court decision.

Labour law in Russia is complicated and contains numerous rules and conditions that are obligatory for all employers and companies operating in Russia. EY provides a full range of consulting services to assist with the proper management of labour relations in Russia.



# 18

## Appendices



# Appendix 1: Useful addresses and telephone numbers

When calling from an international location, the caller must use the international telephone country code for Russia, 7, as a prefix.

## Major business and commercial organizations

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### ***American Chamber of Commerce***

Ul. Lesnaya, 7,  
Moscow, 125196  
Russia  
Tel: + 7 495 961 2141  
Fax: + 7 495 961 2142  
Email: [info@amcham.ru](mailto:info@amcham.ru)  
Website: [www.amcham.ru](http://www.amcham.ru)

### ***The U.S.-Russia Business Council (USRBC)***

Ul. Myasnitskaya, 24, bld. 1., Moscow,  
101000  
Russia  
Tel: +7 985 155 9655  
Email: [info@usrbc.org](mailto:info@usrbc.org)  
Website: [www.usrbc.org](http://www.usrbc.org)

### ***The Canada Eurasia Russia Business Association (CERBA)***

1-y Kazachiy Pereulok, 7.  
Moscow, 119017  
Russia  
Tel: +7 495 134 0268  
Email: [alex@cerbanet.org](mailto:alex@cerbanet.org)  
Website: [www.cerbanet.org](http://www.cerbanet.org)

### ***Association of European Businesses***

Butyrsky Val, 68/70, bld. 1.  
Moscow, 127055  
Russia  
Tel: + 7 495 234 2764  
Fax: + 7 495 234 2807  
Email: [info@aebrus.ru](mailto:info@aebrus.ru)  
Website: [www.aebrus.ru](http://www.aebrus.ru)

### ***Deutsch-Russische Auslandshandelskammer (Russo- German Chamber of Commerce)***

Beregovoy Proezd, 5A/1.  
Moscow, 121087  
Russia  
Tel: + 7 495 234 4950  
Fax: + 7 495 234 4951  
Email: [ahk@russland-ahk.ru](mailto:ahk@russland-ahk.ru)  
Website: [www.russland.ahk.de](http://www.russland.ahk.de)

### ***Russo-British Chamber of Commerce***

Ul. Tverskaya, 16/1.  
Moscow, 125009  
Russia  
Tel: + 7 495 961 2160  
Email: [information@rbcc.com](mailto:information@rbcc.com)  
Website: [www.rbcc.com](http://www.rbcc.com)

### ***Chambre de Commerce et D'Industrie Française en Russie***

Milyutinskiy Pereulok, 10, bld. 1  
Moscow, 101000  
Russia  
Tel: + 7 495 721 3828  
Email: [info@ccifr.ru](mailto:info@ccifr.ru)  
Website: [www.ccifr.ru](http://www.ccifr.ru)

### ***Japan Association for Trade with Russia & NIS (ROTOBO)***

Ul. Pyatnitskaya, 18, bld. 3.  
Moscow, 115035  
Russia  
Tel: +7 495 098 0018  
Email: [jbc@ronis.dol.ru](mailto:jbc@ronis.dol.ru)  
Website: [www.rotobo.or.jp](http://www.rotobo.or.jp)

### ***Russian-Japanese Business Council***

Ul. Delegatskaya, 7, bld. 1.  
Moscow, 127473  
Russia  
Tel: +7 495 139 9112  
Email: [anna.orlova@ryatiko.com](mailto:anna.orlova@ryatiko.com)  
Website: [www.russia-japan.info](http://www.russia-japan.info)

***The Foreign Investment Advisory Council (FIAC)***

Sadovnicheskaya Nab., 77, bld.1.  
Moscow, 115035  
Russia  
Tel: +7 495 755 9700  
Fax: +7 495 755 9701  
Email: FIAC@ru.ey.com  
Website: fiac.ru

***Russian Chamber of Commerce and Industry***

Ul. Ilyinka, 6/1, bld. 1.  
Moscow, 109012  
Russia  
Tel: + 7 495 620 0009  
Fax: + 7 495 620 0360  
Email: tpprf@tpprf.ru  
Website: www.tpprf.ru

***Russian Union of Industrialists and Entrepreneurs (RSPP)***

Kotelnicheskaya Naberezhnaya, 17.  
Moscow, 109240  
Russia  
Tel: + 7 495 663 0404  
Email: rspp@rspp.ru  
Website: en.rspp.ru

***All Russia Public Organization "Business Russia"***

Ul. Delegatskaya, 7, bld. 1.  
Moscow, 127473  
Russia  
Tel: +7 495 649 1826  
Fax: +7 495 649 1819  
Email: info@deloros.ru  
Website: www.deloros.ru

***Association of Russian Banks***

Skatertny Pereulok, 20, bld. 1.  
Moscow, 121069  
Russia  
Tel: +7 495 691 8788  
+7 495 691 6630  
+7 495 691 8098  
Email: arb@arb.ru  
Website: www.arb.ru

***Self-regulated organization of auditors "Russian Union of auditors" (Association)***

Ul. Seleznevskaya, 32,  
Moscow, 127473  
Russia  
Tel: +7 495 150 3347  
Website: www.org-rsa.ru

***Moscow International Business Association***

Ul. Ilyinka, 5/2.  
Moscow, 109012  
Russia  
Tel: +7 495 620 0130  
Email: miba@mibas.ru  
Website: www.mibas.ru

***Russian Managers Association***

Butyrsky Val, 68/70, bld. 5.  
Moscow, 127055  
Russia  
Tel: +7 495 902 5232  
Email: info@amr.ru  
Website: www.amr.ru

***The International Business Leaders Forum Russia***

1<sup>st</sup> Tverskaya-Yamskaya Ul., 23, bld.1.  
Moscow, 125047  
Russia  
Tel: +7 495 960 4021  
Email: further.info@iblrussia.org  
Website: www.iblrussia.org

***Self-Regulated Organization of Auditors "Audit Chamber of Russia" (Association)***

3<sup>rd</sup> Syromyatnichesky Pereulok, 3/9.  
Moscow, 105120  
Russia  
Tel: +7 495 781 2479  
Email: apr@sroapr.ru  
Website: www.sroapr.ru

***"Institute of Internal Auditors" Association***

Naryshkinskaya Alleya, 5, bld.1.  
Moscow, 125167  
Russia  
Tel: +7 985 393 1240  
Email: info@iia-ru.ru  
Website: www.iia-ru.ru

***National Alternative Investment Management Association***

Presnenskaya Naberezhnaya, 10C.  
Moscow, 123317  
Russia  
Email: info@naima-russia.org  
Website: www.naima-russia.org



## Russian ministries, agencies and services

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### ***Government of the Russian Federation***

Krasnopresnenskaya Nab., 2  
Moscow, 103274  
Russia  
Tel: + 7 495 985 4444  
+ 7 800 200 8442  
Website: [www.government.ru](http://www.government.ru)

### ***Ministry of Agriculture***

Orlikov pereulok, 1/11  
Moscow, 107139  
Russia  
Tel: + 7 495 607 8000  
Fax: + 7 495 607 8362  
Email: [info@mcx.gov.ru](mailto:info@mcx.gov.ru)  
Website:  
[www.mcx.gov.ru](http://www.mcx.gov.ru)

### ***Ministry of Construction and Communal Development***

Ul. Sadovaya-Samotechnaya, 10, bld. 1.  
Moscow, 127994  
Russia  
Tel: + 7 495 647 1580  
Fax: + 7 495 645 7340  
Website: [www.minstroyrf.gov.ru](http://www.minstroyrf.gov.ru)

### ***Ministry of Digital Development, Communications and Mass Media***

Presnenskaya Nab., 10/2.  
Moscow, 123112  
Russia  
Tel: + 7 495 771 8000  
+ 7 800 222 1501  
Email: [office@digital.gov.ru](mailto:office@digital.gov.ru)  
Website: [www.digital.gov.ru](http://www.digital.gov.ru)

### ***Ministry of Economic Development***

Moscow, 125039  
Russia  
Tel: + 7 495 870 2921  
Fax: + 7 499 870 7006  
Email: [mineconom@economy.gov.ru](mailto:mineconom@economy.gov.ru)  
Website: [www.economy.gov.ru](http://www.economy.gov.ru)

### ***Ministry of Energy***

Ul. Schepkina, 42  
Moscow, 107996  
Russia  
Tel: + 7 495 631 9858  
Fax: + 7 495 631 8364  
Email: [minenergo@minenergo.gov.ru](mailto:minenergo@minenergo.gov.ru)  
Website: [www.minenergo.gov.ru](http://www.minenergo.gov.ru)

### ***Ministry of Finance***

Ul. Ilyinka, 9  
Moscow, 109097  
Russia  
Tel: + 7 495 987 9101  
Fax: + 7 495 987 9381  
Email: [priemnaya@minfin.ru](mailto:priemnaya@minfin.ru)  
Website: [www.minfin.ru](http://www.minfin.ru)

### ***Ministry of Foreign Affairs***

Smolenskaya-Sennaya Pl., 32/34  
Moscow, 119200  
Russia  
Tel: + 7 499 244 2469  
Email: [ministry@mid.ru](mailto:ministry@mid.ru)  
Website: [www.mid.ru](http://www.mid.ru)

### ***Ministry of Health Care***

Rakhmanovsky Pereulok, 3/25.  
Moscow, 127994  
Russia  
Tel: + 7 495 628 4453  
+ 7 495 627 2944  
Email: [info@rosminzdrav.ru](mailto:info@rosminzdrav.ru)  
Website:  
[www.minzdrav.gov.ru](http://www.minzdrav.gov.ru)

### ***Ministry of Industry and Trade***

Presnenskaya Nab., 10/2  
Moscow, 125039  
Russia  
Tel: + 7 495 539 2166  
Fax: + 7 495 539 2172  
Email: [info\\_admin@minprom.gov.ru](mailto:info_admin@minprom.gov.ru)  
Website: [www.minpromtorg.gov.ru](http://www.minpromtorg.gov.ru)

### ***Ministry of Internal Affairs***

Zhitnaya Ul., 16  
Moscow, 119049  
Russia  
Tel: + 7 495 667 7447  
+ 7 800 222 7447  
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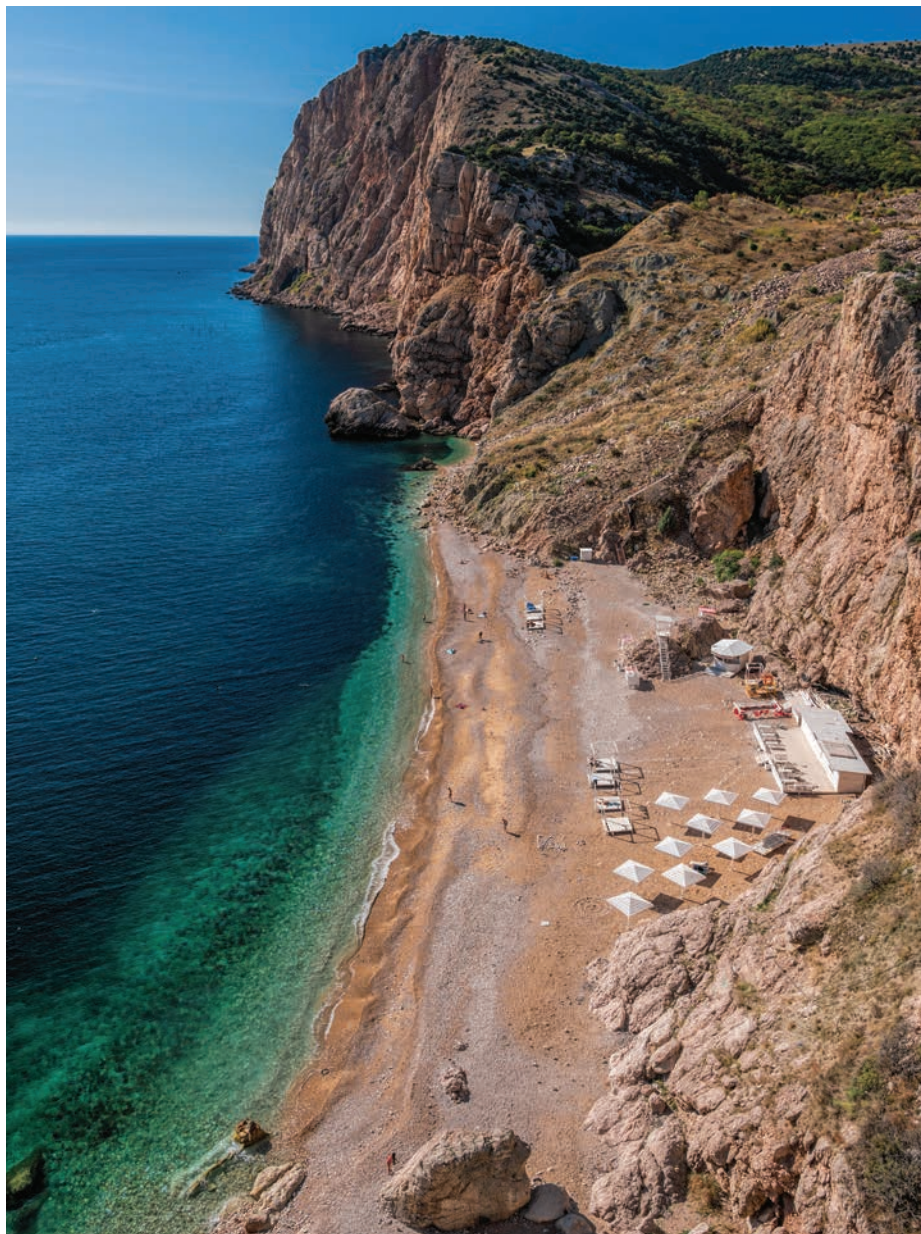
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## Appendix 2: Exchange rates (as of year's end)

	2013	2014	2015	2016	2017	2018	2019	2020
RUB/US\$, eop (end of period)	32.73	56.26	72.88	60.66	57.60	69.47	61.91	72.32
RUB/EUR	44.97	68.34	79.70	63.81	68.87	79.46	69.34	90.68

Source: Central Bank of the Russian Federation



## Appendix 3: Treaty withholding tax rates

Russian legislation currently states that double tax treaties signed by the former USSR are still valid. Withholding tax rates under treaties of the USSR and the Russian Federation are listed in the following table. Like most double tax treaties, treaty rates do not apply if domestic withholding tax rates (see Section A) are lower.

On 25 March 2020 President Putin announced that the conditions of double tax treaties concluded by Russia with certain foreign states (mostly traditional “transit” jurisdictions) would be toughened insofar as dividend and interest income is concerned. He said that the tax treaties must be amended to impose a 15% withholding tax rate on dividends and interest paid to recipients that are not Russian tax residents, and that Russia will unilaterally withdraw from treaties if agreement is not reached (i.e., if the treaty country rejects the proposed amendments).

Russia has already sent official letters to Cyprus, Malta, the Netherlands and Luxembourg proposing the above-mentioned tax treaty amendments. A Protocol amending the DTT between Russia and Cyprus was signed on 8 September 2020, followed by Protocols with Malta on 1 October 2020 and with Luxembourg on 6 November 2020. The amendments to the DTTs with Cyprus and Malta provisionally apply from 1 January 2021, while the changes made by the Protocol with Luxembourg will enter into force on the date of the later of notifications provided through diplomatic channels by the contracting states upon completion of the necessary legal procedures and will take effect in the calendar year following the year of the entry into force of the Protocol (in any case, not earlier than 2022). All three Protocols provide for the standard withholding tax rates for dividends and interest to be raised to 15% (compared with 0%/5%/10%/15% for dividends and 0%/5% for interest before the amendments) with a few exceptions for certain categories of taxpayers and certain types of income. At the same time, the requirement for foreign recipients of dividend and interest income to prove their beneficial ownership status in order to take advantage of reduced tax rates under the DTTs remains unchanged. As for the DTT with the Netherlands, in December 2020 the Russian Ministry of Finance initiated procedures for the denunciation of that DTT since the parties have not yet reached agreement on the proposed amendments.

Country	Dividends, %	Interest, %	Royalties, %
Albania	10	10	10
Algeria	5/15 (tt)	0/15 (k)	15
Argentina	10/15 (bbb)	0/15 (ccc)	15
Armenia	5/10 (a)	0/10 (xxx)	0
Australia	5/15 (nn)	10	10
Austria	5/15 (ssss)	0	0
Azerbaijan	10	0/10 (yyy)	10
Belarus	15	0/10 (xxx)	10
Belgium	10	0/10 (ggg)	0
Botswana	5/10 (ll)	0/10 (zzz)	10
Brazil	10/15 (uuu)	0/15 (aaaa)	15
Bulgaria	15	0/15 (xxx)	15
Canada	10/15 (c)	0/10 (bbbb)	0/10 (d)

Country	Dividends, %	Interest, %	Royalties, %
Chile	5/10 (ddd)	15	5/10 (eee)
China (mainland)	5/10 (sss)	0	6
Croatia	5/10 (e)	10	10
Cuba	5/15 (aaa)	0/10 (cccc)	5
Cyprus	5/15 (f)	0/5/15 (f)	0
Czech Republic	10	0	10
Denmark	10	0	0
Ecuador	5/10 (www)	0	10/15 (www)
Egypt	10	0/15 (g)	15
Finland	5/12 (h)	0	0
France	5/10/15 (i)	0	0
Germany	5/15 (j)	0	0
Greece	5/10 (rr)	7	7

Country	Dividends, %	Interest, %	Royalties, %
Hong Kong SAR	0/5/10 (ttt)	0	3
Hungary	10	0	0
Iceland	5/15 (jj)	0	0
India	10	0/10 (dddd)	10
Indonesia	15	0/15 (k)	15
Iran	5/10 (ll)	0/7.5 (ffff)	5
Ireland	10	0	0
Israel	10	0/10 (gggg)	10
Italy	5/10 (ss)	10	0
Japan	5/10 (m)	0	0
Kazakhstan	10	0/10 (hhhh)	10
Korea (North)	10	0	0
Korea (South)	5/10 (x)	0	5
Kuwait	0/5 (hhh)	0	10
Kyrgyzstan	10	0/10 (iiii)	10
Latvia	5/10 (fff)	0/5/10 (dd)	5
Lebanon	10	0/5 (kkk)	5
Lithuania	5/10 (l)	0/10 (jjjj)	5/10 (pp)
Luxembourg	5/15 (n)	0 (n)	0
Macedonia	10	10	10
Malaysia	0/15 (jjj)	0/15 (kkkk)	10/15 (o)
Mali	10/15 (p)	0/15 (iii)	0
Malta	5/15 (mmm)	5/15 (mmm)	5
Mexico	10	0/10 (uu)	10
Moldova	10	0	10
Mongolia	10	0/10 (nnn)	20 (q)
Montenegro	5/15 (hh)	10	10
Morocco	5/10 (r)	0/10 (ooo)	10
Namibia	5/10 (e)	0/10 (llll)	5
Netherlands	5/15 (s)	0	0
New Zealand	15	10	10

Country	Dividends, %	Interest, %	Royalties, %
Norway	10	0/10 (t)	0
Philippines	15	0/15 (kkk)	15
Poland	10	0/10 (mmmm)	10
Portugal	10/15 (u)	0/10 (v)	10
Qatar	5	0/5 (mm)	0
Romania	15	0/15 (nnnn)	10
Saudi Arabia	0/5 (lll)	0/5 (oooo)	10
Serbia	5/15 (hh)	10	10
Singapore	0/5/10 (vv)	0	5
Slovak Republic	10	0	10
Slovenia	10	10	10
South Africa	10/15 (w)	0/10 (pppp)	0
Spain	5/10/15 (y)(z)	0/5 (z)(qq)	5 (z)
Sri Lanka	10/15 (aa)	0/10 (dddd)	10
Sweden	5/15 (bb)	0	0
Switzerland	0/5/15 (cc)	0	0
Syria	15	0/10 (kkk)	4.5/13.5/18 (kk)
Tajikistan	5/10 (ll)	0/10 (oo)	0
Thailand	15	0/10 (ww)	15
Turkey	10	0/10 (qqqq)	10
Turkmenistan	10	5	5
Ukraine	5/15 (ee)	0/10 (rrrr)	10
United Arab Emirates	0 (ppp)	0 (qqq)	20 (rrr)
United Kingdom	10/15 (eeee)	0	0
United States	5/10 (ff)	0	0
Uzbekistan	10	0/10 (vvv)	0
Venezuela	10/15 (xx)	0/5/10 (yy)	10/15 (zz)
Vietnam	10/15 (gg)	10	15
Non-treaty jurisdictions	15	15/20 (ii)	20



- (a) The 5% rate applies if the recipient of the dividends has invested at least US\$40,000 or the equivalent in local currency in the payer's charter capital. The 10% rate applies to other dividends.
- (b) The 5% rate applies if the beneficial owner of the dividends (except for a partnership) holds directly at least 10% of the capital of the payer of the dividends and if the participation exceeds US\$100,000. The 15% rate applies to other dividends.
- (c) The 10% rate applies if the beneficial owner of the dividends owns at least 10% of the voting shares of the payer or, in the case of a Russian payer that has not issued voting shares, at least 10% of the statutory capital. The 15% rate applies to other dividends.
- (d) The 0% rate applies to royalties for the following:
  - ▶ Copyrights of cultural works (excluding films and television rights)
  - ▶ The use of computer software
  - ▶ The use of patents or information concerning industrial, commercial or scientific experience, if the payer and the beneficiary are not related persons
 The 10% rate applies to other royalties.
- (e) The 5% rate applies to dividends paid to corporations that hold at least 25% of the capital of the payer and have invested in the payer more than US\$100,000 or the equivalent amount in local currency. The 10% rate applies to other dividends.
- (f) The 5% rate applies to dividends if the beneficial owner of the dividends is a resident of Cyprus and is (a) an insurance company or a pension fund, (b) a company whose shares are listed on a registered stock exchange, provided that no less than 15% of the voting shares of that company are in free float, and which holds directly at least 15% of the capital of the company paying the dividends throughout a 365 day period that includes the day of payment of the dividends, (c) the Government, a political subdivision or a local authority, (d) the Central Bank. The 15% rate applies to dividends if the beneficial owner of the dividends is a tax resident of Cyprus. The 15% rate applies to interest if the recipient of the interest is a tax resident of Cyprus and is the beneficial owner of the income. The 5% rate applies to interest if the recipient of the interest, being the beneficial owner of such income, is a tax resident of Cyprus and is a company whose shares are listed on a registered stock exchange, provided that no less than 15% of the voting shares of that company are in free float, and which holds directly at least 15% of the capital of the company paying the interest throughout a 365 day period that includes the day of payment of the interest. The 0% rate applies to interest if the recipient of the interest, being the beneficial owner of the income, is a tax resident of Cyprus and is (a) an insurance company or a pension fund, (b) the Government, a political subdivision or a local authority, (c) the Central Bank, (d) a bank. The 0% rate also applies to interest if the interest is paid in respect of the following securities listed on a registered stock exchange: government bonds, corporate bonds, Eurobonds
- (g) The 0% rate applies if the recipient of the interest is the other contracting state or a bank that is more than 51%-owned by the other contracting state. The 15% rate applies to other interest payments.
- (h) The 5% rate applies if the beneficial owner of the dividends is a company (other than a partnership) that holds directly at least 30% of the capital of the payer of the dividends and if the foreign capital invested exceeds US\$100,000 or its equivalent in the national currencies of the contracting states when the dividends become due and payable. The 12% rate applies to other dividends.
- (i) The 5% rate applies if the recipient of the dividends has invested in the payer at least FF500,000 (EUR76,225) or the equivalent amount in other currency and if the beneficiary of the dividends is a company that is exempt from tax on dividends in its state of residence. The 10% rate applies if only one of these conditions is met. The 15% rate applies to other dividends.
- (j) The 5% rate applies to dividends paid to corporations that hold a 10% or greater interest in the capital of the payer and have invested in the payer at least EUR80,000 or the equivalent amount in roubles. The 15% rate applies to other dividends.
- (k) The 0% rate applies if the recipient of the interest is the government of the other contracting state, including local authorities thereof, a political subdivision or the central bank. The 15% rate applies to other interest payments.
- (l) The 5% rate applies to dividends paid to corporations that hold at least 25% of the capital of the payer and have invested in the payer at least US\$100,000 or the equivalent amount in other currency. The 10% rate applies to other dividends.
- (m) The 5% rate applies if the beneficial owner of the dividends is a company that has held directly at least 15% of the voting power of the company paying the dividends for 365 days ending on the date on which the entitlement to dividends is determined. The 10% rate applies to all other dividends.
- (n) The 5% rate applies if the recipient of the dividends directly holds at least 10% of the capital of the payer and has invested in the payer more than EUR80,000 or the equivalent amount in local currency. The 15% rate applies to other dividends. The Russian Finance Ministry has sent an official letter to Luxembourg proposing amendments to the treaty to introduce a 15% withholding tax rate for dividend and interest income. The amendments to Russia-Luxembourg DTT (not yet in force) will increase withholding tax rates to 15% (5% in certain cases) for dividends and 15% (0%/5% in certain cases) for interest.
- (o) The 15% rate applies to royalties for copyrights, including film and radio broadcasts. The 10% rate applies to other royalties.
- (p) The 10% rate applies if the recipient of the dividends has invested more than FF1 million (EUR152,449) in the payer. The 15% rate applies to other dividends.
- (q) Royalties are subject to tax in the country of the payer in accordance with that country's law.
- (r) The 5% rate applies if the beneficial owner of the dividends owns at least US\$500,000 of the shares of the payer. The 10% rate applies to other dividends.
- (s) The 5% rate applies to dividends paid to corporations that hold at least 25% of the capital of the payer and have invested at least ECU75,000 or an equivalent amount in local currency. The 15% rate applies to other dividends. In December 2020, the Russian Ministry of Finance initiated procedures for the denunciation of the DTT.
- (t) The 0% rate applies if the recipient of the interest is the government of the other contracting state including local authorities thereof, an instrumentality of that state that is not subject to tax in that state or the central bank. The 10% rate applies to other interest payments.
- (u) The 10% rate applies if the beneficial owner is a company that, for an uninterrupted period of two years before the payment of the dividends, owned directly at least 25% of the capital of the payer of the dividends. The 15% rate applies to other dividends.

- (v) The 0% rate applies if the interest is derived and beneficially owned by the other contracting state, a political or administrative subdivision or a local authority thereof or any institution specified and agreed to in an exchange of notes between the competent authorities of the contracting states in connection with any credit granted or guaranteed by them under an agreement between the governments of the contracting states. The 10% rate applies to other interest payments.
- (w) The 10% rate applies if the beneficial owner of the dividends owns at least 30% of the charter capital of the payer and has directly invested at least US\$100,000 in the charter capital of the payer. The 15% rate applies to other dividends.
- (x) The 5% rate applies to dividends paid to corporations that hold at least 30% of the capital of the payer and have invested in the payer at least US\$100,000 or the equivalent amount in local currency. The 10% rate applies to other dividends.
- (y) The 5% rate applies if the beneficial owner of the dividends (except for a partnership) has invested at least ECU100,000 in the charter capital of the payer and if the country of residence of the beneficial owner of the dividends does not impose taxes on the dividends. The 10% rate applies if one of these conditions is met. The 15% rate applies to other dividends.
- (z) The treaty does not provide relief for Spanish companies receiving dividends, interest or royalties from Russian sources if more than 50% of the Spanish company is owned (directly or indirectly) by non-Spanish residents.
- (aa) The 10% rate applies if the beneficial owner of the dividends owns at least 25% of the charter capital of the payer. The 15% rate applies to other dividends.
- (bb) The 5% rate applies if the recipient is a company (other than an investment fund) that holds at least 10% of the capital of the payer, and this holding amounts to at least EUR80,000 or its equivalent in any other currency. The 15% rate applies to other dividends.
- (cc) If the competent authorities agree, the 0% rate applies to dividends paid to the following:
- ▶ A pension fund
  - ▶ The government of a contracting state, political subdivision or local authority
  - ▶ The central (national) bank
- The 5% rate applies if the recipient of the dividends is a corporation that holds at least 20% of the capital of the payer and if, at the time the dividends become due, the amount of the recipient's investment exceeds CHF200,000. The 15% rate applies to other dividends.
- (dd) The 0% rate applies to interest paid to the government of a contracting state, including its political subdivisions and local authorities, the central bank or any financial institution wholly owned by that government and to interest derived from loans guaranteed by that government. The 5% rate applies to loan interest paid by one bank to another bank. The 10% rate applies to other interest.
- (ee) The 5% rate applies to dividends paid to corporations that have invested in the payer at least US\$50,000 or the equivalent amount in local currency. The 15% rate applies to other dividends.
- (ff) The 5% rate applies to dividends paid to corporations holding at least 10% of the voting shares of the payer or, in the case of a Russian payer that has not issued voting shares, at least 10% of the statutory capital. The 10% rate applies to other dividends.
- (gg) The 10% rate applies to dividends paid to shareholders that have invested at least the equivalent of US\$10 million in the payer. The 15% rate applies to other dividends.
- (hh) The 5% rate applies to dividends paid to corporations that hold at least 25% of the capital of the payer and have invested in the payer at least US\$100,000 or the equivalent amount in local currency. The 15% rate applies to other dividends.
- (ii) The 15% rate applies to interest on certain types of state and municipal securities; the 20% rate applies to other interest.
- (jj) The 5% rate applies to dividends paid to corporations that hold at least 25% of the capital of the payer and have invested in the payer at least US\$100,000 or an equivalent amount in local currency. The 15% rate applies to other dividends.
- (kk) The 4.5% rate applies to royalties paid to entities for copyrights of cinematographic films, programs and recordings for radio and television broadcasting. The 13.5% rate applies to royalties paid to entities for copyrights of works of literature, art or science. The 18% rate applies to royalties paid to entities for patents, trademarks, designs or models, plans, secret formulas or processes and computer software, as well as for information relating to industrial, commercial or scientific experience.
- (ll) The 5% rate applies to dividends paid to corporations that hold at least 25% of the capital of the payer. The 10% rate applies to other dividends.
- (mm) The 0% rate applies if the recipient of the interest is the other contracting state or local authorities and governmental agencies of that state. The 5% rate applies to other interest payments.
- (nn) The 5% rate applies to dividends paid to corporations that hold at least 10% of the capital of the payer and have invested in the payer at least AUD700,000 or an equivalent amount in local currency and if dividends paid by a Russian company are exempt from tax in Australia. The 15% rate applies to other dividends.
- (oo) The 0% rate applies if the following circumstances exist:
- ▶ The interest is derived and beneficially owned by the other contracting state, a political or administrative subdivision or a local authority thereof.
  - ▶ The interest is derived and beneficially owned by the central bank or a similar institution specified and agreed to in an exchange of notes between the competent authorities of the contracting states.
  - ▶ The interest is derived with respect to the deferral of payment under commercial credits.
- The 10% rate applies to other interest payments.
- (pp) The 5% rate applies to royalties paid for the right to use industrial, commercial or scientific equipment. The 10% rate applies to other royalties.
- (qq) The 0% rate applies if the interest is paid on a long-term loan (seven or more years) issued by a bank or other credit institution or if the recipient of the interest is the government of the other contracting state, a political subdivision or a local authority.
- (rr) The 5% rate applies if the beneficial owner is a company (other than a partnership) that holds directly at least 25% of the capital of the company paying the dividends. The 10% rate applies in all other cases.
- (ss) The 5% rate applies to dividends paid to corporations that hold at least 10% of the capital of the payer and that have invested in the payer at least US\$100,000 or the equivalent amount in other currency. The 10% rate applies to other dividends.

- (tt) The 5% rate applies to dividends paid to corporations that hold at least 25% of the capital of the payer.
- (uu) The 0% rate applies if any of the following circumstances exist:
- ▶ he beneficial owner is a contracting state, a political subdivision or the central bank of a contracting state.
  - ▶ The interest is paid by any of the entities mentioned in the preceding bullet.
  - ▶ The interest arises in the Russian Federation and is paid with respect to a loan for a period of not less than three years that is granted, guaranteed or insured, or a credit for such period that is granted, guaranteed or insured, by Banco de México, S.N.C., Banco Nacional de Comercio Exterior, S.N.C., Nacional Financiera, S.N.C. or Banco Nacional de Obras y Servicios Públicos, S.N.C., or interest is derived by any other institution, as may be agreed from time to time between the competent authorities of the contracting states.
  - ▶ The interest arises in Mexico and is paid with respect to a loan for a period of not less than three years that is granted, guaranteed or insured, or a credit for such period that is granted, guaranteed or insured, by The Bank for Foreign Trade (Vneshtorgbank) or The Bank for Foreign Economic Relations of the USSR (Vnesheconombank), or the interest is derived by any other institution, as may be agreed from time to time between the competent authorities of the contracting states.
- (vv) The 0% rate applies to dividends paid to the Monetary Authority of Singapore, GIC Private Limited, the Central Bank of the Russian Federation and institutions wholly or mainly owned by the Central Bank of the Russian Federation and any statutory bodies or institutions wholly or mainly owned by the governments of a contracting state as may be agreed from time to time between the competent authorities of the contracting states. The 5% rate applies if the recipient of the dividends is a company that holds directly at least 15% of the capital of the company paying the dividends. The 10% rate applies to other dividends.
- (ww) The 0% rate applies if the beneficial owner of the interest is the government of a contracting state, a government body of a contracting state, the central bank or the Export-Import bank of Thailand. The 10% rate applies if interest is received by an institution that has a licence to carry on banking operations (Russian Federation) or a financial institution including an insurance company (Thailand).
- (xx) The 10% rate applies if the beneficial owner of the dividends (except for a partnership) holds directly at least 10% of the capital of the payer of the dividends and if the participation exceeds US\$100,000. The 15% rate applies to other dividends.
- (yy) The 0% rate applies if any of the following conditions is met:
- ▶ The beneficial owner is a government of a contracting state, the central bank of a contracting state, a political subdivision of a contracting state or a local authority.
  - ▶ The interest is paid by the government of a contracting state, the central bank of a contracting state, a political subdivision of a contracting state or a local authority.
  - ▶ The interest is paid with respect to a loan granted or guaranteed by a public financial institution with the objective to promote exports and development.
- The 5% rate applies to interest on bank loans. The 10% rate applies to other interest.
- (zz) The 10% rate applies to fees for technical assistance. The 15% rate applies to royalties.
- (aaa) The 5% rate applies if the beneficial owner of the dividends (except for a partnership) holds directly at least 25% of the capital of the payer of the dividends. The 15% rate applies to other dividends.
- (bbb) The 10% rate applies if the beneficial owner of the dividends holds directly at least 25% of the capital of the payer of the dividends. The 15% rate applies to other dividends.
- (ccc) The 0% rate applies if the recipient of the interest is the government of the other contracting state or the central bank. The 15% rate applies to other interest.
- (ddd) The 5% rate applies if the beneficial owner of the dividends holds directly at least 25% of the capital of the payer of the dividends. The 10% rate applies to other dividends.
- (eee) The 5% rate applies to royalties paid for the right to use industrial, commercial or scientific equipment. The 10% rate applies to other royalties.
- (fff) The 5% rate applies if the beneficial owner of the dividends (except for a partnership) directly owns at least 25% of the capital of the payer and has invested more than US\$75,000 in the capital of the payer. The 10% rate applies to other dividends.
- (ggg) The 0% rate applies if any of the following conditions is met:
- ▶ The recipient of the interest is the government of a contracting state, or a political subdivision or local authority of a contracting state.
  - ▶ The relevant loan is secured by a contracting state, or a political subdivision or local authority of a contracting state.
  - ▶ The loan is issued by a bank or other credit institution of a contracting state.
- (hhh) The 0% rate applies if the dividends are paid to the government of a contracting state, a local authority or political subdivision of a contracting state, the central bank or other state institutions, as agreed by the competent authorities. The 5% rate applies to other dividends.
- (iii) The 0% rate applies if any of the following conditions is met:
- ▶ Interest is paid by the government or local authorities of a contracting state.
  - ▶ Interest is paid to the government or local authorities of a contracting state or to the central bank.
  - ▶ Interest is paid on loans issued under agreements between the governments.
- (jjj) The 0% rate applies to dividends paid to Russian tax residents. The 15% rate applies to dividends paid to Malaysian tax residents.
- (kkk) The 0% rate applies to interest paid to the government of a contracting state, or a political subdivision or local authority of a contracting state.
- (lll) The 0% rate applies to dividends paid to any of the following:
- ▶ The government, a political subdivision or a local authority of a contracting state
  - ▶ The central bank
  - ▶ Other government agencies or financial institutions, as agreed by the competent authorities
- The 5% rate applies to other dividends.



- (mmm) The 5% rate applies to dividends if the beneficial owner of the dividends is a resident of Malta and is (a) an insurance company or a pension fund, (b) a company whose shares are listed on a registered stock exchange, provided that no less than 15% of the voting shares of that company are in free float, and which holds directly at least 15% of the capital of the company paying the dividends throughout a 365 day period that includes the day of payment of the dividends, (c) the Government, a political subdivision or a local authority, (d) the Central Bank. The 15% rate applies to dividends if the beneficial owner of the dividends is a tax resident of Malta. The 15% rate applies to interest if the recipient of interest is a tax resident of Malta and is the beneficial owner of the income. The 5% rate applies to interest if the recipient of the interest, being the beneficial owner of the income, is a tax resident of Malta and is (a) an insurance company or a pension fund, (b) the Government, a political subdivision or a local authority, (c) the Central Bank, (d) a bank, (e) a company whose shares are listed on a registered stock exchange, provided that no less than 15% of the voting shares of that company are in free float, and which holds directly at least 15% of the capital of the company paying the interest throughout a 365 day period that includes the day of payment of the interest. The 5% rate also applies to interest if the interest is paid in respect of the following securities listed on a registered stock exchange: government bonds, corporate bonds, Eurobonds.
- (nnn) The 0% rate applies if the recipient of the interest is the government of a contracting state, or the central or foreign trade bank. The 10% rate applies to other interest payments.
- (ooo) The 0% rate applies to interest on foreign-currency deposits and interest on loans granted to a contracting state or guaranteed by a contracting state. The 10% rate applies to other interest payments.
- (ppp) The 0% rate applies to dividends paid to a contracting state or its financial or investment institutions.
- (qqq) The 0% rate applies to interest paid to a contracting state or its financial or investment institutions.
- (rrr) The treaty does not cover royalties.
- (sss) The 5% rate applies if the recipient is a company (other than a partnership) that holds at least 25% of the capital of the payer, and this holding amounts to at least EUR80,000 or its equivalent in any other currency. The 10% rate applies to other dividends.
- (ttt) The 0% rate applies to dividends paid to the following:
- ▶ The government of Russia, a political subdivision or local authority thereof, or the government of the Hong Kong Special Administrative Region (SAR)
  - ▶ The Central Bank of the Russian Federation or the Hong Kong Monetary Authority
  - ▶ Any entity that is wholly or mainly owned by the government of Russia or by the government of the Hong Kong SAR and that is mutually agreed on by the competent authorities of the two contracting parties
- The 5% rate applies if the recipient of the dividends is a company (other than a partnership) that holds directly at least 15% of the capital of the company paying the dividends. The 10% rate applies to other dividends.
- (uuu) The 10% rate applies if the beneficial owner of the dividends holds directly at least 20% of the capital of the payer of the dividends.
- (vvv) The 0% rate applies if any of the following circumstances exist:
- ▶ The interest is paid to a contracting state, a political subdivision or a local authority thereof.
  - ▶ The interest is paid to the central bank of a contracting state, an export credit guarantee agency or other similar institution that may from time to time be agreed upon between the competent authorities of the contracting states.
  - ▶ The interest is paid with respect to a commercial loan in the form of deferred payment for goods, equipment and services.
- (www) The 5% rate applies to dividends if the beneficial owner of the dividends is a company that owns directly at least 25% of the voting stock of the company paying the dividends. The 10% rate applies to all other dividends. The 10% rate applies to royalties for the use of, or the right to use, industrial, commercial or scientific equipment. The 15% rate applies to royalties in all other cases.
- (xxx) The 0% rate applies if the recipient of the interest is the government or the central bank of a contracting state.
- (yyy) The 0% rate applies if the recipient of the interest is the government of a contracting state or an institution authorized by such a government.
- (zzz) The 0% rate applies if the recipient of the interest is any of the following:
- ▶ The government of a contracting state, a political subdivision or a local authority thereof
  - ▶ The central bank of a contracting state
  - ▶ Any government institution agreed upon in writing by the competent authorities of the contracting states
- (aaaa) The 0% rate applies if either of following circumstances exist:
- ▶ The recipient of the interest is the government of a contracting state, a political subdivision thereof or any agency (including a financial institution) wholly owned by that government or political subdivision.
  - ▶ The interest is paid with respect to securities, bonds or debentures issued by the government of a contracting state, a political subdivision thereof or any agency (including a financial institution) wholly owned by that government or political subdivision.
- (bbbb) The 0% rate applies if any of the following circumstances exist:
- ▶ The recipient of the interest is the central bank of a contracting state.
  - ▶ The interest is paid to a resident of a contracting state with respect to indebtedness of the other contracting state or of its state authorities, including local authorities thereof.
  - ▶ The interest is paid with respect to a loan made, guaranteed or insured, or a credit extended, guaranteed or insured, by an organization created and wholly owned by the government of a contracting state for the purpose of facilitating exports.
- (cccc) The 0% rate applies if the recipient of the interest is either of the following:
- ▶ The government of a contracting state, a political subdivision thereof or a local authority, or a financial institution wholly owned or controlled by that government, political subdivision or local authority
  - ▶ Any organization (including a financial institution) that is financed in accordance with an agreement between the governments of the contracting states

(dddd)	<p>The 0% rate applies if the recipient of the interest is any of the following:</p> <ul style="list-style-type: none"><li>▶ The government of a contracting state, a political subdivision thereof or a local authority</li><li>▶ The central bank of a contracting state</li><li>▶ Any government agency or a financial institution agreed upon by an exchange of notes by the competent authorities of the contracting states</li></ul>	(jjjj)	<p>The 0% rate applies if either of the following circumstances exist:</p> <ul style="list-style-type: none"><li>▶ The recipient of the interest is the government of a contracting state, including its political subdivisions and local authorities, the central bank or any financial institution wholly owned by that government.</li><li>▶ The interest is paid on loans guaranteed by the government of a contracting state.</li></ul>	<ul style="list-style-type: none"><li>▶ The interest is paid to the government of a contracting state or a local authority thereof, or any agency or instrumentality (including a financial institution) wholly owned by the contracting state or local authority thereof.</li><li>▶ The interest is paid to any other agency or instrumentality (including a financial institution) with respect to loans made in application of any agreement concluded between the governments of the contracting states.</li></ul>	
(eeee)	<p>The 10% rate applies to dividends in the source state if the recipient is subject to tax with respect to the dividends in the recipient's resident state.</p>	(kkkk)	<p>The 0% rate applies if any of the following circumstances exist:</p> <ul style="list-style-type: none"><li>▶ The interest is paid to a resident of the Russian Federation with respect to an approved loan as defined under Malaysian law.</li><li>▶ The interest is paid to the government or the central bank of a contracting state.</li><li>▶ The interest is paid in a contracting state with respect to a loan provided, guaranteed or insured by the government of the other state, which may be agreed upon between the competent authorities of the contracting states.</li></ul>	(pppp)	<p>The 0% rate applies to interest paid with respect to a loan made or guaranteed by the government of a contracting state, a local authority thereof, the Bank of Russia or the South African Reserve Bank.</p>
(ffff)	<p>The 0% rate applies if the recipient of the interest is any of the following:</p> <ul style="list-style-type: none"><li>▶ The government of a contracting state, a political subdivision thereof or a local authority</li><li>▶ The central bank of a contracting state, the bank for external trade of a contracting state, a state agency for insurance of export credits or a state-owned bank</li><li>▶ Any other state agency of a contracting state</li></ul>			(qqqq)	<p>The 0% rate applies to the following interest:</p> <ul style="list-style-type: none"><li>▶ Interest paid in the Russian Federation to the government of Turkey, its central bank or Eximbank</li><li>▶ Interest paid in Turkey to the government of the Russian Federation, its central bank or its bank for foreign trade</li></ul>
(gggg)	<p>The 0% rate applies if the recipient of the interest is either of the following:</p> <ul style="list-style-type: none"><li>▶ The government of a contracting state or a local authority thereof, the central bank or any agency (including a financial institution) wholly owned by that government or political subdivision</li><li>▶ Any resident of a contracting state, if the interest is paid with respect to debt claims guaranteed, insured or indirectly financed by the government of the other contracting state, a local authority thereof or the central bank</li></ul>	(llll)	<p>The 0% rate applies if the recipient of the interest is either of the following:</p> <ul style="list-style-type: none"><li>▶ The government of a contracting state, a political subdivision thereof or a local authority</li><li>▶ Any government institution agreed upon in writing by the competent authorities of the contracting states</li></ul>	(rrrr)	<p>The 0% rate applies to the following interest:</p> <ul style="list-style-type: none"><li>▶ Interest paid in the Russian Federation to the government of Ukraine, its national bank, a local authority or any other government body, or paid with respect to loans guaranteed by them</li><li>▶ Interest paid in Ukraine to the government of the Russia Federation, its central bank or any other government body, or paid with respect to loans guaranteed by them</li></ul>
(hhhh)	<p>The 0% rate applies if the recipient of the interest is the government of a contracting state, a political subdivision thereof or a local authority, or any institution of that government, political subdivision or local authority.</p>	(mmmm)	<p>The 0% rate applies if the recipient of the interest is the government of a contracting state, a political subdivision or a local authority thereof, or the central bank.</p>	(ssss)	<p>The 5% rate applies if the beneficial owner of the dividends (except for a partnership) holds directly at least 10% of the capital of the payer of the dividends.</p>
(iiii)	<p>The 0% rate applies if the recipient of the interest is any of the following:</p> <ul style="list-style-type: none"><li>▶ The government of a contracting state</li><li>▶ The central bank of a contracting state</li><li>▶ A government agency or an authorized financial institution agreed upon by the exchange of notes by the competent authorities of the contracting states</li></ul>	(nnnn)	<p>The 0% rate applies to the following interest:</p> <ul style="list-style-type: none"><li>▶ Interest paid in the Russian Federation to the government of Romania, its national bank, its bank for foreign trade or Eximbank</li><li>▶ Interest paid in Romania to the government of the Russian Federation, its central Bank or its bank for foreign trade</li></ul>		
		(oooo)	<p>The 0% applies if any of the following circumstances exist:</p> <ul style="list-style-type: none"><li>▶ The interest is paid by the government of a contracting state or a local authority thereof.</li></ul>		

The Russian Federation has signed tax treaties with Estonia, Ethiopia, Georgia, Laos, Mauritius and Oman, as well as a new treaty with Belgium, but these treaties are not yet in force.

The Russian Federation is negotiating a tax treaty with Bosnia and Herzegovina. The Russian Federation is renegotiating its tax treaties with Malaysia, the Netherlands and the United Kingdom.

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# Appendix 4: Blacklist of jurisdictions approved by the Ministry of Finance

The list of states and territories that grant preferential tax treatment and do not require the disclosure and provision of information in relation to financial operations carried out (offshore zones) is as follows:

- |   |  |   |
|---|--|---|
| 1. Anguilla   | 16. Union of the Comoros:<br>Anjouan Islands     | 31. Turks and Caicos Islands  |
| 2. Kingdom of Andorra   | 17. Republic of Liberia                          | 32. Republic of Palau   |
| 3. Antigua and Barbuda  | 18. Principality of Liechtenstein                | 33. Republic of Panama  |
| 4. Aruba  | 19. Republic of Mauritius                        | 34. Republic of Samoa   |
| 5. Commonwealth of the Bahamas  | 20. Malaysia: Labuan Island                      | 35. Republic of San Marino  |
| 6. Kingdom of Bahrain   | 21. Republic of Maldives                         | 36. Saint Vincent and the Grenadines  |
| 7. Belize   | 22. Republic of the Marshall Islands             | 37. Saint Kitts and Nevis   |
| 8. Bermuda  | 23. Principality of Monaco                       | 38. Saint Lucia   |
| 9. Brunei-Darussalam  | 24. Montserrat                                   | 39. Administrative units of the<br>United Kingdom of Great Britain and<br>Northern Ireland: Isle of Man and<br>Channel Islands (Islands<br>of Guernsey, Jersey, Sark<br>and Alderney) |
| 10. Republic of Vanuatu   | 25. Republic of Nauru                            | 40. Republic of Seychelles  |
| 11. British Virgin Islands  | 26. Curaçao and Sint Maarten<br>(the Dutch part) |   |
| 12. Gibraltar   | 27. Republic of Niue                             |   |
| 13. Grenada   | 28. United Arab Emirates                         |   |
| 14. Commonwealth of Dominica  | 29. Cayman Islands                               |   |
| 15. People's Republic of China:<br>Macau (Aomen) Special<br>Administration Region | 30. Cook Islands                                 |   |





## Appendix 5: Blacklist of jurisdictions approved by the Federal Tax Service

States				Territories
1. Angola	26. Grenada	51. Maldives	74. Saint Lucia	1. Anguilla
2. Andorra	27. Democratic Republic of the Congo	52. Marshall Islands	75. Solomon Islands	2. Virgin Islands, USA
3. Antigua and Barbuda	28. Djibouti	53. Micronesia, Federated States of	76. Somalia	3. Gibraltar
4. Afghanistan	29. Dominica	54. Mozambique	77. Sudan	4. Greenland
5. Bahamas	30. Dominican Republic	55. Myanmar	78. Surinam	5. Guam
6. Bangladesh	31. Zambia	56. Nauru	79. Sierra Leone	6. Comoros: Anjouan Island
7. Barbados	32. Zimbabwe	57. Nepal	80. Tanzania, United Republic of	7. Curaçao
8. Bahrain	33. Jordan	58. Niger	81. Timor-Leste	8. Macau
9. Benin	34. Iraq	59. Nigeria	82. Togo	9. Malaysia: Labuan Island
10. Bolivia, Plurinational State of	35. Yemen	60. Nicaragua	83. Tonga	10. Montserrat
11. Bosnia and Herzegovina	36. Cape Verde	61. Oman	84. Trinidad and Tobago	11. Niue
12. Brunei-Darussalam	37. Cambodia	62. Pakistan	85. Tuvalu	12. Puerto Rico
13. Burkina Faso	38. Cameroon	63. Palau	86. Tunisia	13. Cook Islands
14. Burundi	39. Kenya	64. Palestine, State of	87. Uruguay	14. Turks and Caicos Islands
15. Bhutan	40. Kiribati	65. Papua New Guinea	88. Fiji	15. Certain administrative units of the United Kingdom of Great Britain and Northern Ireland: Channel Islands (Jersey, Sark, Alderney)
16. Vanuatu	41. Colombia	66. Paraguay	89. Central African Republic	16. Sint Maarten (Dutch part)
17. Gabon	42. Comoros	67. Peru	90. Chad	17. Taiwan (China)
18. Haiti	43. Costa Rica	68. Republic of the Congo	91. Ecuador	18. Faroe Islands
19. Guyana	44. Ivory Coast	69. Rwanda	92. Equatorial Guinea	
20. Gambia	45. Laos People's Democratic Republic	70. Samoa	93. El Salvador	
21. Ghana	46. Lesotho	71. São Tomé and Príncipe	94. Eritrea	
22. Guatemala	47. Liberia	72. Senegal	95. Ethiopia	
23. Guinea	48. Mauritania	73. Saint Vincent and the Grenadines	96. Eswatini	
24. Guinea-Bissau	49. Madagascar		97. South Sudan	
25. Honduras	50. Malawi		98. Jamaica	

## Appendix 6: Compliance calendar

Schedule for submission of reports to tax and other authorities in 2021 for Representative Offices/  
Branches of FLE in Russia

Nº	Name of report	Frequency*	January	February	March	April	May
1	Corporate Income Tax Return	4Q			29 March	28 April	
2	Statement of Activities of a Foreign Organization in the RF	A			29 March		
3	Explanatory Note to the Statement of Activities (only for Moscow)	A			29 March		
4	Corporate property tax (only for immovable property since 1 January 2020)**	4Q			30 March (return plus payment)	30 April (for payment only)	
5	VAT Return	4Q	25 January (for Q4 2020)			26 April	
6	Withholding tax return	4Q			29 March	28 April	
7	Transport tax payment***	4Q			1 March (for Annual 2020; for payment only)	30 April (for advance payment only)	
8	Land Tax payment***	4Q			1 March (for Annual 2020; for payment only)	30 April (for advance payment only)	
9	Form 5-Z****	3Q				30 April	
10	Form 8-VES	A	27 January				
11	Form 1-Enterprise	A				1 April	
12	Pension report on insured individuals length of services (SZV-stazh)	A			1 March		
13	Monthly Pension Fund Report (SZV-M)	M	15 January	15 February	15 March	15 April	17 May
14	Monthly Pension Fund Report (SZV-TD)	M	15 January	15 February	15 March	15 April	17 May
15	Report on Headcount, Salary and Employee Turnover (Form P4)	M (if ≥ 15 employees)	15 January	15 February	15 March	15 April	17 May
16		4Q (if < 15 employees)	15 January			15 April	
17	Social Insurance Fund (SIF) Report**** (4-FSS)	4Q	25 January for 2020			26 April	
18	Personal Income Tax (PIT) Accrued and Withheld by the Tax Agent (Form 6-NDFL)	4Q			1 March for 2020	30 April	
19	Report on Accrued Insurance Contributions	4Q		1 February for 2020		30 April	
20	Personal Income Tax (PIT) Withheld by RO (Form 2-NDFL)	A			1 March for 2020		
21	Confirmation of the type of economic activity (to Social Insurance Fund)	A				15 April for 2020	
22	Personal Income Tax (PIT) for Individuals*	A				30 April	
23	Payment of the PIT	A					
24	Salary Reports on Income of HQS	4Q	31 January			30 April	

June	July	August	September	October	November	December
	28 July			28 October		
	30 July (for payment only)				1 November (for payment only)	
	26 July			25 October		
	28 July			28 October		
		2 August (for advance payment only)			1 November (for advance payment only)	
		2 August (for advance payment only)			1 November (for advance payment only)	
	30 July			30 October		
15 June	15 July	16 August	15 September	15 October	15 November	15 December
15 June	15 July	16 August	15 September	15 October	15 November	15 December
15 June	15 July	16 August	15 September	15 October	15 November	15 December
	15 July			15 October		
	26 July			25 October		
		2 August			1 November	
	30 July				1 November	
	15 July					
	31 July			30 October		

Corporate tax related report

Payroll related report

Income tax related report

Immigration reports for HQS

\* Frequency: A – annual; SA – semi-annual;  
4Q – quarterly, 4 times a year;  
3Q – quarterly, 3 times a year; M – monthly

\*\* Starting in 2021, organizations will no longer have to file quarterly computations of advance corporate property tax payments.

We stress that taxpayers will still be obliged to pay advance payments unless regional corporate property tax legislation establishes otherwise.

\*\*\* Starting 2021 organizations will no longer have to file Transport Tax and Land Tax returns. Advance payments are established by regional authorities

\*\*\*\* The list of required reports should be checked on a monthly basis at <https://websbor.gks.ru/online/#!/gs/statistic-codes>

\*\*\*\*\* Starting from the 2020 tax period there will be no requirement to prepare and file a land tax return. Tax inspectorates will calculate tax based on information available to them and send appropriate notices to payers. The last return must be filed for 2019. Thereafter, companies will pay tax based on notices from the inspectorate in the same way as individuals.

\*\*\*\*\* Social Insurance Fund (SIF) report – No later than the 20th (in hard copy) and 25th (in electronic form) of the month following the reporting period



## Schedule for submission of reports to tax and other authorities in 2021 for LLCs in Russia

Nº	Name of report	Frequency*	January	February	March	April	May
1	Corporate Income Tax Return	4Q			29 March	28 April	
2	Statutory financial reporting	A			31 March		
3	Corporate property tax (only for immovable property since 1 January 2020)**	4Q			30 March (return plus payment)	30 April (for payment only)	
4	VAT Return	4Q	25 January			26 April	
5	Withholding tax return	4Q			29 March	28 April	
6	Transport tax payment***	4Q			1 March (for Annual 2020; for payment only)	30 April (for advance payment only)	
7	Land Tax payment***	4Q			1 March (for Annual 2020; for payment only)	30 April (for advance payment only)	
8	Form P-3****	4Q	30 January (for Q4 2020)			30 April	
9	Form 12-F	A				1 April	
10	Form 11	A				1 April	
11	Form 1-Enterprise	A				1 April	
12	Pension report on insured individuals length of services (SZV-stazh)	A			5 March for 2020		
13	Monthly Pension Fund Report (SZV-M)	M	15 January	15 February	15 March	15 April	17 May
14	Monthly Pension Fund Report (SZV-TD)	M	15 January	15 February	15 March	15 April	17 May
15	Report on Headcount, Salary and Employee Turnover (Form P4)	M (if ≥ 15 employees)	15 January	15 February	15 March	15 April	17 May
16		4Q (if < 15 employees)	15 January			15 April	
17	Social Insurance Fund (SIF) Report (4-FSS)*****	4Q	25 January for 2020			26 April	
18	Personal Income Tax (PIT) Accrued and Withheld by the Tax Agent (Form 6-NDFL)	4Q			1 March for 2020	30 April	
19	Report on Accrued Insurance Contributions	4Q		1 February for 2020		30 April	
20	Personal Income Tax (PIT) Withheld by LLC (Form 2-NDFL)	A			1 March for 2020		
21	Confirmation of the type of economic activity (to Social Insurance Fund)	A				15 April for 2020	
22	Personal Income Tax (PIT) for Individuals	A				30 April	
23	Payment of the PIT	A					
24	Salary Reports on Income of HQS	4Q	31 January			30 April	

June	July	August	September	October	November	December
	28 July			28 October		
	30 July (for payment only)				1 November (for payment only)	
	26 July			25 October		
	28 July			28 October		
		2 August (for advance payment only)			1 November (for advance payment only)	
		2 August (for advance payment only)			1 November (for advance payment only)	
	30 July			30 October		
15 June	15 July	16 August	15 September	15 October	15 November	15 December
15 June	15 July	16 August	15 September	15 October	15 November	15 December
15 June	15 July	16 August	15 September	15 October	15 November	15 December
	15 July			15 October		
	26 July			25 October		
		2 August			1 November	
	30 July				1 November	
	15 July					
	31 July			30 October		

- Corporate tax related report
- Payroll related report
- Income tax related report
- Immigration reports for HQS

- \* Frequency: A – annual; SA – semi-annual; 4Q – quarterly, 4 times a year; 3Q – quarterly, 3 times a year; M – monthly
- \*\* Starting in 2021, organizations will no longer have to file quarterly computations of advance corporate property tax payments.  
  
We stress that taxpayers will still be obliged to pay advance payments unless regional corporate property tax legislation establishes otherwise.
- \*\*\* Starting 2021 organizations will no longer have to file Transport Tax and Land Tax returns. Advance payments are established by regional authorities
- \*\*\*\* The list of required reports should be checked on a monthly basis at <https://websbor.gks.ru/online/#/qs/statistic-codes>
- \*\*\*\* Social Insurance Fund (SIF) report - No later than the 20th (in hard copy) and 25th (in electronic form) of the month following the reporting period

# General compliance obligations of a branch/representative office of a foreign legal entity in Russia

Tax	Filing monthly	Filing quarterly**	Filing annually	Statutory filing due dates	Payment due dates	Additional comments (assumptions)	Branch/ RO
Tax returns (Federal taxes)							
Newly established branches and ROs of foreign legal entities are obliged to connect to telecommunications channels within 10 days in order to ensure filing and communications with tax authorities via electronic channels							✓
The Russian Tax Code provides that filing and formalized communications with tax authorities have to be organized via electronic channels. It is important to meet deadlines. For example, companies must confirm receipt of official messages within 6 days and must respond to those messages within the period specified by the Russian Tax Code.							✓
Profit (Corporate income) tax		✓	✓	Due date is the 28th day of the month following the reporting quarter, i.e. 28 April, 28 July, 28 October, and 28 March for annual tax return.	Quarterly advance payments by the 28th day of the month following the reporting quarter and annual payment is due by 28 March following the tax period.		✓
Statement of Activity and Explanatory Note			✓	Due date is the 28th March of the following reporting year		Explanatory Note is applicable for Moscow only.	✓
Value added tax (VAT)		✓		Due date is the 25th day of the month following the tax reporting period (quarter) i.e. 25 April, 25 July, 25 October, 25 January	The payment is due by installments in equal parts by the 25 th day of each of the 3 months following the tax reporting period (quarter).		✓
Withholding tax (WHT)		✓		"Due date is the 28th day of the month following the reporting quarter, i.e. 28 April, 28 July, 28 October, and 28 March for annual tax report.	The due date is the next day following the day of income payment.	There are some tax reliefs in double tax treaties	✓
State duties						Applicable only in cases where the Company makes requests to state authorities	
Tax returns (Regional taxes)							
Corporate property tax			✓	Due date is 30 March.	Due date is the 30th day of the month following the reporting period i.e. 30 April, 30 July, 30 October, and 30 March for annual payment.	Applicable only if the Company owns real estate. Inseparable leasehold improvements may be considered as real estate for the purposes of assets tax. Organizations no longer have to file quarterly computations of advance corporate property tax payments. Taxpayers will still be obliged to pay advance payments unless regional corporate property tax legislation establishes otherwise.	✓



Tax	Filing monthly	Filing quarterly**	Filing annually	Statutory filing due dates	Payment due dates	Additional comments (assumptions)	Branch/ RO
Transport tax				From 2020 tax year no tax return should be filed	Due date is 1 March following the tax period; The advance payment should be paid by the end of the month following the reporting quarter i.e. 30 April, 31 July, 31 October	Applicable only if the Company owns transport vehicles. Taxpayers are obliged to pay advance payments unless regional transport tax legislation establishes otherwise.	✓
Statistical reporting							
Statistical reporting	✓	✓	✓	Statutory deadlines are different for the different forms of filings		The list of required reports should be checked on a monthly basis at <a href="https://websbor.gks.ru/online/#!/gs/statistic-codes">https://websbor.gks.ru/online/#!/gs/statistic-codes</a>	✓
Transfer pricing reporting to the tax authorities							
Notification on controlled transactions			✓	Due date is 20 May of the following year		TP documentation may be requested by tax authorities, in this case taxpayers must provide it within 30 days from the date it is requested	✓
Notification on participation in MNE group			✓	Russian legislation requires taxpayers that are constituent entities of an MNE group to submit a CbCR Notification annually, no later than eight month after the end of the MNE group's financial year			✓
Payroll-related reporting							
Contributions against workplace accidents		✓		Due date is the 25th day of the month following the reporting quarter and 25 January for the annual report.	The contributions must be paid not later than the 15th of the following month		✓
Social contributions		✓		Due date is the 30th day of the month following the reporting quarter and 1 February for the annual report.	Social contributions must be paid not later than the 15th of the following month		✓
Report on individuals covered by pension insurance (SZV-M)	✓			Due date is the 15th day of the month following the reporting month			✓
Report on individuals' length of service (SZV-STAZH)			✓	Due date is 1 March of the year following the reporting year			✓

Tax	Filing monthly	Filing quarterly**	Filing annually	Statutory filing due dates	Payment due dates	Additional comments (assumptions)	Branch/ RO
"Electronic labor book" (SZV-TD)	✓			Due date is the 15th day of the month following the reporting month, except for hirings/terminations where the due date is the next day after HR event			✓
Consolidated personal income tax form (6-NDFL)		✓		Due date is the last day of the month following the reporting quarter and 1 March for the annual report.	Tax agents are required to remit withheld personal income tax not later than the day following the day payment was made to individuals		✓
Individual personal income tax form (2-NDFL)			✓	Due date is 1 March of the following year			✓
Annual confirmation of the main type of economic activity			✓	Due date is 15 April			✓

Notes:

- \* The table below includes only general tax, social insurance and statistical reporting obligations applicable to a Branch/Representative Office («RO») located in Moscow. The filing and payment deadlines presented below may be changed by the government based on current circumstances
- \*\* The payment deadline may be different from the filing deadline
- \*\*\* If the deadline falls on a day of rest or a non-working public holiday, the due date for tax payment is postponed to the next working day.

# EY in the CIS

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