



State Duma passes the biggest tax draft law of 2023

In brief

In the last days of the spring session, the State Duma passed a [draft law](#) introducing massive amendments to the Russian Tax Code (RTC). The law was signed by the Russian President and officially published. Currently, one may call it the biggest amendment to the RTC in 2023.

Personal Income Tax (PIT) regime for remote workers located outside Russia was one of the most talked about and anticipated changes in the framework of this statutory initiative. According to the adopted version of the law, such workers engaged by a Russian employers under a labour agreement will pay PIT at 13% or 15% starting 2024, while those who provide services online under civil law contracts will become subject to these PIT rates starting 2025 (provided that certain conditions are met).

This law is quite voluminous and includes approximately 300 pages. It touches upon many situations and matters. In this survey, we will share its most important and popular topics.

In detail

PIT for remote workers

The law amends the procedure for taxing income of the employees who work remotely abroad either under employment agreements or civil law contracts

In the past, there were reasons not to impose Russian tax on income earned by such non-residents. Now, their income will be subject to PIT at 13% (or 15%, if the income exceeds RUB 5 million per year).

Therefore, PIT will apply:

- starting 2024 – to any income of a Russian employer's worker engaged under an employment agreement;
- starting 2025 – to income under a civil law contract that implies provision of services online using Russian domains, servers located in Russia etc., provided that at least one of the following conditions is met:
 - the natural person is a Russian tax resident;
 - the income was remitted to the natural person's account with a Russian bank;
 - the source of the payment is located in Russia.

Important matters for employers

Employers do not have to monitor the location of their remote workers. In any case, the tax should be withheld at the rates established for residents. Currently, companies apply various approaches when withholding PIT from those who work remotely abroad. While current provisions of the RTC contain reasons why the tax may be non-withheld from salary payments abroad, PIT withholding will become mandatory starting 2024.

Please note that the 30% rate for non-residents who work non-remotely in Russia will continue to apply. It is difficult to evaluate whether the current situation is fair or not. If the tax rates for non-residents who work in Russia and those who work abroad are not levelled, the former category may be put to a disadvantage.

Important matters for citizens

The tax burden on Russian tax residents will not change. Their income will continue to be taxed at the standard tax rates of 13% or 15%. That said, they will not need to file tax returns if tax on their work abroad was not withheld at

the source of payment.

The employees whose employer has been taxing such income at 30% may even treat this novelty as good news because the rate of the withheld tax will become lower (barring the matter of double taxation that we discuss below).

Those workers whose employers do not withhold PIT will see an increase in their tax burden.

Double tax and tax set-off

If there is an applicable Double Tax Treaty (DTT):

If a citizen lives in a foreign state where he/she holds the tax residency, declares and pays tax on income received from working outside Russia, and if the Russian employer withheld PIT from such income, no Russian tax set-off will be available as the DTT does not provide for the tax set-off in such circumstances. The citizen may address the Russian employer to refund the PIT.

If there is no DTT or Russia has suspended it:

Probably, it will be impossible to set-off foreign tax in both countries, which will result in double tax.

Standards for tax-free transfer of assets from foreign jurisdictions to Russia

- (1) The law extends PIT exemption for the income that taxpayers receive **on a gratuitous basis from their controlled foreign companies**. This exemption was applied to property and property rights (except for monetary funds) transferred to a natural person in 2022, provided that the assets were owned by the transferring foreign entity (structure) at 1 March 2022. Now, a similar provision will retrospectively apply to 2023 in whole.
- (2) The law introduces a new benefit in the form of a PIT exemption for natural persons' income represented by **forgiven debt**. This exemption will apply when a natural person purchases shares (participatory interest) in Russian assets from non-residents after 1 March 2022 and the non-residents forgive debt under such transactions. The exemption will apply through the end of 2023. This benefit will also be applicable if the right of claim passes from the seller to another foreign entity that decides to forgive the debt. Article 217 of the RTC has been amended accordingly.

Other matters pertaining to PIT

- The new law introduces PIT exemption for remote workers on **compensation of their daily costs**¹ amounting up to RUB 35 or to the amount of their documented expenses. This amount can be recognised as expenses for income tax purposes, and it is allowed to refrain from charging insurance contributions on it (Article 217 of the RTC).
- **Dividends on foreign shares**. The new law clarifies provisions of Article 214 of the RTC. Among other things, it states that a Russian depository or broker (fiduciary) shall withhold tax if dividends are transferred to their account first (Article 214 of the RTC).
- If a security was purchased in the period between coupon payments, the new owner shall pay tax only on that part of the **coupon income** which attributes to the days after the purchase (Article 214.1 of the RTC).
- If an entity that received the payment provides respective information to the Russian Federal Tax Service (FTS)², the FTS shall upload such information into the citizens personal account so that the citizen will not be required to re-confirm their right to obtain a **tax rebate for education, medical treatment, purchase of a voluntary medical insurance policy, non-state pension insurance, as well as health and fitness services**.
- It is allowed to **reduce income from sale of property rights** (not just property itself) by the amount of the expenses connected with their purchase (Article 220 of the RTC).
- The law provides for a PIT exemption on transactions for the **exchange (substitution) of Eurobonds for bonds of Russian organisations**. In case of further sale of such substitute bonds, the law proposes to take account of the expenses incurred for the purchase of Eurobonds.

¹ The costs incurred by a remote worker for the purposes of discharging the employment function by using own or rented equipment, software and hardware, information protection means and other facilities, where the amount of such costs is determined by a collective agreement, local regulation or employment agreement.

² In accordance with item 3.2 of Article 221.1 of the RTC, the information should be submitted to the FTS in an electronic format, if technically feasible, based on the taxpayer's written application and pursuant to a number of certain conditions.

Income tax

Debt forgiveness

- This exemption has been expanded and extended through the end of 2023 (in the current version of the law, the exemption was effective only for 2022).

Eventually, tax will not be levied on income from forgiving the following liabilities:

- (1) under a loan (credit) agreement (including interest liabilities recognised as extraordinary expenses), where the lender (creditor) is a foreign entity or a foreign citizen at 1 March 2022;
- (2) under an agreement on sale and purchase of shares (equity interest) in Russian entities signed after 1 March 2022, where the seller is a foreign organisation/citizen.

The debt may be forgiven either by the foreign organisation/citizen or by another person (including a Russian one) that obtained the right of claim under such sale and purchase agreement before 31 December 2023. If such person's debt is forgiven, it will also have no taxable income.

Article 251 of the RTC has been amended accordingly.

It has been clarified that the tax base for such shares (equity interest) will be equal to zero (please refer to amendments to Article 268 of the RTC).

- The limitation on **loss carry-forward** (not more than 50% of the current year's base) will be extended by **2026**.
- Income tax rate credited to the Federal Budget will amount to 2% for residents of all **special economic zones** (currently, this rate may be reduced to 0% for certain zones, provided that respective conditions are met).
- The historical cost of the property/property rights received **free-of-charge** will be determined as the amount of the taxable income recognised when the property was received.
- Expenses on compensating costs incurred by remote workers may be recognised to the amount of documented expenses of such worker or within an established limit of **RUB 35 per diem**.
- **Increase in the historical cost of intangible assets.** The rule based on which the cost of property, plant and equipment increases in the case of modernisation will now extend to intangible assets too (Article 257 of the RTC).
- For tax purposes, taxpayers will recognise expenses on **voluntary property insurance** if such insurance is intended for compensating expenses, losses or *lost earnings* accounted for tax purposes (Article 263 of the RTC).
- **For sanctioned taxpayers**, the effect of the zero tax rate in transactions with Russian equity interest and shares will be extended through the end of 2023 (Article 284.2 of the RTC).
- **Withholding tax amount denominated in a foreign currency will be re-calculated to RUB at the exchange rate determined on the date when income was paid to a foreign organisation.** According to the current provisions, such re-calculation is made at the date of paying the tax to the budget.

Please note that respective amendments to Articles 45 and 310 of the RTC cover the relationships which arose on 1 January 2023 and later.

- **Accounting for losses from sale of certain PPE and intangible assets.** The law introduces a provision based on which it is prohibited to recognise a loss from the sale of certain assets whose historical cost formation factored in expenses with a coefficient of 1.5 (Article 268 of the RTC).
- **Replacement of Eurobonds with substitute bonds** shall be made tax-free by respective express provisions included in Chapters on income tax and PIT. The tax exemption will be enjoyed by the holders of bonds who received title thereto before 1 March 2022. The cost of the received substitute bonds will be equal to the cost of the Eurobonds documented in the taxpayer's tax accounting.
- The law clarifies the definition of a **permanent establishment**. This amendment aims to prevent possible abuse. For example, breaking-down of business processes into fragments (including their allocation between various legal entities) will no longer help to avoid the creation of a permanent establishment in Russia.

Private funds

- New regulations have been introduced for taxation of private funds and their beneficial owners. They are based on a concept that a fund is an “extension of the natural person”.
- Transfer of property and property rights to/from a private fund will not constitute a taxable event for the purposes of VAT, PIT and income tax.
- Income derived by such funds will be taxed at 15%, provided that certain conditions for the level of passive income are met. These conditions are laid out in a new Article 284.12 of the RTC.
- The law sets particular specifics for calculating the period of non-stop ownership of shares (equity interest) and other property received by a natural person (taxpayer) from their private fund. It was proposed to include in such period (1) the term when the property was owned by the taxpayer and up to the date when it was transferred to the private funds, (2) the term when the property was owned by the funds and (3) the term when it was owned by the taxpayer after receiving it from the fund. This procedure for calculating the non-stop ownership term of shares and other instruments is important for applying an exemption on the ownership of shares and other instruments, as income from long-term ownership of certain types of shares and other instruments (at least for three years) is not subject to tax. Put simply, the transfer of shares to/from the fund will not break the period of their ownership.
- The new law introduces PIT exemption on the income received from a private fund by the private fund founder and/or their family in accordance with the fund’s charter or upon its liquidation, provided that the recipients of the income are Russian tax residents.

CFC

Retained earnings of CFC will be exempt from tax according to the rules stipulated in Article 25.15 of the RTC if

- (1) the CFC is a foreign unincorporated structure (ISBOUL) – a form of collective investment under a private law (this definition, in fact meaning a limited liability partnership (kommandit partnership), will most likely cover such most common structures as LPA or limited partnership agreement).
- (2) the CFC’s profits are exempt from tax under a private law (the law does not clarify whether the form of such exemption constitutes a tax exemption per se, zero rate or structure transparency for tax purposes).

In such case, the controlling party will pay tax upon receiving profit distributions.

The law does not cancel the obligation to file a CFC notification including an application for such exemption.

This exemption should solve the CFC problem for Russian investors who use certain types of foreign fund structures for co-investment purposes. It is most likely that the exemption will not apply to family trusts and funds.

VAT

- **Accelerated VAT refund.** The right to apply an accelerated VAT refund procedure for the amounts of taxes that were paid earlier shall extend over the periods **up to 2025 (inclusive)**.

We remind that the accelerated VAT refund procedure came into effect in the beginning 2022. Currently, the law allows to use it as pertaining to 2022-2023 tax periods.

The idea of this refund procedure is that taxpayers may, without obtaining a bank guarantee or waiting for the end of a chamber audit of their tax returns, refund VAT from the Russian budget to the extent of the aggregate amount of the taxes and insurance contributions they paid in the previous year. This procedure will remain in effect for 2 more years. By the way, taxpayers refunded more than RUB 3 trillion of VAT in 2022 using the accelerated procedure.

- Changes in the registration of foreign providers of electronic services in Russia for VAT purposes.

Currently, foreign organisations have to obtain a registration when providing electronic services to Russian natural persons (B2C) and Russian legal entities (B2B).

Based on the wording of the new law, the requirements to obtain registration will remain for providers of B2C electronic services only. This approach is generally in line with global practice. The registration of providers of B2B electronic services was introduced in 2019, and businesses often regarded it as an onerous obligation. Since 1 October 2022, the obligation to pay VAT on B2B electronic services has been assigned to tax agents. In the current situation, the volume of electronic services purchased by Russian companies from foreign providers has drastically decreased, therefore, now there is no practical sense for foreign providers to obtain such registration.

We believe that the new amendments serve as grounds for foreign companies that provide electronic services

only to legal entities and sole proprietors to de-register with the tax authorities. Please note that these amendments come into force on 1 April 2024.

- The law cancels a VAT relief on **developer services** provided in the course of apartment unit construction.
- The law clarifies the procedure for determining the tax base, applying VAT deductions and VAT zero rate for certain transactions with **hybrid digital rights**, including the hybrid digital rights that certify a right to receive precious metals in ingots.

Excise duties

Excise duty rates will be increased for a number of excisable goods. In 2024, the rates will grow approximately by 5% as compared to the rates that are currently in effect for all excisable goods. The new law also clarifies the procedure for determining the coefficients used to calculate refundable excise duty amounts for certain excisable goods.

Disputes

Damages may be sought in court only after appealing against a respective decision (omission) by a tax inspectorate to a higher tax authority. Currently, taxpayers may resort to court with a monetary claim in order to refund taxes without contesting respective decisions made by tax inspectors.

The amendments to Article 138 of the RTC will come into force starting 1 January 2025.

Liability

The new law **sets tax agents liable for a failure to provide a tax calculation** of the amounts of income paid to and taxes withheld from foreign organisations. The fine will make 5% of the unpaid tax amount for each month of delay and shall be not more than 30% and not less than RUB 1,000.

Respective amendments to Article 119 of the RTC will come into force starting 1 January 2024.

The new law introduces a new Article 126.3 to the RTC. The article sets organisations and sole proprietors liable for providing unreliable information so that taxpayers could obtain social deductions from their PIT base under a simplified procedure.

Tax monitoring

The tax authorities will be entitled to **interview witnesses and inspect territories** in the course of tax monitoring procedures (Article 105.29 of the RTC). Currently, they may only request documents and engage experts (specialists) when necessary.

It has been clarified that the access to a territory or premises of a person subject to tax monitoring shall be granted only in case of a tax monitoring audit of VAT returns that declare the recoverable amount of tax or in case of identifying discrepancies and inconsistencies in accordance with the RTC (those specified in items 8.1 and 8.9 of Article 88 of the RTC) (Article 91 of the RTC).

A taxpayer may **withdraw a request for motivated opinion**. This right may be of use when the expected opinion may differ from that of the taxpayer. At the same time, the tax authorities will also enjoy more rights: the RTC will establish that the tax authorities may refuse to examine a request if it is not in line with prescribed requirements. That said, taxpayers will retain their right to re-apply for a motivated opinion.

The deadline for providing a taxpayer with a motivated opinion may be extended by 3 months at most if there is a need to obtain clarifications from the Russian Ministry of Finance, finance authorities of Russian constituent entities etc.

Parties to tax monitoring will be able to file documents and information to the tax authorities via telecommunication channels – this possibility has been extended until 2026.

Single tax account

Amendments that have been made to Article 11.3 of the RTC clarify the procedure for recognising amounts that were declared in tax returns on a single tax account in various cases. These amendments come into force on 1 October 2023.

Mutual agreement procedure

The draft law amends Chapter 20.3 of the RTC “Mutual agreement procedure in accordance with Russia’s international treaty on tax matters”. The amendments focus on further enhancement of the procedure for conducting mutual agreement procedures, namely:

- add a reference to the fact that the mutual agreement procedure is established by the Russian Ministry of

Finance in accordance with provisions of international treaties (in the current version, this procedure is determined by a respective international treaty).

- elaborate on the procedure for filing information and documents to the Ministry of Finance for the purposes of conducting a mutual agreement procedure.

We would be happy to answer any questions you may have.



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