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BUILDING BRIDGES

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Changes in tax laws 2022

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→ Overview

On January 1, 2022 numerous changes to the Tax Code of the Republic of Belarus (the “Tax Code”) came into force, which became one of the most significant in recent years, affecting both businesses and individuals.

Several changes directly affect foreign companies operating at the Belarusian market as well as the course of business exercised by such companies.

Therefore, it is of essence for foreign entrepreneurs represented in Belarus to review the relevant business processes in order to ensure their compliance with the new requirements of Belarusian tax laws.

Below please find the summary of the key changes in connection with the entry into force of the new edition of the Tax Code.

→ Foreign businesses

Registration for tax purposes

As from July 1, 2022 the following foreign companies and individual entrepreneurs are obliged to file for registration with the tax authorities in Belarus:

- the ones rendering services in electronic form;
- the ones performing a remote sale of goods.

Previously, such an obligation has been imposed only on foreign companies providing services in electronic form towards individuals.

In the light of the recent changes, this rule shall apply regardless the purchaser of goods (services), if the volume of sales of goods (services) to Belarusian customers exceeds the amount equivalent to EUR 10,000 (net of VAT).

In connection with the above changes the Tax Code will be supplemented with new definitions such as “electronic trading platform”,



“electronic remote sale of goods”, “foreign companies, foreign individual entrepreneurs, carrying out electronic remote sale of goods”.

When it comes to the procedure of tax registration, special attention should be paid to the increase of the validity period of the extract from the trade register provided by a foreign company. Starting from January 1, 2022, the extract should be issued no later than 6 months before the date of its submission for registration towards a Belarusian tax authority (previously, this period was just 3 months).

Permanent establishment

From the practical perspective, there may be the case when a foreign company performs works or renders services at different locations of the customer's facilities in Belarus, while the duration of works (services) at each site separately do not exceed the period, triggering creation of a permanent establishment in Belarus. At the same time, such activities of a foreign company at various sites in Belarus are of a long-term nature.

This case was explicitly resolved in the revised Tax Code. Thus, if a foreign company performs works (renders services) in Belarus for a period exceeding 180 days continuously or in aggregate in any 12-month period, such activities are treated as the ones creating a permanent establishment of a foreign company from the commencement of their performance, even in case of their implementation at different sites.

→ Withholding tax (WHT)

Confirmation of tax residency

The revised Tax Code extends the list of cases where a certificate of foreign tax residency is not required for the purposes of avoidance of double taxation.

Thus, the tax residency certificate shall not be submitted by foreign companies already registered at tax authorities in Belarus, if taxable income is received by foreign companies:

- which render services in electronic form, as well as
- which are engaged in a remote sale of goods.

Avoidance of double taxation

The new version of the Tax Code clarifies the criteria for recognizing a foreign organization as a recipient of income for the purposes of applying provisions of double taxation treaties.

Thus, a foreign company is not recognized as the recipient of income if it mainly carries out financial and (or) investment activities performed directly by management bodies members without involvement of other duly qualified employees or individuals in its day-to-day operation.

Taxation of certain services

The income being subject to WHT includes, *inter alia*, income out of services for installation, setting up, inspection, maintenance, measuring, testing of lines, machinery, equipment, devices, appliances, facilities, intangible assets located in Belarus.

At the same time, there is an exception out of this rule: WHT shall not be levied with respect to income received from the above services, provided for in a foreign trade contract for acquisition of “tangible fixed assets” (equipment, devices) as an indispensable condition of such contract.

From 2022, the exemption also applies to the above services rendered in respect of intangible assets (e.g., software).

Clarification of the definition “dividends”

Since 2022 for the tax purposes dividends also comprise income from trust management of property constituting an investment fund, paid to the owner of an investment unit.

Thus, if the owner of an investment unit is a foreign company, the abovementioned income is subject to WHT as dividends at the rate of 12 percent.

→ Value added tax (VAT)

New VAT payers

Foreign individual entrepreneurs will be added to the list of VAT payers in Belarus. As from July 1, 2022, foreign individual entrepreneurs as well as foreign companies are obliged to calculate and pay VAT in Belarus if they render services in electronic form or sell goods online to Belarusian customers.

VAT exemption

The following operations of foreign companies, which are not registered for tax purposes in Belarus, have been additionally exempted from VAT:

- rendering services in Belarus towards Belarusian companies and individual entrepreneurs in the field of conformity with the requirements of technical regulations and standardization rules;
- rendering services in Belarus towards Belarusian companies and individual entrepreneurs related to their participation in conferences, forums, which are held in a remote form.

Remote sales

On July 1, 2022 the provisions of the Tax Code, setting the place of sale in case of electronic remote sale of goods enter into force. The territory of the Republic of Belarus will be recognized as the place of sale if the goods are

actually located in Belarus at the time of completion of their delivery to the Belarusian customer. The said rules will directly affect foreign online retail platforms that sell goods at the Belarusian market.

VAT applied to medicines

As from January 1, 2021 import of medicines in a bulk form (unpacked products) into Belarus has

been subject to VAT at the ordinary rate of 20 percent.

Meanwhile, imported medicines that have passed all stages of the technological process, with the exception of wrapping and packaging, are now subject to a reduced VAT rate of 10 percent, in case the respective conclusion of the Ministry of Health of the Republic of Belarus is obtained.

→ Corporate income tax (CIT)

Direct contribution to company's assets

In 2021 amendments to the law “On Business Companies” came into force, allowing shareholders to make gratuitous contributions into assets of Belarusian business companies. Such shareholders’ contributions do not affect the amount of the company’s authorized capital and the shares of the shareholders.

The revised Tax Code explicitly stipulates that such shareholders’ contributions towards Belarusian companies are not recognized as:

- sales, and, accordingly, do not entail tax implications in terms of VAT;
- non-operating income for the purposes of calculating corporate income tax.

Advertising expenses

Since 2022 the approach to the regulation of advertising expenses has been changed. Currently, the certain types of advertising expenses expressly specified in the Tax Code can be attributed to costs for the purposes of corporate income tax without limits on their amount.

The aforesaid types of advertising expenses include, in particular, the expenses for advertising in the mass media, illuminated and other outdoor advertising.

The rest of advertising expenses are considered as “limited miscellaneous expenses”. For corporate income tax purposes, the deductible amount of limited miscellaneous expenses is limited to the amount not exceeding 1 percent out of the company’s sales proceeds.

→ Transfer pricing

The transfer pricing rules (“TP”) have faced a significant modification. As of now, loans and credits are also covered by the TP rules. This means that any loan (credit) agreements are subject to TP if they were entered into between the following related parties:

- A Belarusian resident and a foreign resident;
- Belarusian residents, one of which pays corporate income tax and another is exempted from corporate income tax.

The TP rules shall apply if the total amount of transactions with one counterparty in a calendar year exceeds:

- BYN 2,000,000 (ca. EUR 670,000) – for large taxpayers;
- BYN 400,000 (ca. EUR 135,000) – for other companies.

→ Other changes

Scope	Overview
Winding-up tax audits	In-house tax audits and inspections, which are held upon winding up of companies and individual entrepreneurs in some cases may not be conducted (the tax authorities can only review the information already available).
Personal income tax on vaccinations	Incomes in the form of preventive vaccinations, which have been paid up or reimbursed at the expenses of a company or an individual entrepreneur, are not subject to personal income tax.
Filing tax returns by tax agents	Tax agents are required to submit personal income tax returns to the tax authorities on a quarter basis no later than the 20th day of the month following the reporting quarter.
Real estate tax	Before 2022, one apartment owned by an individual was exempted from real estate tax. Since January 1, 2022, this exemption has been revoked, which means that, by default, each apartment is subject to real estate tax.
Land tax	<ul style="list-style-type: none"> - From January 1, 2023 the land tax rates for land plots without permanent facilities on them shall be multiplied by three times. - This provision applies to land plots provided to companies for the construction and (or) maintenance of permanent structures on them, where within 3 years from the date of their provision: <ul style="list-style-type: none"> - state registration of the creation of the last of the built-up permanent structures has not been made (if it is subject to state registration); - the last of the built-up permanent structures has not been accepted for operation (if its state registration is not required).
Corporate income tax	<ul style="list-style-type: none"> - From 2023 local authorities are entitled to increase standard corporate income tax rate (18 percent) for certain categories of taxpayers who pay corporate income tax in full to the respective local budgets, but no more than by 2 percentage points. - Thus, starting from January 1, 2023, the corporate income tax rate for certain taxpayers can be set in the amount of 20 percent.
Investment deductions	<ul style="list-style-type: none"> - The limits of the investment deductions have been increased: <ul style="list-style-type: none"> - from 15 percent to 20 percent of the original cost or the cost of investment in their reconstruction – for buildings, structures and transfer devices used in business activities; - from 30 percent to 40 percent of the original cost or the investments cost in their reconstruction – for machinery, equipment and vehicles used in business activities.

Scope	Overview
Ultimate beneficial owners	<ul style="list-style-type: none"> - The revised Tax Code sets the obligation of taxpayers being business companies to identify their ultimate beneficial owners every year before December 31 and to report information about them at the request of the tax authorities as well as the State Control Committee. - The information to be obtained with respect to the ultimate beneficial owner includes one's surname, first name, patronymic name, country of residence and the date and basis of obtaining ultimate beneficial owner's status subject to the rules provided by the tax laws.

→ To-do steps



- revise approaches to determination of certain company's expenses in accounting and tax records;
- consider changes in the TP rules and ensure the compliance of certain transactions with such rules;
- monitor availability of up-to-date information on the ultimate beneficial owners of the company.

It is of crucial importance for companies operating in Belarus to review their business processes from the perspective of their compliance with new requirements of the Tax Code and adopt certain measures, in particular:

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