



Russian windfall tax

In brief

A [draft law](#) on windfall tax was adopted in the third reading by the State Duma and approved by the Federation Council.

The tax will be paid by the companies that received more than RUB 1 billion of arithmetic mean profits in 2021-2022. The tax will be introduced in 2024 and will apply to the excess of the above-mentioned amount over the arithmetic mean profits for 2018-2019. The rate of the tax will be 10% with a possible discount for an early “security payment” in 2023. The document is now waiting to be signed by the President of Russia.

In detail

Two regulatory instruments were developed to introduce the Russian windfall tax:

- A [draft law](#) on the Russian windfall tax that sets the parameters for the new tax and
- A [draft law](#) that enables one-off taxes and brings them into the regulatory scope of the Russian Tax Code (with certain specifics). For example, such one-off taxes should not necessarily demonstrate all taxation characteristics provisioned for by the Russian Tax Code (RTC). Instead, such characteristics may be defined by respective Federal Laws that introduce such one-off taxes.

Separate wordings of the draft laws are quite debatable and will require clarifications from the competent authorities.



For convenience, we highlight such aspects with a question mark icon.

Below we discuss key parameters of the introduced windfall tax.

Who will be the payer

Russian entities and Russian permanent establishments (PE) of foreign entities, provided that their arithmetic mean profits for 2021-2022 exceed **RUB 1 billion**. The tax will also apply to foreign entities that qualify as Russian tax residents.

Exemptions (brief summary)

- Entities included in the Unified Register of Small and Medium Enterprises at 31 December 2022
- Russian entities incorporated after 1 January 2021 (except for those created through a re-organisation)
- Foreign entities that started their operations in Russia via a PE after 1 January 2021
- Entities extracting hydrocarbon raw materials and their parent companies with participation share over 75%, as well as consolidated taxpayer groups (CTG) to which these entities belonged

- Coal extracting entities
- Oil processing entities (on certain conditions) and their parent companies with participation share over 75%, as well as CTG to which these entities belonged
- Liquefied natural gas producers
- Entities that continuously paid single agricultural tax from 1 January 2018 through 31 December 2022
- Entities who had no taxable sales income (as determined by Article 249 of the RTC) in 2018-2019. During the draft law examination, there was a discussion on the taxpayers who received sales income only in a few months of 2018-2019. The lawmakers promised that they would prepare separate rules for such cases in the autumn session.
- Credit institutions and non-credit financial institutions that were subject to anti-bankruptcy measures at 1 January 2023 involving the Bank of Russia or Deposit Insurance Agency (DIA)
- Developer companies that implement projects in accordance with the Federal Law on co-investment agreements and did not pay dividends in 2021-2022

Tax base

The tax base will constitute the difference between the arithmetic mean profits for 2021-2022 and such profits for 2018-2019.

Profits shall mean the sum of the tax bases calculated under Article 274 of the RTC and factoring in losses carried forward. Please note that, in case if losses were incurred in the current year, the tax base shall be deemed equal to zero, not to the amount of the loss.





When calculating the tax base, the following items will not be taken into account:

- CFC profits;
- Profits from implementing special investment contracts (SPIC) and investment protection and promotion agreements (SZPK);
- Dividends;
- Interest on government securities;
- Profits from sale of securities and equity shares taxed at 0%;
- Certain income received from an international holding company/by such international holding company;
- CB RF profits from principal activities taxed at 0%.

If the calculated base is negative or if the arithmetic mean profits for 2021-2022 is less than RUB 1 billion, then the tax base shall be deemed equal to zero. There is also a special rules for companies whose income shrank significantly in 2022.

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Below we provide a schematic interpretation of the procedure for tax base calculation:

 Income in 2018-2019	 income in 2021-2022	 Tax base
A = A 2018 + A 2019	B = B 2021 + B 2022	$B/2 - A/2$; if <0 , then 0
If $B/2 < \text{RUB } 1 \text{ billion}$		0
If there is no sales income as per Article 249 of the RTC		0
If $(B/2 - A/2) > B \text{ 2022} * 0,5$		$B \text{ 2022} * 0.5$
AND		The following entities do not apply this rule:
If assets grew faster than profits ¹		credit, non-credit financial institutions, parties to a CTG and entities that paid dividends for 2021 or 2022.
		Did the lawmakers mean dividends paid in 2021-2022? Or, for example, will payment of 2022 dividends in 2023 also disallow the application of this rule? 

Separate calculation results were set for CTG participants or for taxpayers subject to a re-organisation.

Tax rate

- 10%
- The tax rate may be effectively reduced down to 5% if the taxpayer voluntarily makes a security payment on account of the tax starting from 1 October 2023 through 30 November 2023.

 The early payment discount is structured via a security payment arrangement that actually plays the role of an instrument for reducing the effective tax rate (by deducting the security payment from the tax amount) and also serves as an advance payment. This arrangement is a new and unusual structure. Some taxpayers are concerned whether the tax authorities will agree to reduce the tax amount. Although wordings of the draft law are non-perfect, we believe that the early payment discount arrangement should work judging by public statements of the Ministry of Finance officials and according to the issued clarification.

Please note that if the security payment is returned to the taxpayer at the taxpayer's request before the tax payment deadline (28 January 2024), the tax credit will be cancelled.

Deadline for filing tax returns and paying tax

The deadline for filing the special return for this tax is 25 January 2024. The official template for the tax return will be established by the Russian Federal Tax Service.


The tax payment deadline is 28 January 2024. In order to justify the right to credit the security payment against the tax amount, the taxpayer should also present a copy of the payment document confirming that the security payment was actually made.

¹ The ratio of arithmetic mean profits for 2021 and 2022 to arithmetic mean profits for 2018 and 2019 was lesser than the ratio of arithmetic mean carrying value of assets at the end of 2021 and 2022 to arithmetic mean of the same indicators for 2018 and 2019

Taxable base adjustments

The version of the draft law that was adopted by the lawmakers includes important clarifications stating that the windfall profits tax base shall be adjusted in case of *changes in the taxable bases for profits tax* for respective periods used in the calculation. The draft law includes the following provisions:

- If there are additional profits tax assessments following an audit, the tax base amount for a respective year shall be increased by the amount of such additionally assessed income tax multiplied by 5.
- If the taxpayer files adjusted income tax returns for 2021 or 2022, the windfall profits tax base will also be recalculated.

 There are a few important aspects to note:

- Based on the wording of the law, we think that the calculation should include not all additional income tax that was assessed but *only those additional assessments that are connected with the adjustments to the tax bases* used for the windfall profits tax calculation.
- Yet, there is still some ambiguity regarding the adjustment of the tax bases subject to a tax rate other than 20% (not all special tax rates were included in the list of exemptions). If we follow the formula set by the law (the amount of additionally assessed tax multiplied by 5), then the sum of the tax bases included in the calculation of the windfall profits tax base will increase by an amount that is lesser as compared to the amount of the excess profits tax base adjustment. Is it what the lawmakers had in mind?
- Importantly, in case of the above-mentioned changes, the amount of the security payment will be reduced for the purposes of the tax credit by the amount of the money that qualified as a single tax payment after the taxpayer files an application to return the excessively paid tax amount. We cannot rule out different interpretations of this provision.

What should be considered right now

- If the tax applies to your company, you should decide whether you make an early payment to get the discount.
- The higher the profit in 2021-2022, the larger the windfall tax amount will be. We recommend that you take an inventory of questionable positions in tax accounting for income and expenses. Should your company decide to adjust profits tax for 2021 and 2022 (either upward or downward), we recommend filing adjusted tax returns before the end of the deadline for the security payment.
- For example, you may reconsider the way you apply 2022 temporary rules to accounting of foreign exchange differences, as well as adopt a procedure for recognising prior-year expenses identified in the current year (taxpayers often include these in the current year's base and do not file adjusted tax returns).

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