



**Business meeting organized by the AEB  
Taxation Committee**

**VAT OFFICE OF A FOREIGN  
COMPANY FOR E-SERVICES  
STARTING FROM 2019 - ALL  
FLAGS WILL BE VISITING US?**

# **Alina Lavrentieva**

Chairperson of the AEB Taxation  
Committee, PwC

***OPENING REMARKS***

# **Application of the new provisions of the Russian Tax Code – key issues:**

- Qualification of various types of services as electronic ones
- Reporting and tax implications for foreign suppliers
- VAT recovery by Russian buyers
- Supplying non-electronic services by electronic service suppliers: issues to discuss
- Specifics of e-services taxation in the Eurasian Economic Union



# **Qualification of different types of services as electronically supplied services**

**Vladimir Voinov**

Pepeliaev Group

## ***What are electronically supplied services?***

### **General definition:**

Electronically supplied services are delivered:

- over the Internet (an electronic network);
- automated;
- with the use of information technologies.

# ***The list of electronically supplied services***

## **Software and video games**

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

## **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.

## **Advertisement and trade platforms**

- 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;
- Rendering services via Internet to provide technical, organizational, informational and other opportunities, implemented with the use of information technologies and systems, to establish contacts and (or) conclude transactions between sellers and buyers (including provision of real time Internet based trading platforms, where potential buyers offer a price by an automated procedure and the parties are notified about the sale by receiving automatically generated messages).

## **Search engines and social networks**

- Rendering services for search and (or) provision of sales leads to the customer;
- Providing access to search engines in the Internet;
- Provision of automatic services via Internet when customers enter specific data; automatic services for data search, selection and sorting upon requests, providing selected data to users through information and telecommunication networks (in particular, real-time summaries of the stock exchange, real time automatic translation);
- Providing and (or) maintaining of commercial or personal presence in the "Internet", support for users' electronic resources (web-sites and (or) Internet-pages), providing access to such resources to other users, enabling users to modify them.

## **Databases, hosting, websites**

- Storage and processing of data provided that the person submitting such data has remote access to it via Internet connection;
- Real time provision of computing power to accommodate information in the information system;
- Providing domain names, providing hosting services;
- Provision of services for the administration of information systems and websites in the Internet;
- Collecting web page statistics.

## ***What is not covered as electronically supplied services?***

### **Non-exhaustive list of examples of services which includes:**

- online sales of goods or services that are delivered/performed without the use of the Internet;
- sales of licenses for software and databases on tangible storage;
- provision of consulting services by e-mail;
- provision of Internet access services.



# **Russian VAT Implications for Foreign Suppliers of Digital Services**

**Vladimir Konstantinov**  
PwC



# Action Points for Suppliers

***Registration?***

***Procedure of registration***

***FTS site for VAT registration:***

***<http://lkio.gnivc.ru/en/registration>***

# Action Points for Suppliers



FEDERAL  
TAX SERVICE

VAT OFFICE FOR ONLINE SERVICE PROVIDERS

РУС ENG

SIGN IN



## Application for registration

ABOUT THE COMPANY

SERVICES PROVIDED

CONTACT DATA

### About the company

INN (Russian tax ID):

How do I fill in this field?

Full company name (in Russian transcription)\*:

Full company name (in Latin transcription)\*:

Country of registration (incorporation)\*:

Full street address in the country of registration (incorporation) (in Russian transcription)\*:

Full street address in the country of registration (incorporation) (in Latin transcription)\*:

Company website address\*:

Company e-mail address\*:

How do I fill in this field?

### Other identifying information

Company trade name (brand) (in Russian transcription):

Trade name (brand) of the foreign company (in Latin transcription):

Registration number issued by a registering body in the country of registration (incorporation)\*:

**Two** contacts of company's representatives

Some content should be translated into **Russian**

# Action Points for Suppliers

## Payments of VAT to the budget

- Payment from abroad
- Payment by third party

# Action Points for Suppliers

## VAT return preparation

- Deadline for 1Q 2019 → **25<sup>th</sup> April 2019**

## Desk audit

- Up to 6 months

# Eurasian Economic Union

- Special place of supply rules are established by EEU Treaty for VAT purposes
- No special VAT rules are established by EEU Treaty for digital services

# **VAT recovery on ESS fees**

## **Provision of non-ESS by ESS suppliers – disputable tax issues**

**Arseny Seidov**  
Baker McKenzie

## **Input VAT recovery – “direct” ESS purchase structure**

### **Eligibility for VAT recovery - criteria**

- Foreign supplier is tax registered in Russia with Tax Inspectorate No. 7
- Necessary documents: (1) agreement and/or payment documentation with VAT amount, Russian TIN and KPP of ESS supplier, (2) settlement documents confirming payment to ESS supplier (with VAT amount indicated as a separate line item)
- Broad definition of “settlement documents”: bank transfer orders, money orders, payment orders, etc.
- Indication of VAT amount in commercial invoices as a separate line item?

### **Due diligence**

- Does the Russian customer have to check whether ESS supplier is tax registered in Russia for purposes of VAT regime on ESS?
- Should it request any supporting documents?
- Role of defense file and burden of proof

# Input VAT recovery – foreign treasury company structure

## General comments

- Foreign intermediary of ESS supplier collecting proceeds from Russian customers (including related entities) is required to register, report and pay VAT to the Russian budget
- ESS suppliers are relieved from the tax registration requirement in Russia if they do not collect revenues directly from Russian customers

## Eligibility for VAT recovery – controversial issue

- Technically, the Russian tax rules grant the right to recover VAT, among other things, when ESS are “*acquired from foreign organizations registered for tax purposes*” (Article 171(2.1) of the Russian Tax Code)
- Based on the literal interpretation of the rules, there is a risk that the VAT credit may not be granted to Russian customers
- Probably, this was not the intention of the regulator and the Parliament and can be considered a legislative gap and deficiency in the legal drafting, but the risk exists
- This issue needs further clarification by the regulator and/or legislative adjustment



# Input VAT recovery – Russian cash collection agent structure

## General comments

- A Russia-based entity (could be a related company) collecting revenues directly from Russian customers pursuant to an agency, commission or a similar contract is required to register, report and pay VAT to the Russian budget
- ESS suppliers are relieved from the tax registration requirement in this case

## Eligibility for VAT recovery – criteria

- VAT invoice is required to recover input VAT (lack of regulation)
- Russian agent is required to issue VAT invoice to Russian customer in two copies: one copy is registered in the sales ledger and another copy is provided to the customer
- No obligation to register VAT invoice in the ledger of invoices received and issued

## Controversial issues and risks

- If a Russian agent acts in the name of a foreign supplier which entity is indicated as the “seller”?
- Dependent agent PE – where is the borderline?
- “Artificial” structures – risk of negative attitude of regulator

## Input VAT recovery – ESS and other non-ESS

### What if...

- the agreement provides for ESS and other non-ESS (e.g. consulting, marketing, technical maintenance and etc.) for a bundled fee?

### Required documents for VAT recovery

- **“Direct” ESS purchase structure and foreign treasury company structure**
  - VAT invoice OR/ AND (1) agreement and/or payment documentation with VAT amount, Russian TIN and KPP of the ESS supplier, (2) document confirming payment to ESS supplier (with VAT amount indicated as a separate line item)?
  - This issue needs further clarification by the regulator (form of VAT return to be adopted)
- **Russian cash collection agent structure**
  - VAT invoice is required to recover the input VAT

## Provision of non-ESS by foreign ESS suppliers (1)

### What if...

- the foreign ESS supplier provides non-ESS (e.g. consulting, marketing, technical maintenance and etc.) to other Russian customers?

### Force of attraction of the Eriell Case

- If a foreign company is tax registered in Russia, the reverse charge mechanism does not apply (*Resolution of the Constitutional Court No. 2518-O, dated November 24, 2016*)
- I.e. the foreign supplier should report and pay VAT on all its Russian sales subject to VAT

### Position of the Russian Ministry of Finance

- If a foreign company is tax registered in Russia, including on the ground of having the Russian bank, then the obligation to pay VAT must be performed by the foreign company itself (*Letters of the Russian Ministry of Finance No. 03-07-08/66769, dated September 18, 2018, No. 03-07-08/66314, dated September 17, 2018, No. 03-07-08/65697, dated September 13, 2018*)

## **Provision of non-ESS by foreign ESS suppliers (2)**

### **Possible results**

- If a foreign ESS supplier is tax registered in Russia just by virtue of providing ESS to Russian customers, it will likely have to include non-ESS revenues subject to Russian VAT in its joint VAT return to be submitted electronically to Tax Inspectorate No. 7
- Such revenues may include those generated under other agreements with Russian customers that provide for no ESS
- The Federal Tax Service declared that it would adopt a new form of VAT return accordingly to cover non-ESS Russian source income

### **Input VAT recovery by foreign ESS supplier**

- Foreign ESS suppliers tax registered in Russia by virtue of providing ESS to Russian customers do not have the right to recover the input VAT when purchasing goods, works, services in Russia (Article 174.2(6) of the Russian Tax Code)
- Foreign suppliers providing exclusively non-ESS services are not expressly deprived of the right to recover input VAT (practically, there is a risk of a Russian PE if the right to VAT recovery is claimed; very limited court practice)

# Experts panel discussion

**Experts: Arseny Seidov, Baker McKenzie;  
Vladimir Konstantinov, PwC; Vladimir Voinov,  
Pepeliaev Group**

# **Alina Lavrentieva**

Chairperson of the AEB Taxation  
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***CLOSING REMARKS***