

# New amendments to the Russian Tax Code

*FAO CFOs, corporate tax managers, accountants and in-house lawyers*

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**Pepeliaev Group advises of changes in the field of taxation for which a law<sup>1</sup> provides that has been passed by the State Duma and that amends the Russian Tax Code (the 'Tax Code') and other legislative instruments concerning taxes and levies (the 'Law').**

It is already a tradition that material changes are made to tax legislation in Russia twice a year: by the end of the parliamentary spring and autumn sessions. This year, however, the most important amendments have been stipulated by Federal Law No. 176-FZ dated 12 July 2024<sup>2</sup>, which has been passed slightly earlier.

The Law we are commenting on draws our attention to the multiple increase of state duties for trials in courts.<sup>3</sup> It contains what can be referred to as 'technical' provisions, including, among others, a procedure for assessing total debt for the purposes of a unified tax account. In addition, certificates and notifications of registration are replaced with extracts from the Unified State Register of Taxpayers.

However, a few provisions are of great interest for those involved in business activity from various industries. Let us delve into some of them.

## **Temporary provisions of the Tax Code are extended**

The amendments will affect:

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<sup>1</sup> Draft law No. 577665-8 (<https://sozd.duma.gov.ru/bill/577665-8>).

<sup>2</sup> <https://www.pgplaw.ru/analytics-and-brochures/alerts/vvedenie-turisticheskogo-naloga/>  
<https://www.pgplaw.ru/analytics-and-brochures/alerts/izmeneniya-v-nalogovyy-kodeks-rf-posledstviya-dlya-biznesa-/>  
<https://www.pgplaw.ru/analytics-and-brochures/alerts/izmeneniya-v-nalogovyy-kodeks-rf-po-zarplatnym-nalogam/>  
<https://www.pgplaw.ru/analytics-and-brochures/alerts/izmeneniya-v-nalogovyy-kodeks-rf-po-nalogu-na-pribyl-nds-usn-i-imushchestvennym-nalogam/>  
<https://www.pgplaw.ru/analytics-and-brochures/alerts/nalogovaya-amnistiya-pri-droblenii-biznesa/>

<sup>3</sup> For new rules on how state duties should be paid under bankruptcy proceedings, please read our alert (<https://www.pgplaw.ru/analytics-and-brochures/alerts/novye-pravila-oplaty-gosudarstvennykh-poshlin-v-bankrotstve/>)

- the Russian Government's right to adopt regulations that would change deadlines and procedures that are stipulated by the Code - the power has been extended until the end of 2028;
- a 10% VAT rate on domestic flights – the rate has been extended until the end of 2027;
- a 0% VAT rate on domestic flights to Kaliningrad, the Far East, Crimea and Sevastopol – the rate has been extended until the end of 2027;
- the right of constituent entities of the Russian Federation to introduce a 0% rate under the patent taxation system (PTS) and simplified taxation system (STS) for individual entrepreneurs - the power has been extended until the end of 2027.

## **Changes in tax administration**

### **I. The obligation has been lifted to file a record of the receipt of documents transmitted via e-communications**

The obligation is repealed for taxpayers that receive e-documents from tax authorities via electronic communications channels to transmit, within 6 days, a record of having received such e-documents to the tax authority.<sup>4</sup>

The date on which an e-document is deemed to be received will be the 6th business day after it was sent.<sup>5</sup>

Simultaneously, the tax authorities' right is being repealed to suspend transactions in accounts of a company that has not sent a record of receipt to the tax authority.

The amendment will come into effect 180 days after the date on which the law is published, so tentatively in Q1 2025 (it is impossible to determine the exact date because not all stages have yet been completed of the legislative process and the law has not been published).

### **II. Reduced penalties for business entities have been extended for 2024**

According to the general rule, for taxpayers that are business entities, a penalty is 1/300 of the Bank of Russia's key rate for the first 30 calendar days, then to be increased to 1/150.

Starting from March 2022 and until the end of 2023, the increase of penalty to 1/150 was repealed. The Law extends the use by business entities of a penalty of 1/300 of the rate until the end of 2024. The amendment has been extended to legal relationships which have emerged since 1 January 2024.

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<sup>4</sup> Para 2 of article 23(5.1) of the current version of the Tax Code.

<sup>5</sup> New last paragraph of article 31(4) of the Tax Code.

## **Regulation of transfer pricing (TP)**

### **III. Changing the deadline for paying tax that arises when the price is adjusted of transactions with foreign related parties**

A rule has been in effect since 2024 that, if the price that was applied in a transaction with a foreign related party differs from the market price, income which the foreign tax resident receives in the amount of the price adjustment will be equated to dividends, for taxation purposes. The date on which income was received will be the last day of the calendar year in which the transaction was carried out. It followed from the above that a Russian entity that was a tax agent should have remitted the tax no later than 28 January.<sup>6</sup>

According to the Law, the tax will have to be paid no later than 28 March.<sup>7</sup>

### **IV. Participation of officers of regional tax authorities in checks of whether prices correspond to the market level**

Only the Federal Tax Service (its central office) remains authorised to carry out checks of whether prices applied under controlled transactions are in line with the market range.

The Law, however, establishes that officers from regional tax authorities can be involved in carrying out such checks.<sup>8</sup> *It can be expected that the number of TP audits will grow.*

The amendment will come into effect one month after the date on which the Law is officially published.

### **V. The court procedure has been repealed for collecting arrears which were additionally assessed following checks**

The legal rule is being excluded regarding the court procedure for collecting arrears if the obligation to pay the tax arose after the Federal Tax Service checked prices for their compliance with the market under TP.<sup>9</sup>

## **Tax monitoring**

### **Conditions are being relaxed for entering into tax monitoring, with the list of grounds being extended for a well-grounded opinion to be issued**

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<sup>6</sup> Para 2 of article 105.3(6.1) and article 287(2) of the Tax Code.

<sup>7</sup> The new version of para 2 of article 105.3(5.1) of the Tax Code.

<sup>8</sup> The new version of para 1 of article 105.17(2) of the Tax Code.

<sup>9</sup> Article 45(3)(3) of the current version of the Tax Code.

The state is continuing its policy towards increasing the number of taxpayers who can shift to tax monitoring.

1. The Law relaxes the general conditions relating to figures which entitle a taxpayer to file an application for tax monitoring<sup>10</sup>:

- a total amount of taxes for a year of at least RUB 80 million (now RUB 100 million);
- an aggregate amount of income earned for a year according to the financial statements of at least RUB 800 million (now RUB 1 billion);
- a value of assets according to the financial statements of at least RUB 800 million (now RUB 1 billion).

2. Tax monitoring of groups of taxpayers is being returned (although in a modified form): several business entities will be able to enter tax monitoring if one of them directly and/or indirectly holds an interest of at least 50% in another entity and they jointly meet the following criteria:

- the total amount of taxes for a year is at least RUB 1 billion,
- the aggregate amount of income is at least RUB 10 billion,
- the value of assets is at least RUB 10 billion.

In that case, no quantitative indicators will apply to the indicators of a separate business entity.

3. The list is being extended of “preferential” categories of persons who need not meet the above quantitative conditions. The today’s list includes residents of priority development areas (in Russian, ‘TOR’), special economic zones (in Russian, ‘OEZ’) and others. Specifically, lottery operators, as well as public and municipal institutions are added to the above.

4. The changes in the field of tax monitoring also concern parties to special investment contracts (‘SPICs’).

A tax authority will have the right to forward to them a notification of the grounds being in place for drawing up a well-grounded opinion if the actual expenses have been incorrectly assessed in relation to which the law “On protecting and encouraging capital investments in the Russian Federation” provides for measures of state support.

The amendment will come into effect one month after the date on which the Law is officially published.

## **Amendments concerning VAT**

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<sup>10</sup> The new version of article 105.26(3) of the Tax Code.

## **The VAT calculation rate on the sale of second-hand cars and motorcycles**

Starting from 1 April 2024, rules have applied allowing for VAT to be paid on the price difference when cars and motorcycles are sold which have been purchased for subsequent resale (provided that a number of additional conditions are met).<sup>11</sup> There has still been an ambiguity as to which rate to apply: the calculation rate of 20/120 or the general rate of 20%. The Law removes the ambiguity and stipulates that the calculation rate should be applied.<sup>12</sup>

The new provision, however, comes into effect one month from the date on which the Law is officially published, but not earlier than the first day of the next tax period<sup>13</sup>, i.e. from 1 October. *It remains therefore, unclear, which rates should apply to Q2 and Q3 of 2024.*

## **Amendments relating to personal income tax and other changes concerning individuals**

These amendments may be of interest to business entities (who act as tax agents) and to all individuals, in terms of how income from savings should be taxed.

### **A financial benefit from the acquisition of membership interests in issued capital has been included in income that is subject to personal income tax**

According to the current version of article 212 of the Tax Code, income in the form of a financial benefit from the acquisition of two types of assets, such as securities and derivatives, is subject to tax. Starting from 2025, such assets will also include membership interests in issued capital.

The taxable income will be the excess of the market value of the membership interests in issued capital (to be determined according to the relevant ratio of the value of net assets) over the taxpayer's actual expenses on the purchase of same.

### **Non-taxable limits for the entire deposit period will be added together for income in the form of interest on deposits over 15 months with payment at the end of the deposit term**

Personal income tax is levied on income in the form of interest on deposits with Russian banks that exceed the amount of interest that is calculated as RUB 1 million multiplied by the maximum key rate of the Bank of Russia which

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<sup>11</sup> Article 154(5.2) of the Tax Code.

<sup>12</sup> The new version of article 164(4) of the Tax Code.

<sup>13</sup> Article 9(4) of the Law.

was in effect as at the first day of each month of the tax period.

However, if the term of a deposit goes beyond the limits of the tax period (calendar year) and interest is accrued only upon the maturity date of the deposit, the non-taxable limit for the first year will be lost. The amendments resolve this issue: limits which have not been used will be carried forward to subsequent years and decrease the tax base of deposits which have been opened for a period of more than 15 months and on condition that interest is paid upon maturity.<sup>14</sup>

The amendments will apply starting from the tax period in which a relevant bank deposit agreement was concluded.

### **Deducting expenses when income from the sale of real estate is taxed**

An individual who has sold real estate which was in his/her ownership for less than the minimum cap period (5 years, according to the general rule) is obliged to file a personal income tax return, indicating the amount of the tax in it. Otherwise, the tax authority itself will assess the tax. In doing so, the tax authority will have to take into account not only the income, but also the expenses (property-related tax deduction).

The amendments establish the sequence in which a tax authority should act:<sup>15</sup>

- take into account the expenses that the taxpayer has actually incurred and documented in connection with the acquisition of real estate;
- *a new rule* – if a tax authority does not have information relating to the taxpayer's documented expenses, income will be decreased by the amount of expenses calculated based on the price of the transaction which served as the basis for registering ownership title when the real estate was acquired. The tax authorities will obtain such information from the registration authorities;
- in other cases the income will be reduced by the 'fixed' amount of tax deductions for which article 220(2)(1) of the Tax Code provides (no more than RUB 1 million for the year in which the income was received).

The new version of article 214.10(3) of the Tax Code applies to income and expenses received (incurred) starting from 1 January 2023.

### **Persons who carry out business activity without registration applying occupational tax deductions**

A reference is being deleted from article 221(1) of the Tax Code that the right to apply an occupational deduction for personal income tax in the amount of 20% of income does not apply to individuals who carry out entrepreneurial

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<sup>14</sup> The new version of article 214.2(1) of the Tax Code.

<sup>15</sup> The new version of para 3 of article 214.10(3) of the Tax Code.

activity but are not registered as individual entrepreneurs.

Instead, quite the opposite has been stipulated: the provisions of article 221(1) of the Tax Code will apply in relation to the decrease of income by the expenses incurred and, alternatively, to the deduction in the amount of 20% of income, to individuals who carry out business activity but are not registered as individual entrepreneurs.

The amendments will apply when the personal income tax base is determined for the tax period starting from 2024.

That the amendments were necessary owes to the Russian Constitutional Court's Resolution No. 6-P dated 14 February 2024. While recognising that the provisions of article 221 of the Tax Code did not correspond to the Constitution, the Court nonetheless held that both a permission and a ban<sup>16</sup> would be in line with the Constitution in terms of expenses being deducted by taxpayers who carry out business activity without registration. Before the amendments, the Constitutional Court prohibited income from being reduced by expenses for such taxpayers.

We see that the legislature has made its choice in favour of taxpayers.

*The amendments can be of interest not only for those who are actively engaged in activity that entails selling goods, work or services but also for those who have treated their transactions as the receipt of 'passive' (unearned) income and did not consider it to be business activity (for example, when a person rents out several apartments and/or residential premises).*

### **The procedure is being introduced of a tax being reassessed in a tax notification further to an individual's application**

Similar rules are being introduced in the Tax Code's chapters concerning personal income tax<sup>17</sup>, transport<sup>18</sup>, land<sup>19</sup> and personal property tax<sup>20</sup> that, if a tax authority has sent a tax notification to a taxpayer, and the taxpayer does not agree with the amount of the tax, the latter may apply to have the tax reassessed. Documents which provide for the grounds for the tax to be reassessed can be attached to the application. If no such documents have been attached, the tax authority itself will request relevant information from banks and other authorities based on the information indicated in the application.

The tax authority will consider the application for tax to be reassessed within 30 days, which term can be extended but by no more than another 30 days if

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<sup>16</sup> That the ban complies with the Constitution has raised eyebrows, see article by S.G. Pepeliaev, "A Valentine's card from the Constitutional Court", Nalogoved, 2024, Issue No. 3. <https://e.nalogoved.ru/1077488>

<sup>17</sup> Article 228(6) of the Tax Code.

<sup>18</sup> Article 362(8) of the Tax Code.

<sup>19</sup> Article 396(17.1) of the Tax Code.

<sup>20</sup> Article 408(10) of the Tax Code.



the tax authority sends a request for information to third parties.

Based on the findings, the tax authority will send to the taxpayer either a notice that the amount of previously calculated tax has been reassessed or a notice of refusal to make any such reassessment.

### **Counter-sanctions measures being supplemented, extended and amended**

Several amendments extend (sometimes with modifications) the measures that have been adopted since 2022 to mitigate the effects of unilateral restrictions (sanctions).

### **Sanctioned controlling persons will be exempt from fines for a failure to submit a CFC's financial statements**

Controlling persons against whom unilateral restrictive measures have been introduced will be exempt from liability for a failure to submit documents relating to a CFC's profits (losses) for the periods with end dates falling between 2022 and 2024, provided that certain additional conditions are met.<sup>21</sup>

### **Income from a cancelled debt under corporate transactions will be exempt from corporate profit tax**

Income will be exempt from profit tax in the form of the following obligations which are cancelled in 2024-2025:<sup>22</sup>

- obligations under agreements for the sale and purchase of shares (membership interests) in Russian companies under agreements with foreign vendors (if the creditor has forgiven debt);
- obligations concerning the actual value of a membership interest being paid out to foreign members of an LLC when they withdraw or are excluded from the LLC in 2022-2025 under a court procedure.

In contrast to the similar provision of article 251(1)(21.5) of the Tax Code, which was in effect in 2022-2023, income in the form of obligations that were terminated under loan agreements with foreign persons was not exempt from tax.

### **Income and expenses in the form of exchange differences will be recognised only on the date when the obligations are terminated**

The rule has been extended until the end of 2027 according to which income and expenses in the form of exchange differences should be recognised only on the date when the obligations are terminated.<sup>23</sup> The rule does not apply to

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<sup>21</sup> New clause 6 of article 126 of the Tax Code.

<sup>22</sup> New sub-clause 21.7 of article 251(1) of the Tax Code.

<sup>23</sup> Article 271(4)(7.1) and article 272(7)(6.1) of the Tax Code.



banks.

## **Recognising income and expenses in the form of civil-law liability measures under disputes with entities from "unfriendly" jurisdictions**

Income in the form of civil-law liability measures under disputes with entities whose place of registration is "unfriendly" jurisdictions (and Russian entities that are their joint co-defendants) payable on the basis of a court decision that entered into legal force before 5 March 2022 will be recognised only on the date on which cash (property or property rights) was (were) received but no later than 31 December 2026.<sup>24</sup>

Meanwhile, a "mirror" legal provision has been established with respect to the relevant expenses of Russian business entities that are joint defendants of the above foreign entities.<sup>25</sup>

## **Other amendments for business entities**

### **Zero profit tax on income from the sale of circulating shares**

To apply the zero rate on the sale of shares that are traded on an organised stock exchange market and that the seller has held for more than 5 years, the requirement is excluded regarding the composition of the issuer's assets (not more than 50% of immovable property located in Russia), provided that the number of shares a taxpayer sells during a tax period does not exceed 1% of the total number of shares in the business entity.<sup>26</sup>

*Although the Explanatory note to the Draft Law refers to such blocks of shares as 'relatively small', one can only but imagine the value of 1% of shares of the largest Russian blue chips.*

### **Tax on excess profit**

After the tax on excess profit was introduced<sup>27</sup>, there has been a discussion (and criticism) of the provision that when additional profit tax is assessed further to the profit being audited for the relevant year, the amount of excess profit that is included in the relevant base should be multiplied by the product of such additionally assessed profit tax further to the audit and the coefficient of 5.

The issue was that if the tax authority calculates additional profit tax on the tax base that is subject to a reduced rate but is booked for excess profit tax purposes, there may be a difference between the amount of the tax base for profit tax purposes that is formed further to the audit and the amount of what

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<sup>24</sup> New sub-clause 14.5 of article 271(4) of the Tax Code.

<sup>25</sup> New sub-clause 8.1 of article 272(8) of the Tax Code.

<sup>26</sup> New last paragraph of article 284.2(2) of the Tax Code.

<sup>27</sup> <https://www.pgplaw.ru/analytics-and-brochures/alerts/prinyat-zakon-o-naloge-na-sverkhpribyl/>

constitutes the tax base for excess profit tax purposes. Almost a year later, the legislature has decided to pay heed to the arguments and has stated that, for the purpose of the tax on excess profit, the tax base should be altered for the amount equal to the changes in the tax base after the tax audit.

### **What to think about and what to do**

The amendments that are being made to the Tax Code affect various aspects of business activities of taxpayers, both business entities and individuals. The amendments come into effect at different times.

We recommend that you monitor when new legal provisions come into effect by making relevant preparations.

### **Help from your adviser**

Pepeliaev Group's lawyers are well versed in advising their clients on the risks associated with changes in tax legislation and in protecting their clients' interests when they challenge claims of tax authorities.

We are ready to advise you on any issues relating to the above amendments to the Tax Code.

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