

# INFORMATION LETTER

## Value added tax: new developments in legislation

On 19 July 2011 the President of Russia signed the Federal Law No. 245-FZ on the introduction of changes to the Russian Tax Code (the "Tax Code"). The majority of these changes are related to VAT taxation. Major changes include:

- The clarity has been introduced to the **VAT treatment of the exchange differences** arising from currency denominated liabilities payable in rubles. The new rules resolve a practical question as to whether or not the VAT tax base is to be adjusted by the taxpayer if ruble payment for the goods (services, proprietary rights) is made after their supply. Namely, the VAT differences, arising for the seller and buyer on the date of payment as a result of the exchange differences, are to be treated as taxable income or deductible expense for Russian profits tax purposes, without affecting the VAT tax base. Accordingly, the VAT base, once formed on the date of supply, must not be adjusted thereafter.
- A long-awaited procedure has been established for the application of VAT and VAT invoices in the event the price of goods (services, proprietary rights) is changed after their supply. The Russian law has finally institutionalised **credit notes for VAT purposes**. If the price of the supplied goods (services, proprietary rights) changes upwards or downwards, then the seller is required to issue a correcting VAT invoice (i.e. effectively a credit note in the case of downward adjustment) to the buyer. The correcting VAT invoice must indicate the difference between the sum of the VAT indicated on the original VAT invoice and the sum of VAT calculated after the price change. If the price decreases, the respective VAT difference is to be reinstated (reversed back from reclaimable amount) by the buyer and can be reclaimed by the seller. If the price increases, the respective difference is to be paid to the budget by the seller and can be reclaimed by the buyer.
- A change has been introduced to **the place of supply rules for haulage and transportation services**, as well as the services directly related to such haulage and transportation, which are provided by **foreign entities not registered with the Russian tax authorities** (Art. 148.1 of the Tax Code). Pursuant to the changes, the said services will be deemed as being supplied within Russia and subject to Russian VAT if both the departure and destination points are located within Russia. Before the introduction of changes such services were not taxable by Russian VAT.
- More clarity has been introduced to the procedure of applying the **zero VAT rate to transportation and forwarding services**, as well as the services for provision of rolling stock and containers, related to international traffic (Art. 164.1 of the Tax Code). Pursuant to the changes, the zero VAT rate will apply to the said services if they are provided in connection with arranging for and performing rail haulage from the point of the arrival of the goods to Russia (from the ports or border stations within Russia) to the destination station within Russia.
- Certain rules have been legislated concerning the **reinstatement of input VAT** (Art. 170.3 of the Tax Code) in the event the goods (services, proprietary rights), including fixed and intangible assets, are further used by the taxpayer for carrying out VAT zero rated operations under Art. 164.1 of the Tax Code. The amounts of input VAT, which have been previously reclaimed, must be reinstated by the taxpayer. The reinstatement of input VAT is to be made in the tax period in which the zero-rated goods (services) are supplied. The reinstated amounts of input VAT are to be reclaimed in the respective tax period in which the VAT tax base is determined for the zero-rated goods (services).
- More clarity has been introduced to the procedure of **input VAT treatment where the taxpayer is carrying out both VAT-able and VAT-exempt operations** (Art. 170.4 of the Tax Code). The taxpayer will be entitled to reclaim all amounts of input VAT if the total expenses incurred by the taxpayer in buying, producing and selling VAT-exempt goods (services, proprietary rights) do not exceed 5% of the overall amount of total expenses incurred in buying, producing and selling goods (services,

proprietary rights). Before the introduction of changes it was not absolutely clear whether the said 5% ratio was to be computed only on the basis of production expenses, without taking into account buying and selling expenses. Although certain positive letters by the Russian Ministry of Finance supported non-manufacturers in the past, based on the literal interpretation of the formerly effective norm, a full reclaim of input VAT could not have been exercised by, or at least was extremely risky for, entities which do not have sufficient production expenses (e.g., by trading companies).

- More clarity has been introduced to the **VAT taxation of the assignment of proprietary rights** (Art. 155 of the Tax Code). If an original creditor assigns a monetary claim arising from a contract for the sale of goods (services) or a new creditor subsequently assigns such a claim to another entity, then the VAT is to be calculated on the basis of the income from the assignment (margin) received by the original or new creditor. This treatment applies to the assignment of the monetary claims arising from all contracts for the sale of goods (services), whether VAT-able or VAT-exempt.
- The **place of supply rule for auxiliary services** has become more specific (Art. 148.3 of the Tax Code). This rule will be applicable to the situations where the same taxpayer (but not multiple suppliers) provides several types of services and the supply of some of these services is auxiliary to the supply of other services. In such a case, auxiliary services are to be deemed supplied at the place of supply of the core services for VAT purposes.
- The **bank statement confirming the actual receipt of proceeds from the sale of goods** (services) has been removed from the list of documents that must be submitted to the tax authorities in order to confirm the application of zero VAT rate to the export of goods, as well as to the zero-rated services listed in Art. 164.1 of the Tax Code.

Most of the changes will enter into force from 1 October 2011 while some will have a different effective date.

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