

## LT in Focus

# Tax monitoring enhancement

On 2 May 2016, Federal Law No. 130-FZ dated 1 May 2016 (hereinafter – the “**Law**”), which amends the tax monitoring procedure of the Russian Tax Code, was published. The key change to the legislation enables large companies to request an opinion from the tax authorities on the taxation of planned transactions as part of tax monitoring. Previously, such an opinion could be requested only for completed transactions. For businesses, the new rules should become an efficient tool to mitigate the risk of additional tax charges and reduce the number of tax disputes. The Law will become effective no earlier than one month after its official publication date.

Despite the obvious advantages of these changes, some issues remain uncertain and should be considered by taxpayers before applying the amended provisions of the Tax Code. In this issue of Legislative Tracking, we highlight several of the issues and key changes introduced by the Law.

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## Requests regarding planned transactions

The Law extends the taxpayer's right to submit requests to the tax authorities for an opinion to future transactions as well as completed ones. Such opinions are particularly valuable for interpreting the controversial legislative provisions that often give rise to tax disputes.

The Law stipulates that any requests for opinions regarding planned transactions should contain the following information:

- Description of the business purpose, main terms, including rights and obligations of the parties, and payment conditions;
- Information on the counterparties' business activities and functions and the states and territories of tax residency;
- The company's position on the tax consequences of its completed or planned transactions;

To confirm the information presented in the request, the company may provide supporting documents (if any). The tax authorities, in turn, may request additional documents and information for working out an opinion.

Upon receipt of an opinion on planned transactions, the taxpayer shall notify the tax authority regarding the execution of such transactions within one month after they begin. If the taxpayer does not comply with the tax authority's request to provide documents and information earlier, the taxpayer should attach the outstanding documents to the notification of the start of the transactions (as a confirmation of compliance with the opinion).

## Limitation of the term for submitting requests

The Law limit the term for the submission of requests for an opinion regarding completed transactions to the first six months of the year following the period in which the transactions were completed. Currently, the term for submitting requests is unlimited. The change thus

imposes a significant limitation on taxpayers in terms of the time period available for undertaking management decisions on submitting requests, working out legal positions and preparing supporting documents.

## Nature of the tax authorities' opinion

According to the Law, tax authority opinions will become non-discretionary and binding for both the tax authorities and taxpayers, although the following exceptions apply:

- If an opinion is based on incomplete or inaccurate information;

- If significant terms of the transaction differ from the information disclosed by the taxpayer;
- If, at the time of the transaction, the legislation that served as a basis for an opinion is no longer effective (has been amended).

The tax authorities will notify the taxpayer of cases in which opinions have been violated (or

the absence thereof) no later than 1 December of the year that follows the year of tax monitoring.

If the taxpayer disagrees with an opinion of the tax authorities, it may argue against the decision using the provided mutual agreement procedure.

It should be noted that under the current tax legislation, in cases where the taxpayer disagrees with an opinion and fails to sustain its position through the mutual agreement

procedure, the taxpayer may pass the case to an arbitration court (i.e. apply the general procedure of objecting to the tax authorities' decision rather than following the monitoring procedure). Under the Law, this possibility will no longer be applicable.

## Change in the tax monitoring procedure

The Law introduces an important change to the tax monitoring procedure. If a company provides no written refusal to extend the term of tax monitoring, the tax authority may unilaterally extend the duration of tax monitoring for two years following the period when it was initiated by the taxpayer. If the term of tax monitoring is extended by the tax authorities unilaterally, the company's non-compliance with the criteria for initiating tax monitoring (the total value of assets, total gains and taxes paid) becomes invalid. Thus, in order to waive tax monitoring in the following period, the taxpayer will have to submit the respective application before 1 December of

the year preceding the following period of tax monitoring.

It should also be noted that the Law extends the powers exercised by the tax authorities in the course of the tax monitoring procedure. In addition to the right to request documents related to transactions, the tax administration may involve subject matter experts to provide their professional judgement on tax matters that require specific knowledge. This is a change from the current legislation, which instead allows taxpayers to challenge the position of the tax authorities on formal grounds based on an expert opinion.

## What should taxpayers focus on?

Taxpayers should pay careful attention to two main changes brought about by the legislation:

- The extension of the scope of transactions for which an opinion may be requested to planned transactions;
- The restriction of the term during which requests related to completed transactions may be submitted.

We suggest that taxpayers looking to receive an opinion for planned transactions do the following:

- Develop their legal position before submitting the request in order to avoid a negative opinion (if the tax issue requires specific knowledge, consider involving a subject matter expert);
- Ensure that the descriptions of the transaction in the request are as accurate as possible in order to avoid non-compliance with an opinion on the grounds of discrepancies between the information in the request and the actual transaction;
- Document business operations in a timely fashion and in accordance with the received clarifications, and be prepared to provide documents requested by the tax authorities in the course of tax monitoring;
- Track changes in the terms of the contracts for which opinions have been received;
- Track changes in the legislation that might serve as grounds for discretionary application of the opinions.

# Contact information

We hope that you will find the above information interesting and useful. Should you have any questions regarding the situations raised in this issue of Legislative Tracking, please contact our Tax & Legal professionals.

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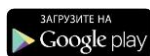
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## TaxSmart App



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