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Legislative initiatives

Roskomnadzor to maintain list of foreign IT giants without Russian branches
A bill to that effect has been posted at the Federal Draft Legislation Portal.

The Ministry of Digital Development, Communications, and Mass Media prepared a draft resolution that addresses the gaps of the recent law mandating the opening of Russian branches by foreign IT corporations.

According to the law, which entered into force in July, violators will be restricted in making payments and transferring funds (read more in the LT in Focus of 26 May 2021).

Roskomnadzor, the Russian media and communications watchdog, will maintain two lists, both publicly available:

- of non-compliant IT companies (Russian banks will be mandated to block all of their cash transactions)
- of foreign payment operators suppliers accepting money from the companies on the first list (a payment operator may be blocked, if it fails to address breaches within 30 days).

Roskomnadzor will remove companies from the list after they have cured the breaches or if required so by court.

Federaal draft legislation portal

Russia to roll out financing of green projects and sustainability initiatives
The Government approved the objectives and priorities of green financing, which will be sourced with green financial instruments (special-purpose bonds or loans).

Using them, businesses will be able to raise financing on beneficial terms.

The qualifying green projects must be consistent with the objectives set by the international climate and sustainability guidelines. The requirements will not apply to adaptation projects. They, however, must not contradict the Russian environmental priorities: to reduce emissions of pollutants and greenhouse gases, to improve resource efficiency, and save energy.

The document names the sectors, for which these special-purpose financing instruments will be available. They will include energy, construction, industry, waste management, transport, agriculture, water supply, and wastewater disposal.

Official website of the Russian Government

Guidelines for counting Russian visitors of foreign websites developed
A bill to that effect was posted at the Federal Draft Legislation Portal.

The bill proposes to determine the daily audience as the number of daily visits a website/platform can accommodate, working at full capacity.

Roskomnadzor will request information from foreign website owners. If no information on a website’s audience can be obtained, it will be established based on:

- data from audience tracking software/resources
- other information publicly available on the Internet.

Foreign draft legislation portal

Foreign Internet companies will have to open personal accounts on Roskomnadzor’s website
The Ministry of Digital Development, Communications, and Mass Media developed a draft resolution approving the rules for opening and maintaining personal accounts by foreign Internet companies operating in the Russian segment of the Internet (the Runet) at www.236-fz.rkn.gov.ru, as well as their interaction with the Russian public authorities through such personal accounts.

To register a personal account, a foreign person must send an application to Roskomnadzor in one of the following ways:

- by completing a special form on the website
- by e-mailing a request signed by an electronic signature acknowledged in Russia
- in hard copy.

Within 10 business days after receiving the request, Roskomnadzor will send the applicant a login and a password to enter the personal account.

For some foreign companies, Roskomnadzor will set up personal accounts automatically. They will receive a notification of personal account opening, which they will have to confirm within five business days.

The following information/documents will be sent to Roskomnadzor via the personal account:

- requests for inclusion in the list of foreign Internet companies operating in Russia
- information on a Russian branch/representative office or legal entity registered in Russia
• documents confirming the powers of a branch (representative office, legal entity) to:
  o accept and consider complaints from Russian individuals or entities, ensure compliance with court orders or decisions of Russian public authorities pertaining to such foreign company
  o represent the foreign company in courts; take measures towards the restriction and/or removal of information disseminated in breach of the Russian legislation, if such responsibility is provided for by the Russian legislation on information, information technologies, and protection of information
  o other information that must be provided to Roskomnadzor, including to maintain the list of foreign IT companies: requests for exclusion from the list of Internet companies operating in Russia and requests for making changes in the list.

Foreign companies will use their personal accounts to communicate with Roskomnadzor and the Federal Antitrust Service, which will upload into the tool their resolutions or other legally binding messages and documents.

Federal draft legislation portal

Travelling COVID-19-free app to be mandated for EAEU travellers to Russia

Using the app becomes mandatory for visitors from the EAEU countries starting from 25 July. Starting from 1 September, it will also be required for travellers from Azerbaijan, Moldova, Tajikistan, Turkmenistan, and Uzbekistan.

Official Internet Portal for Legal Information

Media Review

CBR recommends public companies to disclose ESG factors

The Central Bank of Russia has published recommendations for companies on presenting information on their environmental impact and social responsibility so that investors could judge on their long-term financial health. Assessing the environmental, social, and governance (ESG) risks is necessary, as over time they are likely to transform into financial risks.

Public companies are advised to disclose information on how they account for the ESG risk factors. The recommendations focus on non-financial information and the principles of its disclosure.

Companies are encouraged to independently determine the scope and the format of disclosure, depending on the nature and scale of their business.

The disclosed information must be relevant, useful, consistent, and comparable to performance indicators of other public companies.

Official web site of the Central Bank of Russia

Ministry of Economic Development aims to make SADs more attractive

It prepared a package of bills, proposing, in particular, the following changes:

• to permit start-ups registered not later than in 2020 (vs. in 2018 according to the existing regulations) to relocate into Special Administrative Districts (SADs)
• branches relocating to SADs will be deemed to be registered on the date of their Russian accreditation
• instead of the registration fee, a stamp duty is introduced, which multinational companies will have to pay upon their registration in a SAD and then annually to confirm their residency (the amount will be set in the Russian Tax Code)
• international trusts worth at least RUB 5 billion can also be transferred to SADs. A qualifying trust may only be settled by a foreign national and its assets may include foreign real estate, participation interests in foreign legal entities, cash in foreign banks, and securities treated as such by the laws of the respective foreign state.

The documents have not yet been officially published.

Kommersant

Court Practice

Constitutional Court cancels administrative sanctions for not using Russian bank account to transfer money abroad

An individual was fined RUB 31 million by the tax authorities for making an illegitimate transfer of foreign currency to a foreign bank account, bypassing the account with an authorised Russian bank.
**Background**

A Russian citizen placed an order with a Russian bank to transfer his funds in US dollars to his father’s account with another Russian bank. The transfer was carried out through an authorised US bank, which blocked the funds over sanctions imposed against the Russian recipient bank.

Russian courts turned down the Russian citizen’s claim seeking to recover the funds from the Russian sender bank, citing that the payment order had not been executed due to the US sanctions, which was a force majeure.

Eventually, the funds were transferred to the individual’s account with a UK bank and from there – to the Russian bank.

The transfer of foreign currency to the UK bank, bypassing the account with an authorised Russian bank, was regarded by the tax authorities as an illegitimate transaction.

**Position of the Constitutional Court**

The law does not restrict the Russian residents’ right to transfer foreign currency between their accounts with authorised banks and foreign banks. At the same time, there is no unified approach to the regulation of such transfers by the Russian Administrative Offences Code in the situations where the account holder’s funds end up in a foreign jurisdiction for reasons beyond his control.

The public authorities are supposed to assist the sanctioned persons, not make things even harder for them.

The resident’s efforts to retrieve funds are formally considered illegitimate; yet, this is not enough to treat them as such. The Russian Administrative Offences Code does not penalise currency residents for actions driven by the risk of losing funds or control over them indefinitely.

The Constitutional Court also noted that it was the currency residents’ obligation to report the opening (closing) or change of account details or account transactions to the tax authorities. Yet, failure to report or overdue reporting do not entail illegitimacy of the underlying foreign currency transactions and are to be penalised separately. Therefore, the Constitutional Court reaffirmed the opinion earlier expressed by the FTS of Russia that foreign currency transactions carried out through the “unreported” accounts do not automatically become illegitimate, but the tax authorities may audit them for compliance with the currency laws.

The Court ruled that the judgements in the claimant’s case must be reviewed.

**European Commission to restrict crypto-currency transactions**

The European Commission has presented an ambitious package of legislative proposals to strengthen the EU’s anti-money laundering and counter-terrorism financing (AML/CFT) rules.

In particular, the proposal calls for:

- setting a EU-wide limit of EUR 10,000 on large cash payments
- prohibiting anonymous crypto-asset wallets
- creating the Anti-Money Laundering Authority (AMLA) that will transform AML/CFT supervision in the EU and enhance cooperation among Financial Intelligence Units. Furthermore, it will directly supervise some of the riskiest financial institutions that operate in a large number of member states or require immediate action to address the imminent risks.

**Russia and Belarus finalise work on joint tax and customs programme**

Minsk and Moscow completed work on the development of the Union’s programmes towards the harmonisation of tax legislation and cooperation in customs matters and agreed on a common stance on how Belarus will be compensated for the losses from the Russian tax maneuver in the oil refining sector, said Natalia Eismant, Press Secretary to Alexander Lukashenko.

**Offset of upfront import duties enabled in EAEU**

On 1 August 2021, the Protocol on Amendments to the Treaty on the Eurasian Economic Union, which was signed by the leaders of the EAEU states in October 2019, comes into force.

The Protocol enables offsetting upfront payments against import customs duties, as well as special, anti-dumping, and countervailing duties.

The mechanism was previously unavailable to importers, which caused them to execute several payment orders for each type of duty.

The new approach will enable charging all customs duties and other dues to upfront payments.
Agreement on exchange of AML/TF information in EAEU signed

Under the agreement, the EAEU states cooperate and exchange the data declared in the customs declarations of passengers moving cash and/or cash instruments via the EAEU customs.

The information is exchanged at the request of the authorities of the EAEU states responsible for maintaining the relevant databases.

The agreement regulates the execution/rejection of requests and exchange deadlines.

It also establishes the requirements for the protection of the received information, which is confidential and cannot be used without a written consent of the disclosing authority for purposes other than those for which it was requested.
New accounting standard – new challenges

On 7 June 2021, the Ministry of Justice registered the Ministry of Finance’s Order No. 62n of 16 April 2021, approving the Federal Accounting Standard (FAS) 27/2021 Accounting Documents and Document Flow (“the Standard”).

The document enters into force as of 1 January 2022, but can be applied voluntarily already now. The Standard incorporates some of the previous provisions and introduces new ones.

One of the most important changes is the requirement to keep accounting documents and the respective databases in Russia.

Read on for more details in our LT in Focus of 15 July 2021.

Occupational health and safety amendments to the Labour Code


The amendments will inevitably trigger a further revision of the OHS regulations as they introduce a new approach to nearly all key processes. Management of occupational risks, new trainings, digitalisation of the OHS documents – read on to find out about the important changes for employers.

Read on for more details in our LT in Focus of 29 July 2021.

131 countries (including Russia) join new framework for international tax reform

Last autumn, the OECD published two landmark documents that outlined the elements of the international tax reform:

• a fundamentally new approach to the allocation of taxing rights with respect to business profits in the digital age (Pillar 1)
• global minimum taxation (Pillar 2)

Despite the recognition of their importance by all countries, the reforms lacked political support. In particular, the United States strongly opposed the redistribution of rights to tax excess profits of digital companies in favour of the market jurisdictions.

Despite the ongoing multilateral negotiations of the universal approach, several EU countries have decided to move ahead with the unilateral measures to tax the digital economy.

At last, on 1 July 2021, the OECD informed that 131 countries and jurisdictions (including Russia), representing more than 90% of global GDP, joined the Statement on a Two-Pillar Solution to Address the Tax Challenges Arising From the Digitalisation of the Economy (“the Statement”) establishing a new framework for international tax reform.

The parameters of the reform itself have undergone some changes.

Read on for more details in our LT in Focus of 8 July 2021.
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