Russia to allow full input VAT recovery on “exports” of services

April 2019

What has changed?

On 15 April 2019, the federal law introducing changes to the Tax Code of the Russian Federation (hereinafter referred to as the Tax Code) concerning VAT recovery in case of “exporting” services and work (hereinafter referred to as the Federal Law) was signed by the President and published.

In particular, the Federal Law, among other things, provides for the right to recover VAT related to services and work deemed supplied outside Russia for VAT purposes. Effectively, such services and work will be treated as VATable transactions for the allocation of input VAT between VATable and non-VATable transactions.

The new rules do not apply to recovery of VAT related to services or work exempt from VAT (e.g. transfer of rights to use software under a license agreement to a foreign company not carrying out activities in Russia).

The changes will come into effect starting from 1 July 2019 (next VAT period).

What companies will be affected by the changes?

The changes introduced by the Federal Law may affect companies “exporting” work and services and having projects outside Russia in various industries, including:

— information technology (e.g. some types of electronic services, development, adaptation and modification of software for foreign customers);
— infrastructure companies (e.g. construction outside Russia, engineering services for foreign customers);
— mechanical engineering and industrial products (e.g. maintenance and repairs outside Russia);
— professional services (e.g. advisory, legal, marketing services for foreign customers);
— transport (e.g. transportation outside Russia);
— leasing certain types of equipment.

How will these changes impact business?

— The changes allow companies to increase the amount of VAT recovery when they “export” services and work;
— The current methodology of VAT allocation and separate accounting between VATable and non-VATable activities should be revised;
— The increase in the amount of recoverable VAT may lead to VAT refunds from the tax authorities;
— It becomes even more important to have documentary evidence confirming that the place of supply of work or services is not Russia (e.g. that the substance of work or services complies with the definition of work or services not deemed to be sold in Russia, the place of the buyer’s activities is outside Russia), especially in light of recent landmark cases where the Russian tax authorities proved that the place of supply for VAT purposes was indeed Russia;
— Ineffective structuring of contractual relations may result in competitive disadvantages or lower profitability (e.g. if existing contracts do not allow recovery of VAT in case of “exporting” services or work under the new rules as opposed to competitors);
— For companies currently choosing to calculate VAT on work or services that potentially may be viewed as supplied outside Russia for some reasons (e.g. insufficiency of supporting documents), it makes sense to revise their approach as the VAT effect may become significant due to the changes.

How KPMG can help

KPMG professionals will be glad to assess the impact of changes and assist in applying the new provisions of the Tax Code, in particular:

— identify what services and work will be subject to the new rules;
— analyze and adjust the methodology for VAT allocation and separate accounting between VATable and non-VATable activities;
— analyze documents and provide support for VAT refunds (including support in case of a desk tax audit or appealing against the decision of the tax authorities under the pretrial procedure or in court);
— analyze the substance of services or work, assess the sufficiency of documents confirming that the services or work are supplied outside Russia for VAT purposes.

2 Article 149 of the RF Tax Code.
3 In practice, the tax authorities successfully prove that the place of supply is Russia when they challenge the type of services or the buyer’s place of activity based on its place of management (e.g. Determination of the Supreme Court of the Russian Federation dated 13 September 2018 No. 305-KG18-13491 and Decision of the Arbitration Court of Moscow dated 06 March 2019 in case No. A40-142855/18-115-4029.
Contacts

Evgenia Wolfus  
Partner  
Indirect Tax  
Tax and Legal  
Т: +7 495 937 4477  
E: ewolfus@kpmg.ru

Ilya Samuylov  
Director  
Indirect Tax  
Tax and Legal  
Т: +7 (495) 937 4477  
E: isamuylov@kpmg.ru

Anton Grebenchuk  
Senior Manager  
Indirect Tax  
Tax and Legal  
Т: +7 (495) 937 4477  
E: agrebenchuk@kpmg.ru

Ekaterina Andreyashchenko  
Manager  
Indirect Tax  
Tax and Legal  
Т: +7 495 937 4477  
E: eandreyashchenko@kpmg.ru

Vladimir Anosov  
Manager  
Indirect Tax  
Tax and Legal  
Т: +7 495 937 4477  
E: vanosov@kpmg.ru

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

Legal services may not be offered to SEC registrant audit clients or where otherwise prohibited by law.

© 2019 KPMG. KPMG refers to JSC “KPMG”, “KPMG Tax and Advisory” LLC, companies incorporated under the Laws of the Russian Federation, and KPMG Limited, a company incorporated under The Companies (Guernsey) Law, as amended in 2008.

The KPMG name and logo are registered trademarks or trademarks of KPMG International.