

LT in Focus

VAT exemptions for in-game purchases

On 23 January 2017, the Russian Federal Tax Service released [clarifications](#) on VAT exemptions for purchased e-game non-activated data and commands. Gain insight into the possibilities of claiming tax exemption on in-game purchases from Deloitte's specialists.

[Disputes over applicability of VAT exemption on in-game purchases](#)

[Court practice](#)

[The Russian Federal Tax Service approach](#)

[Recommendations](#)

Disputes over applicability of VAT exemption on in-game purchases

In accordance with Sub-item 26, Item 2, Article 149 of the Russian Tax Code, the licensing of exclusive rights to computer programs and the use of such rights on the basis of a licensing agreement are exempt of VAT. According to the current position of the Russian Ministry of Finance, the exemption also applies to foreign providers of digital services¹.

Historically, the tax authorities have tried to challenge the applicability of this exemption to purchases of extra content (upgrades, items, and other game features). According to them, the exemption cannot be applied, as offering extra e-game content for a consideration shall be treated as e-game operator services, which are VAT-able.

Court practice

A landmark court resolution² was adopted in 2015, in which the court of cassation supported the tax authorities in qualifying the sale of extra game content as a VAT-able service.

Three instances of commercial courts offered the following reasoning:

- The additional e-game content is separately listed in the licensing agreement;
- Apart from assigning the intellectual property rights, the licensing agreement envisaged the provision of VAT-able e-game operator services;
- The additional game content was meant to facilitate the gameplay and speed up character development, which was treated as a service rendered by the game seller to the user;
- In-game purchases had originally been integrated into the client-side of the game, therefore, no new code was added and no software licensing occurred;
- The sale of additional game content does not entail a provision of an extra code or a set of commands that need to be activated to continue the game;
- The transfer of rights to the additional game content is not contingent upon the acquisition (downloading) of software and joining the game, therefore, cannot be treated as part of the program code;
- Apart from selling the extra content, the right holder also rendered communication, distribution, operating, servicing, administration, and e-game operation services.

The courts supported the tax authorities in qualifying the in-game purchases as gaming operator services rendered "under the guise of licensing of additional game content for cash converted into game currency", therefore, the tax exemption granted to software licensing (as per Sub-Item 26, Item 2, Article 149 of the Tax Code) could not apply.

¹ Russian Ministry of Finance Letter No. [03-07-08/19407](#) of 3 April 2017

² Moscow District Commercial Court resolution of 18 June 2015 on case No. [A40-91072/14](#) (Russian Supreme Court Ruling No. [305-KG15-12154](#) of 30.09.2015 denied case consideration by its Panel on Economic Disputes)

The Russian Federal Tax Service approach

In 2017, the Russian Federal Tax Service expressed a different position regarding the applicability of VAT exemption to in-game purchases.

The licensing agreement under consideration contained the following material conditions:

- The agreement set forth that a game was a **computer program**, i.e. a combination of data, commands and audiovisual images, **consecutively activated** to generate a certain result envisaged by the game scenario;
- **The data and the commands** were divided into activated (received free-of-charge) and non-activated (available for purchase);
- The rights to use the data and the commands (activated and non-activated) are granted on the basis of a **licensing agreement**.

In its Letter No. [СД-4-3/988@](#) of 23 January 2017, the Federal Tax Service concluded that the VAT exemption can

be claimed only in the instances when the rights to non-activated data and commands (activated on payment) are offered by the licensor to the licensee for a consideration on the basis of a licensing agreement.

In other words, the Russian Federal Tax Service actually admits that parts of gaming software can be treated separately, the core part (activated commands) and the additional content (deactivated commands). Irrespective of how the additional content is activated, during the gameplay or for extra payment, the key differentiating criterion for VAT exemption purposes is granting rights on the basis of a licensing agreement.

In our opinion, this approach has got potential and is likely to be applied in practice. Developers do not actually design additional game features. Such extra features had pre-existed by the time of purchase and are actually offered to the gamers through the activation of non-activated data and commands given at the time of installation of the client-side of the game.

Recommendations

To conclude whether a game seller can claim a VAT exemption on additional e-game content, a thorough analysis of the licensing agreement terms and conditions should be performed.

We recommend paying attention to the following material licensing conditions:

- The licensing agreement must divide the features (commands) into activated (granted free-of-charge) and non-activated (that can be purchased), provided on the basis of a licensing agreement;
- The licensing agreement shall specify that the user acquires intellectual property rights for a specific purpose, i.e. to use in the basic version of a multiplayer game;
- When downloading an online game, the user must see all activated and non-activated data and commands, which proves that additionally purchased game features do not qualify for additionally rendered services;
- The possibility to purchase non-activated data and commands can be either integrated in the game scenario or provided for a fee. This stipulation confirms that the right holder does not actually sell additional content and that the specific scope of rights had originally been envisaged by the licensing agreement and was just further activated by the user;
- All extra services relating to website access, servicing, maintenance, user content moderation, etc. should be covered by a separate item of user agreement and respective service fees should be set.

We hope that you will find this newsletter interesting and informative. Please feel welcome to contact us for more information on the topics covered.

Best regards,

Deloitte CIS Partners

Contacts

Tax & Legal



Oleg Berezin
Partner
oberezin@deloitte.ru



Andrey Silantiev
Partner
asilantiev@deloitte.ru



Tamara Arkhangelskaya
Director
tarkhangelskaya@deloitte.ru



Artem Tolkachev
Director
atolkachev@deloitte.ru



Svetlana Romanova
Manager
sromanova@deloitte.ru



Nikita Soshnikov
Manager
nsoshnikov@deloitte.ru

TaxSmart app



deloitte.ru

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as "Deloitte Global") does not provide services to clients. Please see www.deloitte.com/about for a more detailed description of DTTL and its member firms.

Deloitte provides audit, consulting, financial advisory, risk management, tax and related services to public and private clients spanning multiple industries. Deloitte serves four out of five Fortune Global 500® companies through a globally connected network of member firms in more than 150 countries bringing world-class capabilities, insights, and high-quality service to address clients' most complex business challenges. To learn more about how Deloitte's approximately 244,000 professionals make an impact that matters, please connect with us on [Facebook](#), [LinkedIn](#), or [Twitter](#).

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively, the "Deloitte Network") is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser. No entity in the Deloitte Network shall be responsible for any loss whatsoever sustained by any person who relies on this communication.