



VAT TAXATION ON E-SERVICES FROM ABROAD: regulation of «Google Tax» in Russia in 2021



VAT TAXATION ON E-SERVICES FROM ABROAD: regulation of «Google Tax» in Russia in 2021

Since January 01, 2017 a tax unofficially called «Google tax» is laid on the non-Russian companies performing electronic services in Russia. At first it applied only to B2C services, but since 2019 it has extended its effect to B2B services as well. Who are payers of «Google tax», which services are subject to tax, what is the tax rate and how can foreign company register – answers to these and other questions are in the article of Olga Yatsalo, leading consultant of Legal & Tax practice.

WHAT IS «GOOGLE TAX»

Since January 01, 2017 a tax unofficially called «Google tax» is laid on the non-Russian companies performing certain services in Russia. It is an informal name for the value added tax (VAT) imposed on those foreign businesses (entities only) that provide electronic (online) services without a permanent establishment in Russia (hereinafter the «foreign providers» / «foreign companies» / «company»). The place of supply of electronic services shall be recognized as the territory of the Russian Federation.

At first «Google tax» applied to the services performed by the foreign providers to the Russian consumers who are individuals only (B2C), but since January 01, 2019 it has extended its effect to the situations when the buyers are the Russian legal entities and individual entrepreneurs (B2B). Thus, now it is charged regardless of who the ultimate buyer is.

The regulation hereof is stipulated in Article 174.2 of the Tax Code of the Russian Federation (hereinafter the «Tax Code»)

E-SERVICES: DEFINITION

The full list of services provided by electronic means (hereinafter the «e-services») is established by Item 1 Article 174.2 of the Tax Code and includes online services like streaming music, films, gaming services, granting the rights to use computer programs (including computer games) and domain names via the Internet, hosting, website and webpage support etc.

For convenience of the foreign providers the complete list is also given on the English version of the official website of the Federal Tax Service of Russia on the web page <https://lkioreg.nalog.ru/en/test> (go to Step 2 and click on the word «e-services»).

E-services are divided into the following sections:

a) software and video games:

- provision of rights to use computer software (including video games), databases via Internet, including by providing remote access thereto, including updates thereto and additional functionality;

b) music, books, films:

- provision of rights to use e-books and other electronic publications, information, education materials, graphic images, musical works with or without text, audiovisual works, through the Internet, including by providing remote streaming thereof;

c) advertisement and trade platforms, including:

- providing advertising services in the Internet, including by using internet-based computer and database software, as well as providing advertising space in the Internet;
- provision of services for placement of offers for the purchase (realization) of goods (works, services), property rights in the Internet;

d) search engines and social networks, including:

- rendering services for search and (or) provision of sales leads to the customer;
- providing access to search engines in the Internet;

e) databases, hosting, websites, including:

- storage and processing of data provided that the person submitting such data has remote access to it via Internet connection;
- providing domain names and hosting services;
- provision of services for the administration of information systems and websites in the Internet;
- collecting web page statistics.





WHO IS TAXPAYER OF «GOOGLE TAX»

«Google tax» is laid on non-Russian entities (except those with a permanent establishment in Russia) that provide e-services on the territory of Russia / to the Russian purchasers and receive payments from the ultimate buyers.

Provision of e-services is defined in Item 1 Article 174.2 of the Tax Code as provision of the services through information and telecommunications networks, including the Internet, made exclusively in an automated fashion using information technologies.

Thus, the following example situations are not considered as e-services for the tax purposes in Russia: i. while ordered through the Internet, the delivery of goods (performance of works, rendering of services) is carried out without using the Internet (by post, courier, etc.); ii. when the goods ordered over the network are collected by the purchasers themselves; iii. when the transfer of rights on computer software (including computer games) and databases is conducted on tangible media. It should be noted that e-services also do not include provision of consulting services by e-mail and rendering of services to provide access to the Internet (Item 1 Article 174.2 of the Tax Code).

TAX RATE

The tax base for a «Google Tax» is defined as the cost of services taking into account the amount of VAT (tax gross-up), calculated based on the actual selling price.

For e-services to be rendered and paid from 01.01.2019 the current estimated VAT rate of 16.67% shall be applied (Item 5 Article 174.2 of the Tax Code).

TAX AGENTS: WHEN CALCULATION AND PAYMENT OF VAT IS DONE BY THEM

Starting from January 01, 2019 VAT on e-services shall be calculated and paid by a foreign provider itself both in B2C and B2B cases if it collects payments from the Russian consumers not through the intermediary. In this case the Russian legal entities and individual entrepreneurs shall not act as a tax agent anymore and don't pay such VAT under reverse-charge VAT mechanism. But if e-services are provided by a non-Russian individual entrepreneur (not a legal entity) the Russian businesses are still recognized as a tax agent, which means that they calculate and pay VAT.

The same obligation for the Russian businesses (as well as for the Russian separate subdivisions of the foreign companies) arises when they act as an intermediary participating in settlements with the ultimate purchasers: when such intermediary is a conducting a business Russian entity, Russian individual entrepreneur or a foreign company's separate subdivision (representative office or a branch office) located on the territory of the Russian Federation and already registered with the Russian tax authorities,

this intermediary is recognized as a tax agent and calculates and pays VAT in accordance with Item 5 Article 161 of the Tax Code. But those intermediaries that are subjects of the national payment system as well as telecom operators are not tax agents according to the Russian legislation.

In case the intermediary between the foreign provider and the buyer is another foreign company, conducting a business, such foreign intermediary (entity, not an individual entrepreneur) that collects payments from the Russian consumers is recognized as a tax agent for the purpose of «Google tax» as per Item 3 Article 174.2 of the Tax Code. This intermediary can participate in settlements directly with buyers on the basis of commission agreement, agency agreement or other similar agreements with the foreign provider.

To sum up, the tax agent appears on the scene when the foreign provider is not a company (entity) or when there is an intermediary collecting payments from the Russian consumers.



ONLINE TEST AND REGISTRATION PROCEDURE

The foreign providers shall submit an application for registration to the Russian tax authority as per Item 4.6 Article 83 of the Tax Code not later than 30 calendar days from the date of the beginning of e-services provision.

In case a foreign company is already VAT registered with the Russian tax authority in relation to delivering e-services to Russian individuals, re-registration is not required. To make it easier for the foreign provider to understand whether it is obliged to register or not, the Federal Tax Service of Russia has put on the Internet the short online test on the mentioned above web page <https://lkireg.nalog.ru/en/test>. If the test shows such necessity the company has to fill in and submit the application form on tax registration. This can be done by submitting an application online (<https://lkireg.nalog.ru/en/registration>).

After all necessary data are provided, the access to Online Personal Account will be arranged within 30 working days with notification by e-mail. After that the company shall report to the Russian tax authorities every quarter. Tax returns must be filed and taxes must be paid no later than 25th of the month following the end of a reporting quarter (Items 7, 8 Article 174.2 of the Tax Code).



In summary, a foreign provider of e-services is subject to registration with the Russian tax authorities for VAT purposes if it replies in the affirmative to all 4 questions of the online test, stating that:

1. it is a foreign (non-Russian) company (legal entity or other corporate entity);
2. it is a provider of electronic (online) services or an intermediary that collects payments from the Russian consumers for e-services;
3. it does not run those activities through a Russian representative office or a branch office;
4. it provides electronic services independently (or independently and through intermediaries, but not solely through intermediaries that collect payments from the Russian consumers), or (b) it is an intermediary collecting payments from the Russian consumers.

After the tax registration the foreign provider receives a taxpayer ID («INN») and a tax reason code («KPP») for entering into VAT office with Online Personal Account (<https://lkireg.nalog.ru/en>). You may find on this web page links to the online test described above, application, information (legislation, forms and formats, guidance, news, forum), FAQ and list of VAT registered e-service providers (list of all foreign online service providers registered as VAT payers in Russia, being the public information). As of August 27, 2021 the total number of the foreign providers registered as VAT payers in Russia is 3042 companies (including Google, of course, bringing to mind the unofficial name of this tax).

RESPONSIBILITY FOR VIOLATION

If a foreign provider performs e-services without the needed tax registration it will lead not only to the fine (10% of the income from the rendered services, with a minimum of RUB 40,000 according to Article 116 of the Tax Code), but also to the negative consequences for the Russian buyers of such services, who will no longer be entitled to deduct VAT. As a result, those foreign providers may lose the Russian counterparties and damage their reputation in the Russian market.

PRIVILEGE REVOKED: END OF VAT EXEMPTION FOR LICENSING OF FOREIGN SOFTWARE AND DATABASE

E-services include, inter alia, provision of rights to use computer software and databases via Internet, including by providing remote access to them. Before January 01, 2021 their realization on the basis of license agreements was exempted from VAT as per Sub-item 26 Item 2 Article 149 of the Tax Code, including in relation to the foreign providers. However, since January 01, 2021 this provision has become stricter: amendments to the Tax Code entered into force and the current version of Sub-item 26 Item 2 Article 149 of the Tax Code grants the mentioned above VAT exemption only to those software and databases which are included into the Unified Register of Russian Programs for Electronic Computers and Databases. Along with other requirements for recognizing such programs and databases as domestic they shall not have foreign holders for the purpose to be included into that Register. Therefore, now the foreign holders of software and database shall register with the tax authorities and pay VAT in the manner described above.



VAT MAY STILL BE PAID BY THE RUSSIAN BUSINESSES

As mentioned above, since January 01, 2019 the Russian businesses (unless being an intermediary) can't pay VAT as a tax agent of the foreign providers and, what is more, they can't have a tax deduction if such foreign providers don't perform their duty to register as a VAT taxpayer. However, on April 24, 2019 the Federal Tax Service of Russia (hereinafter «FNS») has issued the Letter No.СД-4-3/7937@, according to which the Russian purchasers of e-services have the right (but not an obligation) to calculate «Google tax» and transfer it to the budget by themselves instead of the foreign provider and later conduct a tax deduction. FNS stipulated that there will be no adverse effects for both sellers (foreign providers) and the Russian purchasers in case of such free will payment. After receiving VAT payment from the Russian purchaser FNS claims that it will not demand the same payment from the foreign provider. But this neither disengages the foreign companies from an obligation to register as a VAT taxpayer, which is needed also for the Russian buyers to conduct a tax deduction, nor from submission of a VAT return with zero values (if other operations shall not be reflected in the VAT tax return).

FNS does not explain why it is possible to receive in payment VAT sums from the Russian purchasers instead of the foreign providers. Moreover, in its previous Letters with clarifications the Russian tax authorities were against tax deductions by the Russian buyers in situations when payments of VAT were made instead of a foreign provider, but in the Letter above we see that FNS has changed such approach.

In our opinion this new approach may be explained by the current rule that according to Article 45 of the Tax Code the payment of taxes, duties, fines may be conducted by a third person (not a taxpayer or tax agent). According to the Russian law the tax authorities shall act in accordance with the written clarifications of the Ministry of Finance of Russia, including the letters of FNS published on its official website until they are challenged by the appropriate Russian high court. In case the letters and clarifications given by the tax authorities are cancelled the relevant penalties and fines shall not be collected from the taxpayers.



BOTTOM LINE

To sum up, if the non-Russian companies provide the Russian purchasers with e-services, including streaming music, films, gaming services (see the full list in English in the online test mentioned above or in Article 174.2 of the Tax Code), they have to:

- register with the Russian tax authority;
- submit VAT returns quarterly;
- calculate and pay VAT at a rate of 16.67% (inclusive tax rate).

According to the clarifications from the Russian tax authorities, payment of VAT may be done by the Russian businesses themselves alternatively to the foreign providers. The grounds of such free will payment by the Russian purchasers are not stipulated and may be ascertained by the taxpayer and the Russian voluntary payer unless they contradict the effective legislation. The way of contractual arrangements of this

is important and will influence the further tax consequences of such free will payment. But such voluntary payment does not release the foreign provider from duty to register with the Russian tax authorities as well as from the obligation to submit a VAT return (even with zero values after the willful payment by the Russian purchaser).

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Contact for consultation



OLGA YATSALO

Senior international lawyer
Legal & Tax practice

+7 (495) 740-16-01

contact@delprof.ru

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