Deloitte.

Tax & Legal

30 November 2017

LT in Focus

Changes in VAT law: electronic services; payers of unified agricultural tax; ”5% rule” for input VAT allocation; zero VAT rate for international transportation, freight forwarding services and re-export of goods; and more

Federal Laws No. 335-FZ and No. 350-FZ, introducing amendments to Parts One and Two of the Russian Tax Code and setting forth, in particular, the new rules for accounting for and payment of VAT with respect to certain transactions, were officially published on 27 November 2017.

Some amendments will enter into force starting from 1 January 2018, some – from 1 January 2019.

Federal Law # 335-FZ of 27/11/2017 (Law # 335-FZ) "On amendments to Parts I and II of the Russian Tax Code and other legislative acts of the Russian Federation"

Foreign providers of e-services will have to pay VAT by themselves on B2B supplies of e-services from 1 January 2019

Law # 335-FZ changes the procedure for accounting for and paying VAT on e-services that are deemed supplied in Russia and are rendered by foreign suppliers to legal entities and individual entrepreneurs ("B2B supplies") registered with the Russian tax authorities.

According to the current wording of Article 174.2 of the Tax Code, legal entities and individual entrepreneurs registered with the Russian tax authorities and purchasing e-services from foreign suppliers (including from those registered as VAT payers as a result of supplying e-services to individuals – "B2C supplies") shall self-assess and pay VAT on behalf of such foreign suppliers via the reverse charge mechanism.

The new provisions require foreign entities, which make supplies of e-services to businesses tax registered in Russia, to account for and pay Russian VAT on such B2B supplies by themselves, unless the legislation imposes this obligation on a tax agent.

Tax agents would still include the following intermediaries (with respect to both B2C and B2B supplies of e-services):

- Russian entities, individual entrepreneurs or local branches of foreign companies, registered with the Russian tax authorities, operating under agency/commission or similar arrangements with foreign e-service suppliers and "making settlements directly with customers"
- Foreign entities operating under agency/commission or similar arrangements with foreign e-service suppliers and "making settlements directly with customers".

In the latter case, such foreign intermediaries will have to obtain Russian tax registration and pay VAT to the Russian tax authorities, while foreign e-service suppliers will not be obliged to register with and pay VAT to the Russian tax authorities.

We note that in accordance with changes to Article 174.2 of the Tax Code the national payment system operators, specified in Federal Law No. 161-FZ "On the National Payment System" of 27 June 2017, shall not be treated as tax agents (intermediaries) with respect to activities involving cash transfers for e-services. The national payment system operators include, in particular, money transfer operators, banks' payment agents, payment agents, federal postal operators rendering cash transfer services, payment system operators and payment infrastructure service operators.

These amendments to the Tax Code will enter into force as of 1 January 2019, except for the provision that excludes the national payment system operators and mobile network companies from the list of intermediaries, which will become effective as of **1 January 2018.**

Foreign entities that make B2B supplies of e-services, and which are not currently registered with the Russian tax authorities, will have to apply for such tax registration by 15 February 2019.

The foreign suppliers that are already tax registered in Russia and currently pay VAT on B2C supplies of e-services will also be obliged to account for and pay VAT on B2B supplies of e-services, starting from 1 January 2019. Taking into account that the rules for determining the tax point will not change, we believe that the foreign suppliers will be obliged to account for and pay VAT on B2B supplies of e-services provided that such services are rendered after 1 January 2019 and paid for (fully or in part) after 1 January 2019.

A business service buyer may claim for recovery input VAT charged by a foreign tax registered service supplier on the basis of the following documents:

- A contract and (or) payment document that separately states the tax amount and the foreign taxpayer's TIN and KPP (code of reason of registration)
- Payment orders to transfer the payment to the foreign supplier (including the tax amount)

Law # 335-FZ does not contain any special provisions or direct references to other legislative acts that regulate the format and mandatory details of such payment documents.

The rules for determining the tax base and tax point as well as applicable tax rate have not changed.

Therefore, the VAT base for e-services rendered by foreign suppliers and deemed supplied in Russia shall still be determined as the tax-inclusive service fees, while the VAT amount due shall be calculated at a rate of 15.25 percent applied to this taxable base.

The tax base is determined on a quarterly basis - on the last day of the reporting period in which the (pre)payment was received. If the service fees are denominated in a foreign currency, the tax base will be calculated in roubles, using the Russian Central Bank's exchange rate as at the last day of such reporting period.

Law # 335-FZ does not set forth any special provisions regulating the conversion of the service fees denominated in a foreign currency into roubles for e-service buyer's VAT deduction purposes.

The tax filing procedures and deadlines for foreign e-service suppliers remain the same: tax returns are to be filed in accordance with the established format via a taxpayer's web portal, and in cases where the latter cannot be used - via the telecom channels through authorized e-document operators, by the 25th day of the month, following the reporting period (calendar quarter).

Law # 335-FZ does not clarify an existing uncertainty with respect to the interpretation of the Tax Code's provisions relating to the mechanism of VAT payment on non-electronic services rendered by foreign suppliers (including those which provide e-services as well), registered with the Russian tax authorities.

The new mechanism for paying VAT on cross-border B2B supplies of e-services, similarly to cross-border B2C supplies of such services generally contradicts the OECD Guidelines that recommend applying a reverse charge mechanism to cross-border B2B transactions. In our opinion, Law # 335-FZ reflects the legislator's attempt to streamline the administration of VAT coming from the numerous small businesses and sole traders that purchase e-services from large foreign corporations and which will most likely perform their obligations with respect to registration with the tax authorities and payment of VAT in accordance with the new rules.

Unified agricultural tax payers will become VAT payers from 1 January 2019

In accordance with the new requirements, starting **from 1 January 2019,** businesses and individual entrepreneurs that pay Unified Agricultural Tax (UAT) will also be treated as VAT payers.

However, they will be entitled to a VAT exemption if:

- Their transition to UAT and the application of VAT exemption take place in the same calendar year; or
- The revenues (for the preceding UAT period) from the sale of goods or services subject to UAT do not exceed, net of VAT, the following values: RUB 100 million for 2018; RUB 90 million for 2019; RUB 80 million for 2020; RUB 70 million for 2021; RUB 60 million for 2022 and subsequent years.

Law # 335-FZ obliges the UAT payers that wish to apply a VAT exemption to file a respective notification with their local tax authorities.

Therefore, starting from 1 January 2019, all businesses and individual entrepreneurs that pay UAT, which did not opt to apply a VAT exemption, will be obliged to charge VAT on the goods (work, services) sold.

We believe that by introducing these changes the legislator addresses an issue that exists in the agricultural industry: buyers, that are VAT payers, purchasing goods (work, services) from suppliers applying UAT cannot deduct any input VAT; such suppliers increase the price by their input VAT cost which increases the acquisition value of purchases for buyers.

Allocation of input VAT between taxable and exempt supplies will be mandatory from 1 January 2018 irrespective of 5% threshold

Law # 335-FZ changes the procedure for allocating input VAT related to VAT exempt sales: the five-percent rule will now apply to indirect expenses only. VAT on goods (work, services) and property rights purchased for the purpose of making solely non-VAT-able transactions cannot be claimed as input credit, but instead should be included in the acquisition cost of goods (work, services) and property rights.

These amendments put the taxpayers to a disadvantage, making them account for input VAT separately, regardless of the volume of non-VAT-able transactions.

The changes actually reaffirm the judicial opinions sustained by the Russian Supreme Court Ruling No. 305-KG16-9537 of 12 October 2016 in case No.40-65178/2015 (AO RZhDStroy vs. Interregional Major Taxpayers Tax Inspectorate No.6), citing that the five-percent rule does not apply to input VAT on goods (work, services) and property rights purchased for the purposes of making solely non-VAT-able or solely VAT-able transactions (such VAT should be separately accounted for irrespective of the 5% threshold), but shall apply only to accounting for input VAT on goods (work, services) and property rights purchased for the purpose of making both non-VAT-able and VAT-able transactions (i.e. to indirect expenses).

The changes will apply effective 1 January 2018.

Rules for VAT deductions on purchases using subsidies and/or budget investment clarified

Law # 335-FZ clarifies provisions relating to the treatment of input VAT on purchases made using funds received from federal, regional and local budgets.

The new version of Article 170 of the Tax Code states that in case of purchasing goods (work, services) and property rights using subsidies / budget investment input VAT, that is charged to a taxpayer or actually paid upon the import of such goods, cannot not be claimed for recovery against output VAT.

This VAT can be expensed for profit tax purposes, provided the costs of goods (work, services) or property rights purchased are deductible for profits tax purposes and accounted for separately.

The obligation to reverse VAT deductions in case of receiving not only subsidies but also budget investment is introduced.

The current version of Article 170 of the Tax Code requires the reversal of VAT deduction, where a taxpayer receives subsidies in the form of reimbursement of costs incurred to purchase goods (work, services), VAT inclusive. In accordance with the changes, an obligation to reverse a VAT deduction arises regardless of whether the VAT amount was included in such subsidy or investment.

Furthermore, the new version sets forth that the reimbursement may also cover the cost of acquisition of fixed assets, intangibles, and property rights.

Law # 335-FZ also regulates VAT deduction reversal in case of a partial reimbursement of costs: the deduction will have to be reversed pro rata, in accordance with the procedure set out in Law # 335-FZ.

The changes will apply effective 1 January 2018.

VAT exemption for sales of non-ferrous and ferrous metals scrap removed; reverse charge mechanism for VAT payment introduced for sales of this scrap as well as for sale of waste, secondary aluminium alloys and raw animal skin

Law # 335-FZ excludes the sales of non-ferrous and ferrous metals scrap and waste from the list of VAT-exempt transactions.

Law # 335-FZ also establishes that VAT has to be paid on sales of such scrap by buyers via the reverse charge mechanism (unless such goods are sold by exempt taxpayers or persons not recognized as taxpayers). The same mechanism for VAT payment (i.e. by buyers as reverse charge) will also apply to sales of raw animal skins, secondary aluminium, and its alloys.

The changes will apply effective 1 January 2018.

Place of supply for certain services refined

In accordance with the Tax Code currently in force, Russia is deemed the place of supply of services on the lease of movable property (except inland motor vehicles), if the recipient of such services has a place of activity in Russia.

Law # 335-FZ adds a new provision to Article 148 of the Tax Code, granting an exclusion from the general rule with respect to services on the lease of aviation engines and other aviation equipment that are deemed supplied in a foreign state according to the laws of such foreign state.

Owing to that change, Russian lessees of the mentioned movable property will no longer be treated as tax agents and will not have to withhold VAT from relevant lease payments. At the same time, the new provision does not specifically cover the situations where the laws of a foreign state do not contain any concept of "the place of supply of services", e.g., because a VAT system is not established in that state.

In addition, Article 148 of the Tax Code will also set forth that services of pipeline transportation of natural gas shall be deemed supplied in Russia in the instances envisaged by international treaties signed by Russia. Law # 335-FZ also introduces a zero VAT rate on the above-mentioned transportation services for the instances envisaged by international treaties signed by Russia.

The changes will apply effective 1 January 2018.

Federal Law No. 350-FZ of 27 November 2017 (Law # 350-FZ) "On amendments to Chapter 21, Part II of the Russian Tax Code"

Zero VAT for re-export of goods introduced from 1 January 2018

The amendments introduced by Law # 350-FZ will enable the taxpayers to apply a zero VAT rate on the re-export of goods.

The current version of Article 164 of the Tax Code does not envisage any possibility to apply zero VAT rate in case the goods are sold abroad under the re-export customs procedure.

The changes will address this issue, in particular, for the taxpayers that export finished goods made of raw materials imported under the customs procedure of inward processing.

Law # 350-FZ also introduces the list of documents required to justify the application of zero VAT rate for the goods exported by international mail.

The changes will apply effective 1 January 2018.

Option not to apply zero VAT rate to certain transactions from 1 January 2018

Law # 350-FZ gives a right to waive an obligation to apply a zero VAT rate (and establishes a corresponding obligation to pay VAT at the rate of 10 or 18 percent) to the following types of transactions:

- Supply of goods exported under the export customs procedure
- Supply of services related to transportation of the above goods envisaged by Items 2.1-2.5, 2.7 and 2.8, Point 1, Article 164 of the Tax Code, in particular, international transportation of goods, including related freight forwarding services

A taxpayer may waive to apply a zero VAT rate by filing an application to its local tax authority, subject to the following conditions:

- The application must be filed by the first day of a tax period, starting from which the taxpayer plans to waive to apply the zero VAT rate
- The zero VAT rate can be waived only for all transactions listed above (i.e. for supply of goods exported under the export customs procedure as well as for supply of services related to transportation of such goods envisaged by Items 2.1-2.5, 2.7 and 2.8, Point 1, Article 164 of the Tax Code)
- VAT rates cannot be differentiated depending on who the buyer of respective goods (services) is
- The application of the zero VAT rate can be waived for at least 12 months

This option addresses an issue of whether it is justified to deduct an 18-percent VAT charged to buyers of international transportation and related freight forwarding services. At the same time, the change may prove not so beneficial for some forwarders/carriers, as an 18-percent VAT rate will have to be applied to all above-mentioned services that will be rendered to all customers (including foreign ones that will not be able to deduct Russian VAT). Furthermore, taxpayers can waive to apply the zero VAT rate with respect to the mentioned services only with respect to exported, and not imported, goods.

The changes will apply effective 1 January 2018.

*****

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

Indirect Tax & Customs group

Oleg Berezin
Partner
oberezin@deloitte.ru

Andrey Silantiev
Partner
asilantiev@deloitte.ru

Tamara Arkhangelskaya
Director
tarkhangelskaya@deloitte.ru

Svetlana Romanova
Manager
sromanova@deloitte.ru

TaxSmart App

Загрузите в App Store

ЗАГРУЗИТЕ НА Google play

deloitte.ru