August 25, 2016

On taxation of electronic services from 2017

03.07.2016 the Law № 244-FZ "On Amendments to Parts I and II of the Tax Code of the Russian Federation" (hereinafter – "the Law") was enacted. Pursuant to the adopted changes, starting from 2017 foreign companies, which do not have permanent establishment in Russia and provide services in an electronic form to individuals in Russia will be required to register with the Russian tax authorities and pay VAT in the Russian Federation.

1. The definition of «services in an electronic form»

Pursuant to the Law rendering services in an electronic form (hereinafter referred to as *electronic services*) means providing automated services through the information and telecommunications network, including the Internet.

The Law sets forth the closed list of electronic services subject to VAT, including:

- granting rights to use software (including computer games) and databases online, including by means of providing remote access to them;
- rendering advertising services and providing advertising space in the Internet;
- rendering services on placement of offers to acquisition (sale) of goods (works, services), property rights in the Internet;
- providing computing capacities online for allocating information in IT systems;
- providing domain names, rendering hosting services;
- rendering services on administering IT systems, websites in the Internet;
- granting rights to use e-books (editions) and other electronic publications, information, educational materials, graphic images, music works with or without text, audiovisual works online, including by providing remote access to them;
- providing online access to search engines;
- maintaining online statistics on websites.

Besides the Law provides for the list of services, which are not qualified as electronic services for the taxation purposes, as follows:

- sale of goods (works, services), if upon the order via the Internet the delivery of goods (performance of works, provision of services) is carried out without the use of the Internet;
- sale (assignment of rights to use) of software (including computer games), databases on physical media;
- rendering consulting services via e-mail;
- rendering services on providing access to the Internet.

2. The rules of taxation of electronic services

Electronic services are subject to VAT in case of their provision in the territory of the Russian Federation.

17 Skakovaya str., bldg. 2, 6th floor, Moscow, 125040, Russia │ E-mail: info@alrud.com │ www.alrud.com │ Tel. +7 495 234-9692, fax +7 495 956-3718

6679018_3

An electronic service is deemed provided in the territory of the Russian Federation, if a consumer not being an individual entrepreneur, is located in the Russian Federation.

Pursuant to the Law, an electronic service is deemed to be provided to an individual in the territory of the Russian Federation if at least one of the following conditions is met:

- place of residence of the Customer is the Russian Federation;
- location of the bank, in which the account is opened, that is used by the Customer to pay for the services, or location of the operator of electronic money, through which payment for the services is carried out by the Customer, is in the territory of the Russian Federation;
- network address of the Customer, used during purchase of the services, is registered in the Russian Federation;
- international code of the country of the phone number, used for purchase or payment for the services, is assigned to the Russian Federation.

If in accordance with the above criteria the Russian Federation is recognized as the place of activity of the Customer (an individual), and at the same time in accordance with the laws of a foreign country such place should be the territory of the respective foreign country, the Seller of electronic services has the right to determine the place of the Customer's activity at its discretion.

3. Other issues related to payment of VAT

When rendering electronic services to individuals in the territory of the Russian Federation, a foreign company must register and pay the Russian VAT unless a tax agent withholds VAT (*e.g.*, if sales of electronic services to individuals are done through the intermediary – a Russian legal entity which acts under a commission or agency agreement and is involved into settlements with the individuals).

The tax rate is 15,25% applied to the cost of services, including VAT.

The Law provides for that the place of rendering electronic services to individuals should be confirmed by providing registers of operations with information on location of such individuals in the territory of the Russian Federation as well as the cost of such services.

Foreign companies which do not operate in the territory of the Russian Federation through a separate subdivision (branch), will not be able to offset input VAT, paid in the territory of the Russian Federation, against VAT charged on taxable electronic services.

Tax declarations must be filed by foreign organizations quarterly not later than the 25th day of the month following the end of the calendar quarter.

The Law did not remove VAT exemption for license payments made under license agreements for use of software and databases, although the practical application of this benefit may raise questions in certain cases.

The law comes into force on January 01, 2017. From that moment, a foreign company providing electronic services to individuals in Russia, who are not individual entrepreneurs, must register with the tax authorities within the 30 calendar days.

We hope that you find the information above helpful. Should you have any questions, please visit our web-site or contact directly Head of the Tax practice, Senior Partner **Maxim Alekseyev** via email: malekseyev@alrud.com or Head of ALRUD Commercial practice, Partner **Maria Ostashenko** via e-mail: mostashenko@alrud.com.

Kind regards,

ALRUD Law firm

Note: All information was obtained from publicly available sources. The author of this information letter assumes no liability for the consequences of decision-making based on such information