

## Tax alert

# VAT rules for B2B e-service suppliers in Russia



### VAT on e-services in Russia: new rules for B2B operations enter into force in 2019

The application of VAT compliance obligations in relation to B2B provision of e-services to Russian consumers will enter into force on 1 January 2019 (Federal Law No. 335-FZ, the "Law").

This new approach differs from the Organisation for Economic Co-operation and Development's (OECD) recommendations, which state that in the event that e-services are provided to "a large number of customers for relatively small amounts in a short period of time," the taxation of B2B provision of e-services may lead to significant compliance burdens on suppliers.

However, the application of VAT compliance obligations in relation to B2B provision of e-services will enter into force starting on 1 January 2019 (Federal Law No. 335-FZ, the "Law"). This new approach contained in the Russian legislation differs from the Organisation for Economic Co-operation and Development's (OECD) recommendations included in Action 1 Base Erosion and Profit Shifting (BEPS)<sup>1</sup>, which

state that in the event e-services are provided to "a large number of customers for relatively small amounts in a short period of time", the taxation of B2B provision of e-services in the state of the customer's location may lead to significant compliance burdens on suppliers.

Under the Law, the Russian tax authorities are targeting major foreign e-service providers for the purposes of increasing transparency in VAT taxation of the provision of e-services. The tax authorities believe that auditing hundreds of thousands of Russian business customers (both private entrepreneurs and companies) that act as tax agents (withholding VAT) is not very efficient.

However, the main question is how this new reality will affect foreign businesses dealing with e-services in Russia.

<sup>1</sup> Addressing the Tax Challenges of the Digital Economy, Action 1 – 2015 Final Report.

## Key changes for foreign B2B providers

### VAT registration

Existing foreign providers of e-services must undergo the procedure of VAT registration in Russia before 15 February 2019.

New providers must register within 30 days after the first provision of e-services.

The list of registered foreign e-service providers, including their registration numbers, will be available publicly on the website of the Federal Tax Service ("FTS")<sup>2</sup> and customers may check their providers.

### Compliance

Foreign e-service providers must submit quarterly VAT returns before the 25th day after each quarter, as well as calculate, withhold and transfer VAT to the state budget. Therefore, the first VAT reporting must occur no later than 25 April 2019.

### Invoicing

Foreign e-service providers must provide Russian customers with their VAT registration information, such as their Taxpayer Identification Number (INN) and Taxpayer Registration Reason Code (KPP), so Russian customers may claim VAT deductions. There is no strict requirement for invoicing. Therefore, this data should be added to contracts or other settlement documents.

### Withholding

Russian companies and individual entrepreneurs purchasing e-services will no longer act as tax agents. Therefore, starting in 2019, they should not withhold VAT. Please ensure that your Russian customers are informed and do not withhold any amounts of tax. Otherwise, you will incur double tax expenses.

### Russian customers input VAT deductions

Russian business customers apply VAT deductions related to the purchase of e-services, only based on the documents received from their foreign suppliers that are properly registered for VAT purposes in Russia. Currently, there are some uncertainties regarding these documents.

Services delivered over the Internet or other similar electronic network in an automated fashion with the use of information technology are regarded as e-services.

Examples of e-services include:

- accessing software and databases
- hosting services
- website support
- accessing e-platforms and infrastructure
- advertising services
- accessing content
- online storage
- etc



<sup>2</sup> The list of registered e-service providers (B2B) is currently available without registration numbers at the website <https://kioreg.nalog.ru/ru/registry>.

## How the new VAT rules affect intra-group operations

The new VAT rules apply to all intra-group operations between foreign and Russian companies in the group, where such operations are treated as the provision of e-services (e.g., providing access to software and databases, online platforms, etc.).

Therefore, not only are all well-known e-services providers required to comply with the new VAT rules, but all IT/procurement companies in multinational groups must also comply with these rules. Taking into account that VAT registration for B2B provision of e-services is not widespread throughout the world, these companies usually are not prepared for VAT registration and VAT compliance in a foreign country.

In order to determine the application of the new VAT obligations, special attention should be paid to an analysis of the global service or procurement agreements. Even agreements that do not highlight e-services as separate services could lead to VAT obligations in Russia.

## Practical steps for foreign businesses to become prepared

- analyse the VAT treatment of services provided to Russian customers and identify whether the provision of services should be treated as e-services for VAT purposes
- review intra-group operations and agreements in order to understand whether some of them could be treated as e-services
- identify whether VAT exemptions for granting access to software based on license agreements could be applied
- amend existing contracts and primary and supplementary accounting documents to ensure VAT exemptions and/or VAT deductions are available for Russian business customers
- tune ERP and CRM systems of business suppliers to appropriately identify customers and the receipt of information needed for tax compliance
- appoint employees or hire an external service provider to register and perform compliance procedures

## Tax liability for non-compliance with the new VAT rules

Non-compliance with the new rules	Tax liability
Late VAT registration	Fine in an amount of RUB 10,000 (approximately EUR 140)
Non-registration	Fine in an amount of 10% of the amount of income received for the period when the services were provided without registration, but not less than RUB 40,000 (approximately EUR 550)
Failure to submit a VAT tax return	Fine in an amount of 5% of the VAT due per month, but not more than 30% of the VAT due
Failure to pay VAT	Fine in an amount from 20% to 40% of the VAT due



If the above affects your business, please feel free to register for our webcast that we will be hosting in late November or early December 2018. We will send the invitation shortly.

For more information, please contact us. The Russian Tax Practice of Eversheds Sutherland is ready to assist you in any of the above practical steps.



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