



NEW CHALLENGES  
NEW SOLUTIONS

# DOING BUSINESS IN RUSSIA 2023



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# 01 OUR PROFESSIONAL SERVICES IN RUSSIA



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We are a leading professional tax and legal services provider in Russia with 600+ employees and partners, 9 offices around the country and broad market coverage across all industry segments.

We advise our clients on the latest changes and challenges in the law and in the business environment and offer support with acquisitions and disposals. We also provide advice and guidance to our clients on structuring and managing routine business functions in the most efficient way from a tax and legal perspective.

Recent political and market developments in Russia and the wider world have created a great deal of anxiety for shareholders and company managers, but this is also a time of opportunity. We are confident that, with us on their side, our clients will be ideally placed to face present and future challenges and to take full advantage of new opportunities as and when they arise.

This guide addresses the key areas of law and regulation impacting investors in Russia.

B1 means endeavoring together with our clients to be the first in our field, to work as one united team and to be leaders in whatever we do.

In over 30 years in Russia, we have assembled a strong team of professionals with broad expertise and a wealth of experience in delivering challenging projects. B1 Group is based in nine cities: Moscow, St. Petersburg, Novosibirsk, Ekaterinburg, Kazan, Krasnodar, Rostov-on-Don, Vladivostok and Togliatti.

We help clients find new solutions, grow, transform and operate their business as well as strengthen their financial and human capital.

# 02 ORGANIZING BUSINESS ACTIVITIES



# TYPES OF BUSINESS PRESENCE

There are several types of business presence a foreign company may have in Russia, depending on the intended scope of activities:

- ▶ **Representative office**

A representative office is considered a subdivision of a foreign company in Russia rather than a separate legal entity. It must still be accredited by the Russian tax authorities. The activities of a representative office must be limited to representing and protecting the interests of the headquarter entity in Russia.

- ▶ **Branch of a foreign company**

A branch is not considered a separate legal entity. It must be accredited by the Russian tax authorities. However, in contrast to a representative office, a branch may carry out all or part of the functions of the foreign head office, including commercial activities.

- ▶ **Establishing a Russian subsidiary or acquiring shares in an existing Russian company**

A foreign company may establish a subsidiary in Russia. The most common legal forms in Russia are *limited liability company* and *joint stock company* (see below for details). Instead of establishing a new legal entity, a foreign company may also acquire shares in an existing Russian legal entity. A foreign investor (whether a company or an individual) may own up to 100% of shares in a Russian legal entity.

- ▶ **Entering into a simple partnership agreement**

A foreign entity may conclude a joint activity agreement with a local partner and form a simple partnership. A simple partnership allows for the partners' assets to be pooled for the purpose of carrying on joint activities without creating a new legal entity, with one of the partners taking responsibility for managing the partnership and ensuring its statutory compliance.

## BASIC CORPORATE GOVERNANCE REQUIREMENTS

### THE RUSSIAN LEGAL SYSTEM

The Russian legal system is a civil law (codified) system. Unlike common law countries, the main source of law in Russia is the statutes and regulations adopted by legislative and executive authorities.

The President of Russia issues edicts on particular matters required for the implementation of federal laws. The Government of Russia issues decrees and regulations which must comply with federal legislation and the President's edicts

As the next tier of regulation, state executive authorities (federal ministries, services and agencies) issue regulations on matters within their competence (the Ministry of Transport, the Federal Tax Service, the Federal Anti-Monopoly Service, the Federal Customs Service, etc.).

## THE COURT SYSTEM

The court system in Russia consists of general and arbitration courts. General courts consider cases involving individuals (whether civil law, administrative law or criminal law cases), whereas arbitration courts consider cases arising from business relationships of legal entities and individual entrepreneurs, including tax claims, claims arising from commercial contracts, and corporate disputes.

Within the arbitration court system, first instance proceedings commonly last from four to six months. However, it is compulsory to file a pre-litigation claim one month ahead of filing a claim with an arbitration court. The duration of proceedings in each appeal instance rarely exceeds two months.

The parties may also refer a commercial dispute to commercial arbitration, which is carried out in Russia both through permanent arbitration institutions and by ad hoc arbitration.

## REGISTRATION, CERTIFICATION AND DISCLOSURE

Russian law requires certain commercial transactions and civil states to be officially registered in state registers which are made available to the public. In some cases, state registration is essential for the enforceability of a transaction, while in others it is just an element of mandatory disclosure.

The State Register of Legal Entities contains information about Russian legal entities and their founders, CEOs, share capital, re-organization status and, in the case of LLCs, the owners of participating interests in the company and encumbrances over them.

State registers of intellectual property (trademarks, inventions, utility models, industrial designs, etc.) contain information about particular IP assets, such as the rights holders and any encumbrances that are required to be registered.

Notaries public in Russia are officials who certify (notarize) legal and other documents. Russian law requires certain commercial transactions, corporate decisions and one-party documents (such as powers of attorney) to be certified by a notary public to be legally valid and enforceable.

## REGISTRATION OF RIGHTS IN REAL ESTATE

Rights in real estate typically arise only upon their state registration, i.e., the registration of title to real estate is a mandatory precondition for the execution of any transaction involving that real estate.

State registration records are entered in the Unified State Register of Real Estate, which is maintained by the Federal Service for State Registration, Cadastral Records and Cartography.

# KEY MATTERS OF CORPORATE LAW

Russian corporate law provides for two categories of legal entity: (1) commercial legal entities and (2) non-commercial legal entities. Commercial legal entities generally include companies, partnerships and commercial co-operatives, and may be private or public. Non-commercial legal entities include funds, associations, agencies, etc.

Every company must have a Charter (Articles of Association) setting out general information about the company and regulating the general principles of the company's corporate structure and the status of its shareholders/participants. The Charter and any amendments to it must be approved by a General Meeting. Although the Charter is not made available to the public, it must be registered in the State Register of Legal Entities.

The most common types of company are a limited liability company (LLC) and a joint stock company (JSC). There are a few distinctions between LLCs and JSCs which, depending on the business circumstances, make one or the other more suitable for an investor.

## SHAREHOLDERS' AGREEMENTS

Shareholders in a Russian company may enter into a shareholders' agreement ("corporate contract") that includes an undertaking to vote in a particular manner at general meetings and special provisions regarding the disposal of shares and other matters. The agreement may be governed by Russian law or by foreign law provided that there is a foreign element involved (i.e., where some or all of the shareholders are non-Russian persons).

## REPRESENTATION OF FOREIGN COMPANIES

Foreign companies may operate in Russia without creating a local legal entity through the establishment of a branch or a representative office. Such branches/representative offices are not bound by any Russian corporate law rules on corporate governance, net assets, extraordinary transactions, and so on.

## CONTRACT LAW

### Negotiating and executing an agreement

Russian law establishes freedom of contract: parties are free to enter into an agreement and to determine its terms and conditions. A contract is deemed to be concluded if the parties have reached agreement on all essential conditions of the contract as prescribed by law or expressly specified by the parties (typically the law only treats the subject-matter as essential, i.e., the asset to be sold, the property to be leased, the service to be rendered, etc.).

The law requires the parties to negotiate a contract in good faith.

### Invalidation or termination of an agreement

Under Russian law, a contract may be declared invalid only in certain cases specified in the Civil Code (such as fraudulent or sham transactions, contracts made by an incapable person, under duress, in violation of the law, etc.). Besides these cases, a contract is void when the parties have not been able to reach an agreement on all essential conditions stipulated by the law or by the parties themselves.

## THE FINANCIAL SYSTEM

Credit institutions, non-state pension funds, insurance companies and investment funds are the major pillars of the Russian financial system.

The Central Bank of the Russian Federation (the Bank of Russia) acts as the single financial mega-regulator responsible for oversight of the entire financial segment of the Russian economy, with authority extending from the supervision and licensing of financial institutions, including exchanges, to regulation and registration of securities offerings. In addition, the Bank of Russia is vested with the exclusive right to issue Russian national currency — the Russian ruble — and is in charge of overall monetary policy in Russia.

### Banking system

Banking operations in Russia may be carried out only by licensed credit institutions, which include banks and non-bank credit institutions. Banking operations are listed in the relevant statute and include: accepting deposits (in cash and precious metals) from legal entities and individuals, placement of funds and precious metals, opening and maintaining bank accounts (in cash and precious metals) for legal entities and individuals, execution of money transfers and electronic money transfers, cash collection services and foreign currency exchange.

### Insurance companies

In the Russian Federation, insurance services may be provided only by licensed insurance companies. The types of activity that are subject to licensing include property insurance, liability insurance, accident insurance, health insurance, life insurance and business risk insurance, as well as reinsurance and insurance brokerage.

An insurance company may not simultaneously hold licenses to provide life insurance (a “life insurance company”) and property, liability and business risk insurance (a “property insurance company”). However, both types of insurance company may provide health and accident insurance.

### “Know Your Customer” procedures

The Anti-Money Laundering Law is the primary legislative act in Russia aimed at preventing money laundering activities and the financing of terrorism and is supported by numerous recommendations, binding instructions and regulations issued by the Bank of Russia and other authorities.

The Anti-Money Laundering Law requires institutions that engage in monetary transactions, including all kinds of financial institutions, to establish mandatory internal protocols for client and payment acceptance.

## CURRENCY CONTROL

Russian currency control rules differentiate requirements for Russian currency residents and currency non-residents, and currency residence criteria are different from those established for tax purposes.

The law imposes a variety of restrictions and compliance requirements for certain transactions depending on the status of the counterparties (i.e., currency resident vs currency non-resident) and on the types of transaction.

Since February 2022 there have been numerous changes to currency control regulations, some of which appear to be of a temporary nature. Accordingly, it is essential to clarify the status of any proposed transactions from a currency control perspective before they are executed.

## COMPETITION LAW

Russian law requires certain transactions involving Russian and foreign companies, as well as assets located in Russia, to be pre-approved by the Russian authorities before the deal can be closed. These pre-approval regimes may be subdivided into the following groups:

- ▶ Competition sector
- ▶ Natural monopolies sector
- ▶ Financial institutions sector
- ▶ Foreign investments sector

A particular transaction may fall within the scope of one or more sector-specific regulations at the same time, and sometimes the relevant pre-approvals must be obtained in a specific order for clearance to take full effect.

The Federal Anti-Monopoly Service (FAS) is the Russian competition authority involved in most merger control procedures. Sometimes the competition authority performs these functions alone, but there are situations where other authorities also become involved, such as the Bank of Russia (in the case of financial institutions) or the Russian Government (in the case of foreign investments in strategic companies).

## LICENSING

### Permits for certain activities

Under Russian law, certain types of activity may be carried out only by a person who has obtained the relevant license or other type of permission. Licenses allow recipients to engage in a particular activity on a permanent basis (typically with a lifetime license). There are various statutes regulating licensing requirements.

### Licenses for subsurface access

A person intending to extract minerals must obtain a license from the state: all mineral resources located on the territory of Russia or its continental shelf and lying beneath the surface are deemed to be the property of the state.

A license is granted to a specific person for a specific underground area to search for, explore or extract a specific mineral over a specific period of time and may be transferred to another person only in certain cases specified by law.

### Environmental permits

Under Russian law, any activity that may have an adverse impact on the environment is subject to (a) the issuance of a special permit or a license, (b) the establishment of limits with respect to the amount of such impact/pollution, (c) the payment of a fine for negative impact, and (d) liability for violations.

### Data Protection and Privacy

Personal data protection is regulated in Russia by the Personal Data Law. In addition, in 2013 Russia became a party to the European Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.

The Personal Data Law applies to all personal data processing operations occurring within Russia. In addition, recent case law includes instances in which the Russian data protection authority (Roskomnadzor) has intervened to protect the rights of Russian data subjects in matters of the processing of personal data abroad.

## Regulation of the Digital Sphere

Russian law defines such terms as digital rights, smart contracts and big data agreements:

- ▶ digital rights are contractual and other rights which are determined according to the rules of the information system
- ▶ smart contracts are “self-executing agreements” where the obligations of the parties are performed automatically upon the occurrence of certain events
- ▶ big data agreements are agreements on the collection and provision of large blocks of non-personalized data.

Specific legislative acts have been issued to regulate the set-up and operation of investment platforms (crowdfunding), financial platforms (marketplaces) and digital financial assets.

Cryptocurrency is defined by the Digital Financial Assets Law, which also regulates the circulation of cryptocurrency. Currently, there is no legal framework for any other activity involving cryptocurrency (such as mining and related transactions). In February 2022, the Russian Government passed a policy statement regarding the creation of such a legal framework. A bill is currently being drafted to establish requirements governing relevant information systems, Russian operators of cryptocurrency exchanges, foreign cryptocurrency exchanges, AML identification of clients, limits for non-qualified investors, etc.



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## HOW CAN B1 HELP?

At B1 Law we have developed client-focused legal services which we offer in close collaboration with other service lines to provide our clients with high-quality, multi-disciplinary advice in a cost-competitive manner. Our services cover the areas outlined below and many more.

- ▶ Company law:
  - Day-to-day advice to companies of all legal forms on any corporate and commercial legal matters
  - Effective planning and implementation support for corporate re-organizations
  - Domestic and cross-border corporate transactions, including mergers, acquisitions and joint ventures, as well as equity investments and change of control transactions
  - Support and advice on devising and implementing corporate compliance programs
  - Corporate legal secretarial services
- ▶ Corporate governance
- ▶ Commercial law
- ▶ M&A support
- ▶ Shareholder controversy
- ▶ Anti-monopoly compliance:
  - Agreements with provisions that may restrict competition
  - Activities resulting in restriction of competition
  - Improper pricing of goods or services
  - Limitation of access to goods or services on a certain market or segments thereof
- ▶ Comprehensive turnkey services for IP:
  - Brand protection strategy development and implementation (including registration of “non-standard” trademarks)
  - IP asset management system implementation (including identification and review of IP rights)
  - IP rights due diligence, including compliance with open-source licenses
- ▶ Effective solutions for HNWIs:
  - Top holding structures for business and private assets (setting up and restructuring)
  - Structuring of personal investments (JVs, LP/GP structures, debt financing)
  - Succession planning
  - Family law advice (prenuptial agreements and division of assets)
  - Restrictions applicable to Russian residents
  - Reporting requirements of Russian residents
  - Sale and lease of residential real estate
  - Currency control advice
- ▶ Full-scope legal support with all real estate related issues:
  - Real estate transactions
  - Real estate investment and financing
  - Construction and EPC
  - Brownfield and greenfield development
  - Legal due diligence of land plots, buildings and premises
  - Leases
  - Real estate private equity and investment funds
  - Regulatory requirements
  - Support with registration of title to real estate
  - Green buildings
  - Hospitality
  - PPP & Concession
- ▶ Assistance with implementation of infrastructure and PPP projects in the following areas:
  - IP/IT
  - Transport (roads, highway maintenance, airports, ports, railways)
  - Social infrastructure (educational institutions, courts, prisons and social services)
  - Healthcare
  - Conventional and renewable electricity generation
  - Waste and wastewater treatment
  - PPP secondary market (project execution, re-negotiation of agreement, disputes, etc.)

# 03 ACCOUNTING AND TAX COMPLIANCE, REPORTING REQUIREMENTS



# MAIN STATUTORY REQUIREMENTS FOR RUSSIAN LEGAL ENTITIES

All companies registered in Russia must follow Russian accounting and tax rules in maintaining accounting and tax records and preparing financial statements, tax returns and other reports required by Russian law.

Russia has a complex accounting and tax environment. Key issues to be considered are highlighted below. The information provided is general in nature and should not be relied upon as professional advice.

## ORGANIZATION OF STATUTORY AND TAX ACCOUNTING

The director of a company has a duty to organize the maintenance of accounting records and the storage of accounting documents. The director must assign responsibility for maintaining accounting records to a chief accountant or another executive officer of the company or conclude a contract for the provision of accounting services. In some cases, the director himself may assume responsibility for maintaining accounting records.

Taking guidance from the accounting and tax legislation of Russia and regulatory acts of bodies in charge of accounting and tax matters, companies must independently develop and approve accounting policies based on their structure, industry requirements and other aspects of their activities.

Companies must ensure the proper storage of their documentation for periods determined by state archiving rules. Primary documents, accounting and tax ledgers and tax returns must be retained for at least 5 years after the reporting year; financial statements and auditors' reports on financial statements must be retained permanently. A company must store accounting documents and information contained therein and locate relevant databases on the territory of Russia.

## PRIMARY DOCUMENTS

Every transaction or event must be supported by a primary document (acceptance certificate, delivery note, etc.). It must be drawn up at the time that the transaction or event occurs or, if this is not possible, immediately after its occurrence.

Primary documents must be prepared using either prescribed standard forms of primary accounting documentation or forms developed by the company itself and approved as part of its internal accounting policies.

Primary documents must be stored in the form in which they were originally prepared (paper or electronic form).

## ACCOUNTING AND TAX LEDGERS

Data contained in primary documents must be promptly recorded and stored in accounting and tax ledgers, which are the sole basis for compiling statutory reports.

Accounting records must be maintained using the double entry system based on the Chart of Accounts approved by the Russian Government. Every company must have a working chart of accounts tailored to its business, which must be approved as part of the company's internal accounting policies.

A Russian company as a taxpayer is obliged to maintain tax ledgers for tax purposes which record information needed to calculate tax bases for various taxes applicable to the company. This means that, in addition to statutory accounts and ledgers, companies must keep separate records and ledgers for tax purposes which are sourced from the same primary

documents and in which tax adjustments are made as and when a transaction is recorded. Accounting and tax ledgers must be kept in electronic or paper form, must contain mandatory fields and must be drawn up in the Russian language and in Russian currency, i.e. Russian rubles.

## STATUTORY REPORTING REQUIREMENTS

Russian companies must prepare and submit obligatory statutory reports to state bodies within the established deadlines. The templates of financial reports, tax returns and statistical reports are prescribed by Russian law. All reports must be prepared in the Russian language using Russian rubles as the reporting currency.

The fiscal year corresponds to the calendar year from 1 January to 31 December. The first reporting period depends on the date of the company's official registration.



# UNIFIED TAX ACCOUNT

Taxpayers pay taxes, advance payments, levies, insurance contributions, penalties, fines and interest according to the rules governing unified tax accounts. Funds are transferred to the taxpayer's unified tax account in the form of a unified tax payment using the same payment details. To enable the functioning of the unified tax account system, the deadlines for filing tax reports have been synchronized and uniform deadlines for paying taxes have been established.

Also, taxpayers have to prepare and submit to the tax authorities a notification of calculated amounts of taxes, advance tax payments and insurance contributions if payment is due before the submission of a tax return (computation) or where the Tax Code does not require the submission of a tax return (computation).

Key reporting requirements are presented in the table.

REPORT	REPORTING PERIOD	REPORTING DEADLINE
Financial Statements (Balance Sheet, Profit and Loss Statement, Appendices to the Balance Sheet and Profit and Loss Statement (Cash Flow Statement, Statement of Changes in Equity, Explanatory Notes to the Balance Sheet and Profit and Loss Statement))	Yearly	No later than 3 months after the end of the reporting period
Audit opinion (where an audit is mandatory)	Yearly	The audit report is submitted along with the financial statements or no later than 10 business days from the day following the day of its preparation, but no later than 31 December of the year following the reporting year, unless otherwise provided by other federal laws
Profits tax return (20%)	Quarterly	25 April, July, October and March of the following year
VAT return (ex VAT, 0%, 10%, 20%; 16.67% — for electronic services)	Quarterly	25 April, July, October and January of the following year
Corporate property tax return (max 2.2%)	Yearly	25 March of the following year

REPORT	REPORTING PERIOD	REPORTING DEADLINE
<b>Withholding tax return</b> (20%; a double taxation treaty may provide for a lower rate)	Quarterly	25 April, July, October and March of the following year
<b>CbCR notification</b> (if part of a multinational group)	Yearly	8 months after the end of the financial year of the headquarters company
<b>TP notification</b> (if controlled operations occur)	Yearly	20 May of the following year
<b>Notification of amounts of calculated taxes:</b> <ul style="list-style-type: none"> <li>▶ Corporate property tax</li> <li>▶ Transport tax</li> <li>▶ Land tax</li> <li>▶ Withholding tax</li> <li>▶ Personal income tax (PIT) for individuals</li> <li>▶ Social fund contributions</li> </ul>	Monthly	25th of each month
<b>Statistical reports</b>	Monthly / quarterly / yearly	The exact list of reports should be checked monthly on the Rosstat and Central Bank official websites; there may be > 100 reports per year

## AUDITING REQUIREMENTS

Companies are subject to mandatory audit where tax revenue for the year preceding the fiscal year exceeds 800 million rubles OR where the total amount of balance sheet assets at the end of the year preceding the fiscal year exceeds 400 million rubles.

## HOW CAN B1 HELP?

Our core scope of accounting and tax compliance services includes:

- ▶ Outsourcing of accounting and tax functions in accordance with Russian legislation and the client's corporate requirements, i.e., bookkeeping services, including computer-based recording of all the company's transactions based on copies of primary documents using 1C or the company's corporate ERP system
- ▶ Assistance with the preparation of payment orders and compliance with currency control legislation
- ▶ Preparation and submission of local financial statements and statistical and management reports
- ▶ Preparation and submission of tax returns, including preparation of tax ledgers and calculation of tax payments
- ▶ Review of tax returns prepared by clients
- ▶ Tax reconciliations with the tax authorities, receipt of reconciliation certificates, statements of settlements with the budget and certificates of the fulfilment of tax obligations
- ▶ Preparation and provision to the tax authorities of explanations relating to tax returns
- ▶ Tax support during the liquidation or re-organization of representative offices or branches of foreign entities, which may also form part of comprehensive legal and tax support services
- ▶ Performance of controlling functions in accordance with corporate standards
- ▶ Support of transition to new accounting systems / localization of accounting databases, including documentation of processes and preparation of instructions for users, testing, and migration of initial balances
- ▶ Other accounting and tax compliance services



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# VAT AND EXCISE DUTIES

## VAT RATES

Standard	20%, 16.67% applied to B2C gross value of e-services
Reduced	10%
Other	Zero-rated (0%) and exempt

## TAXABLE PERSONS

A taxable person is any individual entrepreneur or legal entity (including a foreign legal entity) that provides taxable supplies of goods (works or services) and/or property rights on the territory of the Russian Federation.

All taxable persons are subject to general tax registration with respect to all taxes. Separate VAT registration is not permitted except for foreign legal entities providing electronic services to B2B and B2C Russian buyers.

### HOW CAN B1 HELP?

We would be glad to assist with:

- ▶ Analyzing transactions from an indirect tax perspective including applicability of VAT reliefs
- ▶ VAT registration and reporting obligations
- ▶ Providing VAT tools, e.g., to automate VAT return preparation, verify vendors from a tax risk standpoint

## VAT RECOVERY

A taxable person may recover input tax charged on goods (works or services) or property rights supplied for use in VATable activities.

## EXCISE DUTY

Excise duty is payable on domestic sales of certain goods produced in or imported into Russia. The list of goods subject to excise duty includes alcohol, beer, tobacco, cars, motorcycles, airplanes, petrol, diesel fuel, motor oil and straight-run petrol. The rates are generally set in rubles per unit or as percentages of value and vary significantly. Imported alcohol and tobacco are cleared through customs only if they bear excise stamps. With some exceptions, export sales are exempt from excise duty.



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# OIL AND GAS TAXES

Oil and gas producers are subject to special taxes such as:

- ▶ mineral extraction tax (MET), which is levied on minerals extracted from the subsurface and is calculated for oil, gas and gas condensate based on the quantity produced using various complex formulae. The formula parameters depend on various factors, such as field parameters, macroeconomic factors, etc.
- ▶ additional income tax (AIT), which is imposed on additional income received by companies that hold exploration and production licenses and engage in hydrocarbon production at certain groups of subsurface sites. AIT is determined as deemed

income from the sale of hydrocarbons minus related actual and deemed costs. The tax rate is set at 50% of the tax base.

In addition, special tax and customs regimes apply to certain offshore hydrocarbon development projects. Concepts such as “operator”, “offshore hydrocarbon deposit” and “hydrocarbon extraction activities” are now incorporated in the Tax Code and customs legislation, allowing special profits tax, mineral extraction tax and customs regimes to be established for qualifying activities. Such activities when performed by the holder of the relevant mineral license or a qualifying operator are subject to special ring-fencing rules.

## HOW CAN B1 HELP?

We have extensive practical experience in advising and supporting oil & gas companies and investors in the oil & gas business in the following ways:

- ▶ developing tax accounting methodologies for hydrocarbon exploration and development activities
- ▶ support in developing (adapting) economic models taking account of MET and AIT parameters
- ▶ identifying potential tax reserves or checking that all available tax reliefs are fully and correctly used
- ▶ advising on comprehensive tax issues requiring technical analysis of production processes
- ▶ organizing seminars and webinars on economic and tax developments in the oil & gas industry and preparing regular legislative updates



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# TRANSFER PRICING

Transfer pricing (TP) regulations are contained in Articles 105.1 to 105.25 of the Tax Code (which have been in force since 2012). Even though Russia is not a member of the OECD, Russian transfer pricing regulations are largely based on the principles laid down in the OECD Guidelines, although the Guidelines themselves do not have force of law. In practice, the law prevails if there are any differences with the OECD Guidelines.

Russia adopted BEPS Action 13 documentation requirements in November 2017 (which have applied to financial years starting on or after 1 January 2017).

The Russian TP rules focus primarily on related-party transactions, but certain third-party transactions (such as sales of global exchange-traded commodities or transactions in which any of the parties belongs to a blacklisted jurisdiction<sup>1</sup>) are also subject to TP control. In 2022-2024 a threshold of RUB 120 million applies for cross-border transactions to be classified as controlled. Domestic transactions that meet certain conditions and exceed a threshold of RUB 1 billion per year are also subject to TP control in Russia.



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<sup>1</sup> For the current blacklist of jurisdictions please contact us.

## RUSSIAN TRANSFER PRICING REPORTING REQUIREMENTS

REPORT	DEADLINE	WHAT TO REPORT?	PENALTIES
<b>Notification of controlled transactions</b>	No later than 20 May of the year following the reporting calendar year	Detailed transactional data such as counterparties, nature of transactions, volumes, prices, units, etc. (all in Russian)	RUB 5,000 for non-submission or submission of inaccurate information
<b>Local file / TP documentation</b>	May be requested from 1 June of the year following the reporting calendar year and must be provided within 30 business days of the request	Company overview, detailed information on controlled transactions, functional analysis, comparability analysis, financial analysis and other information as per the TP rules (all in Russian)	RUB 100,000 for non-submission or late submission of a local file
<b>Notification of membership of a multinational enterprise group (MNE)</b>	No later than 8 months after the end of the MNE's financial year	Information on the taxpayer and its ultimate parent entity (or surrogate parent entity) for country-by-country reporting (CbC) purposes (all in Russian)	RUB 50,000 for non-submission, late submission or submission of inaccurate information
<b>CbC report</b>	No later than 12 months after the end of the MNE's financial year. A Russian subsidiary of a foreign MNE may be exempt from filing a CbC report if (i) its ultimate (or surrogate) parent entity has submitted a CbC report in its jurisdiction and (ii) that jurisdiction has activated the exchange of CbC reports with Russia. Otherwise, the CbC report must be submitted in Russia within 3 months of the request	Key financial indicators (revenue, profits, income taxes assessed / paid, personnel, capital, retained earnings and assets) by jurisdiction, as well as a description of the business activities of MNE members (all in Russian)	RUB 100,000 for non-submission, late submission or submission of inaccurate information
<b>Master file</b>	May be requested no earlier than 12 months and no later than 36 months from the end date of the MNE's financial year and must be provided within 3 months of request	Key information about the MNE group, including organizational structure, description of the MNE's industry and business, functional analysis, TP policies, etc. (all in Russian)	RUB 100,000 for non-submission or late submission

In addition to the penalties mentioned above for particular TP filings, the Tax Code establishes a penalty of 40% of the amount of unpaid tax (not less than RUB 30,000) if a TP assessment is made as a result of a TP audit. There is a grace period (penalty exemption) for 2022-2023. A TP penalty exemption is also available for other years if the taxpayer has provided compliant TP documentation / local file supporting the arm's length level of prices or if prices were set in accordance with an advance pricing agreement (APA).

TP matters in controlled transactions are subject to special TP audits, which are separate from general

tax audits and must be conducted by the Federal Tax Service of Russia (FTS).

The Tax Code allows for the conclusion of an APA (unilateral or multilateral provided that Russia has a double tax treaty with the foreign jurisdiction concerned) for Russian entities classed as major taxpayers. If a TP adjustment is made by the tax authority, the available dispute resolution mechanism is through litigation or Mutual Agreement Procedure (MAP).

## HOW CAN B1 HELP?

### ► **TP compliance and documentation:**

Documenting intercompany transactions is the first line of defense when your TP practices are challenged. Whether you choose to apply a globally centralized approach or a decentralized approach to your documentation needs, we have a dedicated team to support you in the TP documentation process.

### ► **TP implementation — intercompany effectiveness:**

B1 has developed a structured and scalable framework for improving TP implementation and building integrated systems and processes across tax, business units and operations. Our flexible approach can help you develop sustainable practices to execute, monitor and report intercompany transactions.

### ► **TP planning and operating model effectiveness:**

Our multidisciplinary operating model

effectiveness (OME) team works with you on operating model design, business restructuring, systems implications, TP, direct and indirect taxes, customs, human resources, finance, and accounting. We can help you build and implement the model that makes sense for your business, improve your processes and manage the cost of trade.

### ► **TP controversy:**

B1 assists clients in building controversy strategies that help satisfy their objectives. Such strategies often involve robust up-front planning, preventive (TP) controversy advice where needed, consideration of APAs, audit defense work followed by a domestic administrative appeal, review of alternative dispute resolution opportunities, preparation and implementation of a request for competent authority assistance under the MAP article in a tax treaty, and assistance in litigation.

# AUTOMATION OF STATUTORY AND TAX ACCOUNTING AND REPORTING

Russia's statutory and tax reporting rules differ in some respects from those of other countries. In addition, local rules are still evolving and are subject to change. As a result, many foreign businesses entering the Russian market face difficulties in adapting their corporate ERP/accounting systems to local requirements. In practice, foreign businesses choose one or a combination of the following approaches:

- ▶ Localization of a globally integrated solution,
- ▶ Implementation of a Data Mart, or
- ▶ Use of a locally developed solution (IC).

## HOW CAN B1 HELP?

We have market-leading experience in the turnkey localization of statutory and tax reporting and the integration of our solutions into the corporate IT landscape. The team has in-depth knowledge of modern IT solutions and a long history of working with top Russian integrators and government authorities. The team has a full range of competencies and roles — Project Managers, Architects, Consultants, Analysts, Programmers and Testers.



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# TAX MONITORING

## TAX MONITORING — CO-OPERATIVE COMPLIANCE REGIME

Russia introduced a Co-operative Compliance regime known as Tax Monitoring (TM) as a pilot program in 2013 and established corresponding regulations in its law in 2016. From a starting point of just 5 pilot companies (B1 Group was one of those first five participants), the number of participants rose to 450+ companies in 2023. They include some of the largest Russian-headquartered state and private corporations and international investors from major industries (Oil & Gas, Energy, Banking, Transport, Telecom, FMCG, Retail, Trading, Manufacturing, etc.). Russia’s Federal Tax Service has a strategy to develop this regime (the strategic plan for the development of tax monitoring was approved by a government order) and aims to attract the majority of major taxpayers to the regime in the near future.

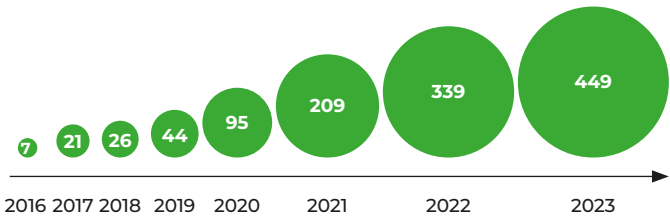
In 2023 participation in the regime is voluntary for companies (except for companies that have concluded an IPPA (Investment Protection and Promotion Agreement)) and subject to their meeting quantitative thresholds for revenue (over RUB 1bn), assets (over RUB 1bn) and taxes paid (profits tax, excise duty, mineral extraction tax, VAT, personal income tax and social contributions totaling at least RUB 100m) based on the Russian statutory P&L statement and balance sheet for the preceding year.

The key benefits for companies that have signed up for tax monitoring over the traditional form of tax control are:

- ▶ Release from traditional tax audits (both in-house and on-site), except for transfer pricing audits
- ▶ “Fast close” of the tax period — the tax inspectorate finalizes audit procedures by 1 October of the year following the reporting year with limited grounds to open it up
- ▶ Possibility to obtain a “reasoned opinion” from the tax authorities (very similar to the international “private letter ruling” concept) for a particular tax position taken in a tax return or to agree the tax treatment of an expected transaction.

The application for TM must be submitted to the tax inspectorate no later than 1 September of the year preceding transition to the regime.

Increasing number of TM participants



## HOW CAN B1 HELP?

B1 has best-in-class experience in providing end-to-end assistance in transition to the tax monitoring regime. We have a successful track record of 120+ projects delivered to more than half of the regime's participants and we have launched accounting processes on various platforms (SAP, 1C, Oracle, etc.).

Our core package of services includes:

- ▶ Supporting clients through all stages of their transition to tax monitoring
- ▶ Gap analysis of a company's readiness for transition to tax monitoring
- ▶ Development of measures to improve business processes, controls, and IT systems. Preparation of all required documentation for TM
- ▶ Turnkey implementation of the TM Data Mart developed by B1 (including new features required for integration with the Federal Tax Service's Nalog AIS-3 system)
- ▶ Automation of TM in a data mart using B1's IT solution or data marts from external vendors, aligned with the client's IT architecture
- ▶ Assistance in negotiations with the tax authorities and the Federal Tax Service



**Andrei Sulin**

Partner, Tax Performance Automation Leader

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# TAX ADMINISTRATION AND TAX CONTROL MEASURES

## TAX AUDITS AND PRE-AUDIT CONTROL MEASURES

The general purpose of tax audits (on-site and in-house) and pre-audit tax control measures is to check compliance with tax law, including checking

that taxes, levies and insurance contributions have been correctly calculated and paid.

An **in-house tax audit** is conducted in relation to a tax return. It takes 3 months, except for an audit of a VAT return, which takes 2 months. An in-house tax audit of a tax return filed by foreign entities that provide electronic services takes up to 6 months

An **on-site tax audit** is conducted in relation to a taxpayer's activities for a period of up to three years. The standard duration of an on-site tax audit is 2 months, but allowing for various extensions and suspensions it may take up to 15 months

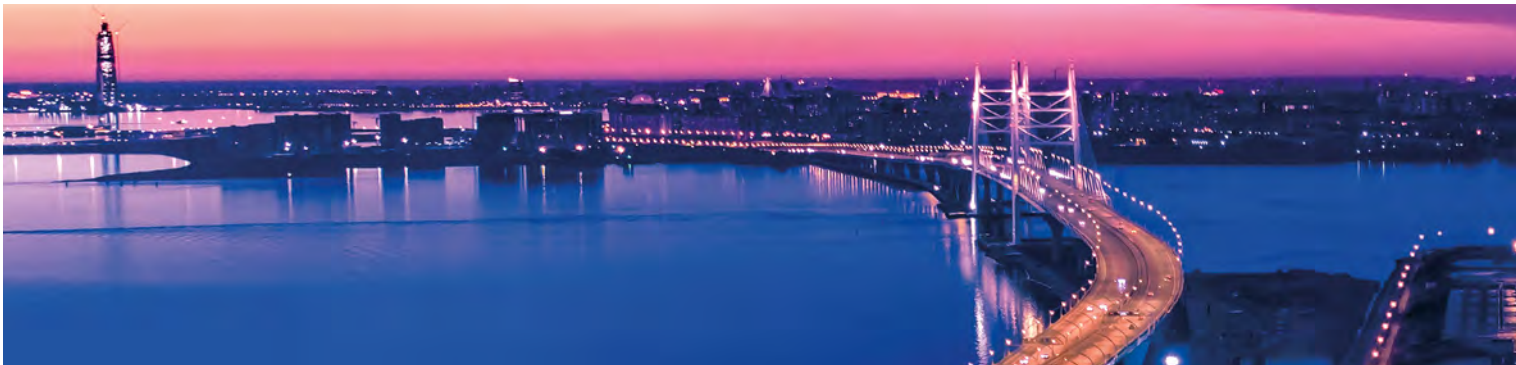
## RESULTS OF TAX AUDITS

Any underpayment identified by the tax authority is penalized by a fine of 20% (or 40% if it is classed as tax evasion) and late payment interest.

In the event of the non-payment of taxes or understatement of the tax base, the tax authority issues a tax audit report and then adopts a decision.

When the decision comes into force, the tax authority issues a demand for payment. If the taxpayer does not pay voluntarily, the relevant amounts will be collected through enforcement action.

The results of tax audits may be appealed administratively and through the courts.



## HOW CAN B1 HELP?

We offer an integrated approach to communication with the tax authorities and the resolution of tax disputes which involves supporting clients through all stages and processes from the identification

and evaluation of potential tax risks that might lead to tax disputes to assistance with administrative and/or judicial procedures for the settlement of disputes.



**Alexander Chizhov**

Tax Partner

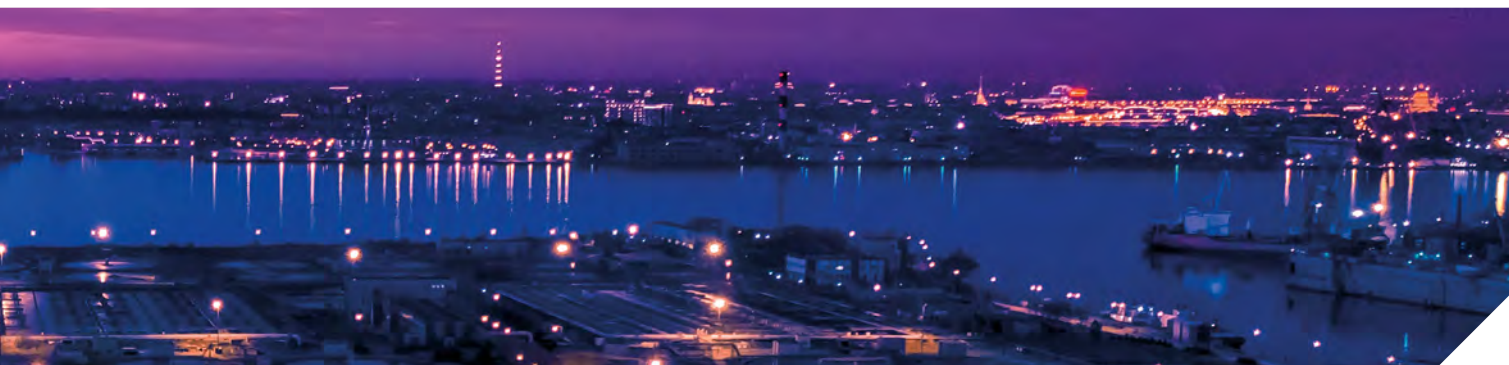
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# FOREIGN INVESTORS RECEIVING INCOME FROM RUSSIAN SOURCES

Foreign investors investing in Russian assets and receiving income generated by such assets are exposed to various tax implications, including tax registration, tax reporting and tax payment requirements in Russia.

Russian tax legislation relating to the taxation of foreign investors investing in Russia is complex and often ambiguous. Key issues which may need to be

considered are outlined below. The information set out below is general in nature and should not be relied upon as professional advice. The information may not be entirely applicable to non-Russian unincorporated structures. Investors should seek individual advice which takes account of all aspects and elements of their situation.

## I. TAX IMPLICATIONS ARISING FOR FOREIGN INVESTORS THAT ARE FOREIGN ORGANIZATIONS

A foreign organization may be subject to taxation in Russia in any of the following cases: (1) if it carries on activities in Russia through a permanent establishment, or (2) if it is recognized as a Russian tax resident, or (3) if it receives Russian source income.

### **Permanent establishment**

A foreign organization is deemed to have a permanent establishment ("PE") in Russia if it is deemed as generating income from entrepreneurial activities carried on in Russia on a regular basis through a fixed place of business or a dependent agent. The rules relating to PEs are vaguely worded and there is uncertainty over the interpretation of certain concepts, such as the "regularity" of activities, "link to a geographical location", etc.

If and when a PE is created, a foreign organization must register with the Russian tax authorities. Failure to register will result in a fine determined as a certain percentage of income earned by the foreign organization as a result of activities in Russia.

Profits of a Russian PE are subject to profits tax in Russia at the rate of 20%. As a rule, profits attributable to a Russian PE must be determined based on the actual activities (functions) carried on by the PE,

economic (commercial) risks assumed in connection with those activities, and assets deployed. It is worth noting that, in the absence of detailed and properly supported calculations, the tax authorities may attempt to attribute the entire profits of a foreign organization to its Russian PE.

If and when a PE of a foreign organisation is created in Russia, that PE must comply with tax reporting / compliance requirements indicated in the "Accounting and tax compliance reporting requirements" section above, except for the Financial statements and audit opinion requirements, which are not applicable. A PE may also give rise to other taxes, e.g., value added tax, property tax, personal income tax, etc. Additionally, a PE of foreign organization should file the Annual statement of activities and Notification regarding shareholders and beneficiaries.

Examples of businesses which may trigger a PE of a foreign organization in Russia include the following:

- ▶ Algorithmic trading undertaken by a foreign organization in the Russian market which involves software located in Russia
- ▶ Traders located in Russia who execute trades in the interest of a foreign organization

- ▶ Sales specialists located in Russia who advertise and market activities / products of a foreign organization
- ▶ The owning of immovable property located in Russia
- ▶ Employees of a foreign organization working remotely from Russia, etc.

### Tax residency

Under Russian tax legislation, a foreign entity is deemed a Russian tax resident if (1) it is deemed to be so under an applicable double tax treaty — for the purposes of the application of that treaty, or (2) its place of management is in Russia, unless an applicable double tax treaty stipulates other criteria. Russian tax residency status may be determined with reference to the basic criteria relating to the operational management of a foreign organization or (if the basic criteria are met in respect of two countries simultaneously) with reference to additional criteria relating to the maintenance of accounting or management records, records management and day-to-day management of personnel.

There are a number of exceptions relating to certain functions which, if undertaken from Russia, should not per se lead to the recognition of a foreign company as a Russian tax resident.

Where a foreign legal entity is deemed to be a Russian tax resident, it is liable to Russian profits tax on worldwide profits at the standard rate of 20%. Russian tax resident status may also result in liability for other Russian taxes (e.g., VAT, payroll taxes, property taxes, etc.). Where a foreign organization is deemed a Russian tax resident, it must comply with tax reporting requirements indicated in the “Taxes & accounting for companies” section above in the same way as Russian organisations.

### Withholding tax (“WHT”)

Where a foreign organization receives Russian source income, that income is subject to Russian WHT. The list of types of Russian source income is established by Russian tax legislation and includes various types of passive income (e.g., dividends, interest, royalties, etc.). The list of types of Russian source income also includes the category “other similar Russian source income”. In practice, this is broadly interpreted by the Russian tax authorities, which may try to treat any payment from Russian persons that is not explicitly mentioned in the list of types of Russian source income as “other similar Russian source income”.

There are also local anti-abuse rules which allow the Russian tax authorities to classify a particular payment from Russian persons as Russian source income (e.g., as deemed dividends), irrespective of the legal form of the payment, if they believe that the economic substance differs from its legal form and/or that the transactions are of an artificial nature.

### Tax rates

The standard WHT rate is 20%. Special WHT rates apply to the following types of Russian source income:

DIVIDENDS	
Dividends on shares in international public holding companies (subject to certain conditions)	5%
Dividends on shares in international holding companies (including shares underlying depositary receipts) (subject to certain conditions)	10%
Dividends on other shares	15%

## INTEREST INCOME

Interest on Russian state and municipal bonds	0%/9%/15%
Interest on Russian mortgage-backed bonds	9%/15%/20%
Interest on debt obligations of international holding companies (subject to certain conditions)	10%
Interest on ruble-denominated traded bonds (except for mortgage-backed bonds) issued by Russian issuers after 1 January 2017	15%
"Punitive" rate applicable to interest on state and corporate bonds held on foreign nominee holder accounts / foreign authorized holder accounts if the ultimate beneficial owners of the securities are not properly disclosed for aggregate reporting purposes	30%
Income from the operation, maintenance or leasing of ships, aircraft or other means of transport or containers in international traffic	10%

### Tax agent

Whenever Russian WHT is applicable, it must be calculated and withheld by the Russian tax agent. It is therefore the Russian tax agent which in practice bears the risk of being penalized for improper withholding (except for payments of income on foreign nominee holder accounts / foreign authorised holder accounts / depositary program securities accounts). For this reason, Russian tax agents normally request indemnity from the foreign investor for the improper withholding of Russian WHT.

WHT agents are exempt from withholding tax obligations with respect to certain types of income (e.g., interest on Russian state bonds, etc.). Exemption from tax agent obligations is not the same as the exclusion of the income in question from the list of types of Russian source income that are subject to WHT. Some uncertainty remains, therefore, as to whether non-residents may be viewed as liable to pay tax themselves in such circumstances.

Although there is no self-assessment mechanism that would allow a foreign legal entity to pay WHT independently, a foreign legal entity may still be considered liable to pay the outstanding tax if tax is not fully withheld by the Russian tax agent. There is no certainty that a self-assessment mechanism will be introduced in Russian tax legislation in the future.

As a rule, WHT must be withheld on each payment of Russian source income. Depending on the specific nature of the payment, the moment of payment may be determined differently (e.g., it may not involve the transfer of funds to the foreign organization's bank account). WHT is applied to the gross amount of income paid (except in certain cases and subject to certain conditions) and irrespective of the form of the payment (e.g., in kind, set-off, debt forgiveness, etc.). Russian rules are, however, unclear as to how the tax should be paid in the respective circumstances.

### Treaty relief

The domestic rates of Russian WHT can generally be reduced or eliminated based on an applicable double tax treaty. In order to utilize the benefits of the relevant tax treaty, a foreign income recipient which is a foreign organization will need to provide to the tax agent, before payment is made (except for payments on securities held on foreign nominee holder accounts / foreign authorized holder accounts / depositary

program securities accounts), documents confirming its right to rely on the applicable double tax treaty (e.g., documents confirming its tax residency status, its beneficial ownership status and compliance with the specific requirements of the applicable double tax treaty, including compliance with the principal purpose test and/or limitation of benefits provisions). In addition to the above, a foreign investor may need to confirm its compliance with local anti-abuse provisions.

Russian rules relating to confirmation of beneficial ownership status and compliance with the principal purpose test and anti-abuse provisions pursuant are vaguely worded and are broadly interpreted and applied by the Russian tax authorities. For this reason, the right to rely on a particular double tax treaty (particularly with regard to the beneficial ownership rules and the principal purpose test) should be carefully analyzed in all situations, and especially in cases where:

- ▶ a total return swap exists in respect of Russian securities;
- ▶ a credit default swap exists in respect of a loan / bond of a Russian issuer;

- ▶ a contract for difference exists in respect of Russian securities or financial instruments;
- ▶ a dividend / interest swap has been entered into;
- ▶ Russian assets are used as collateral in a pledge;
- ▶ Russian assets are the subject of title transfer collateral arrangements or any similar arrangements;
- ▶ Russian assets are the subject of split hedging arrangements;
- ▶ back-to-back arrangements are made / intermediary holding companies are used;
- ▶ various investment vehicles are used, etc.

Russian legislation generally provides for the application of the so-called “look-through” approach, which allows a person that is not the immediate recipient of income to claim benefits under a double tax treaty with Russia as if it were receiving Russian source income directly. The application of the “look-through” approach requires certain additional documentation to be provided to the tax agent before payment is made.



**Tax refund**

Where a tax agent has withheld WHT at the standard or “punitive” tax rate despite the foreign organization having a right to claim benefits under an applicable double tax treaty, the foreign organization should generally be able to claim a refund of the tax withheld in excess.

Generally, Russian tax legislation does not allow refund claims to be made via the tax agent (except for the “quick refund” mechanism applicable to income paid on foreign nominee accounts / foreign authorized holder accounts / foreign depository program securities accounts, which allows tax withheld in excess to be reclaimed from the Russian tax agent within 30 days of the payment date subject to certain conditions).

As a rule, a claim for a refund of tax withheld in excess may be filed by a foreign legal entity with the Russian tax authorities at the location of the tax agent within three years following the year in which the tax was withheld. For this purpose, the foreign legal entity will need to file an application form together with a number of documents supporting its right to a refund. Although domestic tax legislation lays down

an exhaustive list of documents required to claim a refund, in practice the Russian tax authorities may require a number of additional documents depending on the situation. Obtaining a refund of Russian income taxes tends to be a lengthy and laborious process, and there is no guarantee that a refund will be granted.

It should also be possible to claim a tax refund where a tax agent has applied a “punitive” tax rate instead of the standard tax rate. However, the process of obtaining the tax refund will be different from the process described above.

**Tax registration / reporting requirements**

Foreign investors that do not have a PE in Russia / are not deemed as Russian tax residents may be required to register for tax purposes with the Russian tax authorities if they open a bank account with a Russian bank (including special types of bank accounts) or if they own real estate in Russia.

Besides tax registration requirements, the following tax reporting requirements may arise for such investors in Russia:

REPORT	DEADLINE	WHAT TO REPORT?	PENALTIES
Notification regarding shareholders and beneficiaries	Not later than 28 March of the year following the reporting calendar year	Information on all participants (shareholders) of the foreign organisation (including disclosure of indirect participation (if any) of a private individual or a public company if their direct and/or indirect participating interest in the foreign organization exceeds 5%) as of 31 December	RUB 50,000
Property tax return	Not later than 25 March of the year following the reporting calendar year	The tax base and the amount of corporate property tax in a standard form, including documents to eliminate double taxation (if applicable)	5% of the amount of unpaid tax for each full (incomplete) month, but not more than 30% of the specified amount and not less than RUB 1,000.

## HOW CAN B1 HELP?

It is important to be able to respond rapidly to changes and trends and assess their impact as early as possible.

- ▶ Advising on the optimal investment structure and potential exit strategy
- ▶ Advising on PE and tax residency matters, including tax registration, tax reporting and tax payment obligations
- ▶ Advising on Russian tax implications, including tax registration, tax reporting and tax payment obligations, arising in connection with investment in Russian securities or other assets, including exemptions and reliefs available under domestic law and applicable double tax treaties
- ▶ Assistance in preparing/ review of documentation for transactions with Russian counterparties and partners, including tax indemnity and gross-up provisions
- ▶ Assistance in preparing a defense file demonstrating compliance with beneficial ownership rules, principal purpose test requirements and local anti-abuse provisions and/or supporting the application of the look-through approach, if required
- ▶ Assessing the probability of obtaining a refund and providing full-scope assistance in applying for Russian income tax refunds where Russian income tax has been withheld in excess (despite the foreign investor having a right to claim reduced tax rates under a double tax treaty) or where tax has been withheld at the “punitive” tax rate



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# 04 PEOPLE MATTERS



Organizations from which a taxpayer receives income are obliged to calculate, withhold and remit PIT to the budget. Companies must withhold the calculated amount of tax directly from the taxpayer's income when the income is actually paid to the individual.

## WHO IS LIABLE?

Payers of Russian personal income tax are defined as tax residents of Russia and non-resident individuals who receive income from Russian sources.

Tax residents are individuals who stay in Russia for 183 days or more in a period of 12 consecutive months. Short-term leave (not exceeding 6 months) for medical treatment or educational purposes or the performance of employment or other work-related duties at offshore hydrocarbon fields may be treated as presence in Russia in certain cases. The tax authorities currently assess an individual's residency status based on the number of days spent in a particular calendar year. Non-residents are those individuals who do not meet the above-mentioned test.

## OBJECT OF TAXATION

Russian tax residents are taxed in Russia on their worldwide income, including undistributed profit of controlled foreign companies (CFCs).<sup>2</sup>

Individuals who are not tax residents are taxed on their Russian source income, which includes but is not limited to the following:

- ▶ Remuneration for the performance of employment duties, services and activities in Russia (regardless of where paid)
- ▶ Dividends and interest paid by a Russian organization

- ▶ Insurance payments made by a Russian organization
- ▶ Income from the sale of property in Russia and income from the sale of securities in Russia
- ▶ According to the latest amendments, interest received on deposits with Russian banks in 2021–2022 is fully exempt from taxation.

In addition, income of an individual in the form of material benefits received in 2021–2023 as the form of interest savings on loan (credit) arrangements with organizations and individual entrepreneurs with which the individual has employment relations (is a related party) is tax-exempt. Income received under equity compensation plans may also fall under income in the form of material benefit from the acquisition of shares/stock options at below market value. Provided, therefore, that the income is received in the form of actual shares, rather than cash, an exemption will also apply.

## TAX RATES

Tax residents are taxable in Russia on most types of worldwide income at a tax rate of 13% / 15% (15% applies to income earned by tax-resident individuals in excess of the annual limit of 5 million rubles). Income from the sale of property (except for securities), certain gifts and taxable amounts of insurance payments and pensions are still taxable at a flat rate of 13% (the progressive scale does not apply).

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<sup>2</sup> The CFC rules are not covered in this document. Please contact us if you need more information about rules.

All foreign individuals who are Highly Qualified Specialists (HQSs) for immigration purposes (those who have received an HQS work permit) are taxable at 13% / 15% on their earnings as an HQS, irrespective of their actual Russian tax residency status.

Tax non-residents are taxable in Russia at the rate of 30% on their Russian source income. Russian source income is generally defined as income arising from assets in Russia, or earned in Russia, irrespective of where the income is paid.

## **SOCIAL SECURITY**

Social contributions in Russia are the sole responsibility of the employer. There are no “matching” employee contributions. Employer contributions cover obligatory pension, medical and social insurance.

Social contributions are charged on payments made to individuals in the context of employment relationships and civil contracts for the performance of work or the rendering of services (except for individual entrepreneurs), and copyright agreements.

From 2023 the maximum base for social contributions is RUB 1,917,000.

The contribution rates for the majority of companies would be as follows:

- ▶ 30% — on income not exceeding the maximum base
- ▶ 15.1% — on income exceeding the maximum base

Payments to Highly Qualified Specialists are not subject to social contributions as these categories of individuals are not considered as insured within the Russian social security system.

## **Workplace accident insurance**

In addition to the aforementioned social contributions, all employers are required to pay insurance contributions against workplace accidents and occupational illness. The rate of these contributions depends on a company's economic activity and may vary from 0.2% to 8.5%. The rate is generally 0.2% for most employers that predominantly or only employ office workers. The applicable rate is levied on the contribution base without any cap.

Contributions are assessed on all payments to individuals under employment agreements. Notably, employment income payable to foreign nationals is not exempt from these contributions.

## **Russian labor law**

The Russian Labor Code establishes procedures for hiring and dismissing employees, as well as regulations concerning working time, vacations, business trips, salary payment and so on. The Labor Code is very protective of employees. If a conflict arises, an employee may demand the application of relevant protective provisions of the Labor Code, which would prevail over any conflicting provision of the individual's employment agreement. Moreover, the Labor Code establishes certain guarantees for some categories of employees that must be fulfilled by employers, even if they are not specifically set out in employment agreements.

## **Basic salary and compensation for additional work**

All employees must have a working schedule. Standard daily working hours are determined by the employer. The generally accepted standard is a five-day week with an eight-hour working day. Thus, the standard week is 40 working hours.

Monthly salary may not be less than the minimum salary set by regional and federal legislation.

As of 1 January 2023, the minimum monthly salary set at the federal level is RUB 16,242.

In addition, the company must compensate overtime work and work on weekends and national holidays.

**Vacations**

Employees must be granted at least 28 calendar (as opposed to working) days of paid vacation a year. Additional vacations are envisaged for certain

categories of employee, i.e., those working irregular working hours, in harmful and hazardous conditions, or in the Far North or equivalent areas.

Under Russian law, an employee on vacation does not receive basic salary, but average earnings.

Income included in the calculation of average earnings is the average amount of pay for actual working hours and additional payments for work performed (e.g., bonuses and overtime) over the last 12 months.

**IMMIGRATION**

In general, a foreign citizen who works in Russia must hold a work permit and a work visa (if applicable) sponsored by an entity which employs or purchases work/services from a foreign citizen.

There are 2 main employment regimes for foreigners from countries which require a visa to come to Russia.

	HIGHLY QUALIFIED SPECIALISTS (HQS)	STANDARD WORK PERMIT
Monthly salary payable through Russian payroll	Not less than RUB 167,000 (there is a draft law proposing to increase this threshold to RUB 750,000 per quarter)	Minimum monthly salary set for a particular region of Russia (e.g., in Moscow it is RUB 23,508)
Work permit and visa validity period	Up to 3 years	Up to 12 months
Processing time	14 working days	3–4 months
Documents required	Signed local employment agreement	Apostilled/legalized degree  Certificate confirming knowledge of Russian language and history and the fundamental principles of Russian law
Registration in Russia	Within 90 calendar days + 7 working days after arrival in Russia	Within 7 working days after arrival in Russia

NOTIFICATIONS

Companies are required to notify the immigration authorities of:

The <b>conclusion</b> of an employment agreement or civil contract with any category of foreign citizen within three business days after the date of the event.	The <b>termination</b> of an employment agreement or civil contract with any category of foreign citizen within three business days after the date of the event.	<b>Salary</b> paid to HQS work permit holders during the reporting quarter - to be filed before the end of the month following the reporting quarter.
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MEDICAL EXAMINATION AND FINGERPRINTING

Foreigners entering Russia must undergo a medical test and submit the test results and undergo photographing and fingerprint registration at the Ministry of Internal Affairs within the following periods after entering Russia:

- ▶ **30 calendar days** — foreigners entering Russia to work
- ▶ **90 calendar days** — foreigners entering Russia for purposes other than work, including business visitors and family members

Medical tests taken before 1 March 2022 are valid for 3 months; medical tests taken after 1 March 2022 are valid for 12 months. Fingerprinting and photographing only have to be done once.

Under the law, new medical certificates need to be re-submitted to the Ministry of Internal Affairs within 30 days after the lapse of 1 year from the date of the last medical examination. These requirements do not apply to highly qualified specialists.



## HOW CAN B1 HELP?

B1 takes an effective and innovative approach to client service and observes the highest standards of quality control and information security in providing services to individuals and employers.

We would be happy to assist you with:

- ▶ Analysis of personal tax filing obligations in Russia, preparation of Russian tax returns and calculation of Russian tax liability
- ▶ Assistance with in-person tax return submission
- ▶ Assistance with the tax payment/tax refund process via tax return and/or tax agent: preparation of tax payment instructions and tax refund applications and support in verifying the correct allocation of tax payments
- ▶ Assistance with opening and managing an online taxpayer account
- ▶ Individual tax planning
- ▶ Communication with the tax authorities regarding the application of international tax legislation and double tax treaties
- ▶ Assistance with tax audits and querying late payment interest and fines
- ▶ Applying for tax clearance and tax residency certificates
- ▶ Webinars for Russian employees relocating to work abroad
- ▶ Payroll and HR compliance services
- ▶ Payroll and HR health checks
- ▶ Advisory related to labor law, HR administration and employment taxes
- ▶ Work permit initial applications and extensions
- ▶ Applications for various types of visa (work visa, business visa, technical services visa) (initial and extension, where applicable)
- ▶ Submission of various notifications required under immigration law
- ▶ Assistance to foreign employees in arranging medical examinations, fingerprinting and photographing
- ▶ Immigration health checks
- ▶ Arranging training for HR and foreign employees on immigration law/procedures and related updates
- ▶ Preparation of acknowledgement letters for foreign employees containing information on their obligations under Russian immigration legislation
- ▶ Assistance with the legalization and apostilling of personal documents of employees who are Russian citizens relocating to other countries



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# 05 INCENTIVES, SPECIAL TAX REGIMES AND SUPPORT MEASURES

# TAX INCENTIVES FOR IT COMPANIES

Federal Law No. 321-FZ of 14.07.2022 introduced long-awaited amendments to tax support measures for the IT industry as announced by Presidential Edict No. 83 of 02.03.2022. The table below shows the key changes relative to the first package of measures.

CRITERIA / INCENTIVES	INCENTIVES FOR IT COMPANIES (FIRST PACKAGE): SUMMER 2020 – TOOK EFFECT FROM 2021			INCENTIVES FOR IT COMPANIES (SECOND PACKAGE): SUMMER 2022 — ENTERED INTO FORCE ON 14.07.2022, MAINLY WITH EFFECT FROM 01.01.2022		
	Profits tax	Social contributions	VAT	Profits tax	Social contributions	VAT
Rate	3%	7.6%	Exemption	0% in 2022–2024	7.6%	Exemption
Criteria	<ul style="list-style-type: none"> <li>Qualifying operations account for at least 90% of income</li> <li>Average staff size greater than 7 persons</li> <li>Accreditation with Ministry of Digital Development</li> </ul>		SW / DB included in the Register of Russian Software and Databases ("the Register")	<ul style="list-style-type: none"> <li>Qualifying operations account for at least 70% of income</li> <li>No staff size requirements</li> <li>Accreditation with Ministry of Digital Development (new rules from 1 August 2022)</li> </ul>		SW / DB included in the Register
Qualifying operation	<ul style="list-style-type: none"> <li>Alienation and licensing of own SW / DB</li> <li>Contract-based SW / DB development, adaptation and modification</li> <li>Installation, testing and support of SW / DB from the first two categories</li> </ul> <p>The incentives do not apply to software and databases for which monetization is based on enabling users:</p> <ul style="list-style-type: none"> <li>to disseminate advertising on the Internet and/or obtain access to it (<b>advertising model</b>),</li> <li>to post offers to enter into transactions on the Internet, to search for information on potential buyers/sellers and/or to conclude transactions (<b>intermediary model</b>)</li> </ul>		Alienation and (sub)licensing of software and databases	<ul style="list-style-type: none"> <li>Extended to include (1) the licensing of own SW under the advertising model and from 2023 under the intermediary model with a number of exceptions**, and (2) the provision by an accredited IT company*** of services monetized using own SW / DB included in the Register (a component part thereof):</li> <li>under the intermediary model other than those specified in the law**</li> <li>under the advertising model</li> <li>streaming services / online cinemas</li> <li>access to audio recordings and related items</li> <li>access to online educational and/or awareness-raising information by an accredited IT company possessing an education license</li> <li>sale, development and other operations involving a hardware-software suite included in the Register of Software</li> </ul>		Alienation and (sub)licensing of software and databases  The advertising qualification remains practically unchanged except for clarifications to the effect that it applies to the posting (1) not only of offers, but also of announcements, and (2) in other telecommunications networks besides the Internet

## NOTES TO THE SUMMARY TABLE

- \* The amendments extend the definition of internal development to include development, adaptation and modification not only by the accredited IT company directly but also alternatively by a parent, subsidiary or sister company of the accredited company (where the ownership share is greater than 50%).
- \*\* Activities not eligible for profits tax or social contribution reliefs when licensing own SW / DB included in the Register or when providing services using such SW / DB (**"Excluded activities"**):
  - ▶ marketplaces which provide, on behalf of an accredited IT company or its related entities, payment, logistics and other infrastructure required for buyers and sellers to conclude and perform transactions
  - ▶ taxi and food delivery services
  - ▶ state procurements
  - ▶ money transfers
  - ▶ banking and financial services
  - ▶ marking of goods
  - ▶ storage of data in a data processing center
  - ▶ transmission of voice messages.
- \*\*\* Companies that do not qualify for profits tax or social insurance reliefs despite meeting all the conditions (**"Excluded companies"**):
  - ▶ those that were established after 01.07.2022 as a result of re-organization (other than conversion of form) or that were re-organized by means of (1) the acquisition of another legal entity or (2) the spin-off of one or more legal entities from it

- ▶ organizations (including credit organizations) in which the Russian Federation has a direct and/or indirect participating interest if that interest is no less than 50 per cent. If an excluded company obtained IT accreditation before 1 July 2022 and has previously claimed profits tax or social contribution reliefs for the IT sector, then its position will not be worsened: it can continue to claim the reliefs.

## SKOLKOVO INNOVATION CENTER

The Skolkovo Innovation Center is a Russian Government initiative designed to encourage innovation and technological research within Russia. A Russian legal entity recognized as a Skolkovo Innovation Center resident may be entitled to various tax reliefs (0% CIT, VAT relief, 14% rate of social contributions etc.) as well as cash grants and other benefits for the purpose of conducting particular R&D activities.

## OTHER INNOVATION CENTERS IN RUSSIA (SIRIUS (SOCHI), VOROBIEVY GORY (MOSCOW), ETC.)

The same tax incentives that apply to Skolkovo residents are also conferred by other Russian innovation centers which have been rapidly developing in terms of the number of residents and market visibility since 2022.

## HOW CAN B1 HELP?

1. Reviewing the applicability of IT incentives and determining the tax and other effect from them
2. Full-scope support in obtaining accreditation as an IT company
3. Assessing the impact of the amendments if the company previously claimed IT incentives granted prior to the amendments (health check)
4. Drawing up documentation proving that software was developed internally within a group
5. Pinpoint assessment of tax risks associated with restructuring a group's operations in order to claim IT incentives
6. Comprehensive development of a target model for the application of IT incentives
7. Justification of the target model to the tax authorities, including in the context of tax monitoring
8. Assessment of the readiness of software / a database / a hardware-software suite for the submission of an application for inclusion in the Register of Russian Software
9. Support in registering software / databases in the Register of Russian Software
10. Gathering and evaluating evidence to support eligibility for incentives in case of challenges from the tax authorities (defense file)
11. Support with the contractual framework for the activities of an IT company, including templates of reporting documents
12. Preparation of internal documents to show that the conditions for the application of IT incentives are met (interaction protocol, employment contracts, job descriptions)
13. Assessing the possibility of claiming tax reliefs granted to participants in Skolkovo and other innovation and research centers and combining them with reliefs for IT companies



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# SPECIAL INVESTMENT CONTRACTS

## SPIC: GENERAL OVERVIEW

A special investment contract (SPIC) is an instrument aimed at encouraging private investment in projects involving the manufacture of industrial products in Russia, with the state offering various incentives including tax reliefs and subsidies.

## SPIC 2.0

The SPIC 2.0 mechanism was established through amendments made to Federal Law No. 488-FZ of 31 December 2014 “On Industrial Policy in the Russian Federation” back in August 2019 and is designed to promote the implementation or development and implementation of technologies included in a government-approved list of advanced technologies for the purpose of launching the mass production of industrial products.

In 2020 the Russian government issued decrees setting out the updated mechanism for special investment contracts (SPIC 2.0), including rules for concluding contracts and monitoring their performance.

All the regulatory acts required for the conclusion of contracts under the SPIC 2.0 mechanism have now been adopted, including the list of advanced technologies, which contains 600+ items.

## SPIC 2.0 TECHNOLOGIES

On 28 November 2020 the government passed Directive No. 3143-r approving the list of advanced technologies for the conclusion of SPIC 2.0 contracts. Since then, the list has been modified twice.

Companies whose technologies are included in the list have the right to initiate a SPIC 2.0 tender and discuss the receipt of SPIC 2.0-related state support measures (tax reliefs, guarantee of the stability of business conditions, localization of industrial products, access to state orders on a single supplier basis, granting of subsidies and other support measures).

## REVISITING SPIC 1.0

On 14 March 2022 the President signed the Federal Law “On Amendments to Article 2 of the Federal Law “On Amendments to the Federal Law “On Industrial Policy in the Russian Federation” Regarding the Regulation of Special Investment Contracts”.

The law aims to help attract investments in new manufacturing projects and neutralize the adverse impact of sanctions for investors who concluded SPIC 1.0 contracts in the period from 2016 to 2019. It forms part of a new range of measures to boost the country's economic resilience and support industry.

Key amendments to Federal Law No. 290-FZ of 2 August 2019 include:

- ▶ allowing existing special investment contracts (SPIC 1.0) to be extended to 12 years instead of 10
- ▶ allowing contracts to be signed under the old SPIC 1.0 mechanism as well as SPIC 2.0.

The parallel existence of the two instruments of state support certainly creates greater opportunities for companies in terms of selecting the mechanism best suited to their investment projects.

## TAX-RELATED SUPPORT MEASURES

Tax legislation establishes a range of tax-related support measures providing for reduced rates of profits tax, corporate property tax, mineral extraction tax, social contributions, etc. The majority of these tax incentives are based on the principle of “reliefs

in exchange for investments” and offer tax reliefs for companies that carry out investment projects involving investments in fixed assets and the creation of new production facilities.

### SPECIAL INVESTMENT CONTRACT (SPIC)

Benefits are available to investors carrying out a project aimed at the implementation or development and implementation of a technology that will enable the manufacture of industrial products.

#### Benefits:

- ▶ Profits tax — reduction of rate to 0% and accelerated depreciation of fixed assets
- ▶ Protection against worsening of tax conditions

The amount of benefits cannot exceed 50% of the amount of capital investments

### INVESTMENT PROTECTION AND PROMOTION AGREEMENTS (IPPAs)

An IPPA is concluded with an entity carrying out a project involving the implementation of a new investment project in a Russian economic sector, excluding certain sectors and activities.

#### Benefits:

- ▶ Mineral extraction tax — reduction coefficients which reduce the tax rate
- ▶ Protection against the worsening of tax conditions

## SPECIAL ECONOMIC ZONES (SEZs)

Benefits are available in individual territories and may vary depending on the type of SEZ (there are 5 types in all) and the specific territory.

### Benefits:

- ▶ Profits tax: rate reduction to 2% (0% for residents of technology development and tourism and recreation SEZs)
- ▶ Property tax — exemption for 10 years
- ▶ Land tax — exemption for 5 years (for certain types of SEZ).

## PRIORITY DEVELOPMENT AREAS (PDAs)

Benefits are available in certain areas of Russian regions. The minimum investment amount is RUB 0.5 million.

### Benefits:

- ▶ Profits tax — rate reduction to 0% during the first 5 years and 10% for the next 5 years
- ▶ Mineral extraction tax — effective rate reduced to 0% and gradually increased over 10 years (the amount of relief is limited to the amount of capital investments)
- ▶ Social contributions — rate reduction to 7.6% for 10 years
- ▶ Ability to recover VAT under the declarative procedure
- ▶ Protection against the worsening of tax conditions

Similar benefits (except for the MET benefit) are available to residents of the Vladivostok Free Port.

## ARCTIC ZONE

Benefits are available in certain areas of Russia's regions. The minimum investment amount is RUB 1 million.

### Benefits:

- ▶ Profits tax — rate reduction to 0% (except for taxpayers involved in mineral extraction activities and a number of other industries)
- ▶ Mineral extraction tax — tax is reduced by investments actually made but not by more than 50% of the amount of tax (excluding coal and hydrocarbon production)
- ▶ Social contributions — reimbursement (through subsidies) of 75% of social contributions paid (bringing the effective rate to 7.5%).

## REGIONAL INVESTMENT PROJECTS (RIPs)

Benefits are available in most Russian regions. The minimum investment amount is  
(1) RUB 50 million over three years,  
(2) RUB 500 million over 5 years.

### Benefits:

- ▶ Profits tax — reduction of the rate to 0%.
- ▶ Mineral extraction tax — in the case of projects carried out in regions of the Far East and certain regions of Siberia the rate may be reduced to 0% and gradually increase over 10 years.

The benefit is limited to the amount of capital investments made in the investment project.

Regional laws can establish property tax, transport tax and land tax reliefs for IPPA, RIP and SPIC participants and residents of the Vladivostok Free Port, priority development areas and the Arctic Zone.

We should point out that all the above regimes have a set of rules and criteria governing when they start and cease to apply, which may vary according to the type of relief, the region in which a project is carried out and the nature of the project itself, which would require detailed analysis.

## HOW CAN B1 HELP?

In view of the above-mentioned measures provided by the government to encourage investment activities we are happy to assist companies with the following:

- ▶ Choosing the most appropriate region for investments based on various factors and/or the optimal type of special investment regime/ investment contract
- ▶ Preparation and writing of the company's business plan for the conclusion of an investment contract
- ▶ Support in preparing for and concluding an investment contract with the authorities

(including collection, preparation and submission of necessary documents, preparation of a financial model, determination of the potential period of application of tax benefits, communication with the authorities, analysis of the relevant draft investment contract)

- ▶ Reviewing or developing a methodology for separate tax accounting as necessary for the application of tax benefits relating to an investment contract
- ▶ Any further support relating to investment contracts concluded.



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# 06

# CUSTOMS REGULATION IN RUSSIA



## **RUSSIA AND THE EURASIAN ECONOMIC UNION (EAEU)**

Russia operates as a member of the EAEU, which also includes Armenia, Belarus, Kazakhstan and Kyrgyzstan. The EAEU has a unified system of customs regulation, a unified customs tariff and free movement of goods, services, capital and labor.

### **CUSTOMS DUTIES AND TARIFF PREFERENCES**

Goods imported into Russia are subject to duties ranging from 0% to 17.5% depending on the type of goods. At the same time, there are tariff preferences in place for some imported goods, such as food products, products for the manufacture of pharmaceuticals, electronics and consumer goods. Some tariff preferences are conditional upon the imported goods being used for the correct purpose (e.g., in manufacturing). Other tariff preferences are applied in trade with developing and least developed countries. For instance, import duty rates are 25% lower for certain goods imported from developing countries, while a full exemption applies for goods from least developed countries.

Tariff preferences are also applied on the basis of free trade agreements. The EAEU has agreements with Vietnam and Serbia. Russia operates a free trade regime with CIS countries and Georgia.

In 2019 EAEU countries signed a free trade agreement with Singapore and a provisional agreement leading to the formation of a free trade zone with Iran, while in 2018 Russia signed an economic co-operation agreement with China. Talks are also underway on the conclusion of free trade agreements with Egypt, the UAE and India.

## **SIMPLIFICATION OF IMPORTS TO RUSSIA**

In 2022 Russia adopted a range of unprecedented measures aimed at simplifying imports to Russia, including in particular zero import customs duty rates for a wide range of goods, which are still in force in 2023.

### **CERTIFICATION OF GOODS**

The certification process has been simplified for spare parts, components, raw materials and single items.

### **IMPORTATION OF MANUFACTURING EQUIPMENT**

A simplified procedure has been introduced for the importation of manufacturing equipment shipped in disassembled parts.

### **IMPORTATION OF BRANDED GOODS**

It has been made possible for certain categories of goods (clothes, electronics, food products and means of transport) bearing trademarks to be imported without obtaining the permission of the rights holders. The legalization of parallel imports is effective until the end of 2023. However, it is important to keep track of the list of categories of goods covered by the policy, since it is amended from time to time.

### **INTERNET TRADE**

Internet trade is continuing to develop at pace in Russia. Special bonded warehouses are being set up to enable imported goods offered in Internet trade to be stored without the payment of customs charges. A decision was made to raise the threshold for the duty-

free import of goods purchased by individuals through foreign online stores from 200 to 1,000 euros until 1 April 2023.

## **PREFERENTIAL CUSTOMS PROCEDURES**

Customs legislation prescribes certain preferential customs procedures such as processing in the customs territory. That procedure allows raw materials to be imported into Russia for use in production activities without the payment of customs duties based on the assumption that the finished products will be exported to third countries.

The customs warehouse customs procedure does not require customs duties to be paid and is used to optimize logistical routes and to enable various operations to be carried out in the warehouse, such as marking.

Importers can also receive authorized economic operator status, which affords a whole range of simplifications, including faster clearance of goods.

## **FREE CUSTOMS ZONES**

Russia currently has around 30 special economic zones operating in various regions. A special economic zone is a designated area with developed infrastructure in which companies may build factories and import foreign goods duty-free for use in production activities or for their own needs. Products created in such zones can be exported to other countries or sold on the Russian market.

## **CURRENCY REGULATION AND CONTROL**

Import and export contracts must be registered with an authorized bank if the amount of obligations under

the contracts is equal to or greater than the equivalent of RUB 3 million in the case of import contracts and RUB 6 million in the case of export contracts. Russian law requires foreign currency funds to be repatriated to Russia. Administrative and criminal sanctions can be imposed for illegal currency operations

## **MARKING AND TRACEABILITY REQUIREMENTS**

The procedures and requirements for the marking of goods have been simplified. In particular, the marking of imported goods may take place in warehouses of authorized economic operators. In addition, controls and requirements relating to trade in marked goods have been eased.

## **EXPORT RESTRICTIONS**

In order to ensure the economic security of Russia, special economic measures have been introduced in the form of bans or restrictions (i.e., requirements to obtain special permission) on the export of certain goods, equipment and technologies which are of crucial importance for Russia (more than 200 products). The measures are effective until 31 December 2023 inclusively.

## **CUSTOMS CHECKS (AUDITS)**

Recent trends in customs audits show that the Russian customs authorities pay close attention to the customs value of goods declared by importers, especially in cases where the importer pays royalties, dividends or any other intra-group fees.

## ANTI-DUMPING MEASURES

In order for an anti-dumping duty not to be applied to certain goods (e.g., ball bearings, springs or alloy wheels), a certificate of origin may be required when the goods are imported and declared. From a practical standpoint, it is important to ensure that the certificate of origin is properly drawn up — otherwise, an anti-dumping duty may be imposed, which in some cases may be as high as 41.5%.



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## COUNTRY OF ORIGIN

In 2022, the Eurasian Economic Commission adopted decisions aimed at simplifying the certification of origin requirements for importers. These changes are positive for business, and we are seeing a relaxation of the conservative approach taken by customs authorities to country of origin confirmation.



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## HOW CAN B1 HELP?

In today's global economy, moving goods internationally can be a complex and costly activity. More than ever before, effective management of global trade issues is crucial to maintaining a competitive advantage.

Our team of global trade professionals can help you operate more effectively in moving goods around the world.

We offer a wide range of services, including the following:

- ▶ Management of import/export and customs clearance processes:

- Assistance in selecting the optimal customs procedure
- Structuring of supplies where the consignor and consignee are resident in different countries
- Analysis of customs consequences and opportunities to claim customs benefits and tariff preferences
- Development of a step-by-step action plan for importing/exporting goods from/into the EAEU
- Structuring of supplies in trade with EAEU member states where goods are imported from a third country

- ▶ Management of customs payments:
  - Determination of customs value
  - Confirmation of customs value (calculation of test values, preparation of answers to customs authorities' enquiries)
  - Dividends and transportation deductions
- ▶ Customs procedures and simplifications:
  - Analysis of special simplifications, identification of potential practical difficulties in applying them and provision of recommendations on addressing them
  - Analysis of how to apply the free customs zone procedure when importing goods to a priority development zone and when selling goods
- ▶ Simplifications for Authorized Economic Operators (AEOs):
  - Evaluation of whether a company meets the AEO requirements based on an analysis of its current business processes, identification of weaknesses and development of remedial recommendations
  - Assistance in obtaining AEO status, including evaluation of whether the company meets AEO requirements
- ▶ Classification of goods:
  - Review of classification codes applied
  - Assistance in obtaining preliminary decisions on the classification of goods
  - Analysis of customs risks that may arise as a result of declaring incorrect classification codes
- ▶ Proof of origin:
  - Analysis of compliance with the origin criteria for the purposes of public procurement in Russia and export to the CIS
  - Overview of the procedure for obtaining an ST-1 certificate
  - Assistance in confirming 'Made in Russia' status
- ▶ Review of compliance with customs legislation when performing import and export operations:
  - Review of a company's foreign economic activity function over a certain period
  - Customs compliance
  - Health check
- ▶ Recovery of customs overpayments:
  - Assistance in securing refunds of overpayments, including overpaid import VAT
  - Assistance in amending customs declarations
- ▶ Licensing and similar arrangements (franchises, concessions):
  - Analysis of whether royalty payments should be included in the customs value of imported goods
  - Assessment of customs risks that may arise due to ineffective administration of the licensing structure
  - Demonstrating that the royalty rate is at arm's length level
  - Advising on customs value issues regarding the inclusion of VAT in the royalty amount included in customs value
- ▶ Data Control and Analysis
 

Customs tool: a solution designed for the automated processing and checking of customs declarations, which involves:

  - An automated review of customs declarations based on selected parameters
  - Generation of reports based on data from customs declarations
  - Automatic identification of errors in approaches used by different customs brokers based on selected criteria (for example, tariff classification of goods)
  - Monitoring of expenses associated with customs broker services
- ▶ Appealing against actions/decisions of the customs authorities and administrative rulings to courts and higher customs authorities; practical assistance in dealing with the customs authorities:
  - Support for companies in relation to administrative appeals

- Representation of companies in arbitration courts in disputes with the customs authorities
- ▶ Protection of intellectual property:
  - Registering trademarks in the Customs Register of Intellectual Property (TROIS)
  - TROIS administration and communication with the customs authorities
  - Assistance in the development of risk profiles for administration of parallel imports
- ▶ Labeling and traceability:
  - Analysis of business processes
  - Assessment of the impact of Track & Trace operations on current business processes, including their timing
  - Analysis of additional Track & Trace operations and their incorporation into the operations of company departments
  - Estimation of additional labor costs for a company
  - Evaluation of options to automate Track & Trace operations
- ▶ Assistance to companies in obtaining subsidies, benefits and other government support:
  - Development of appropriate support claims and discussion and approval thereof with the relevant federal executive authorities
  - Development of a legal framework for claiming support
  - Assessment of whether the proposed forms of support comply with the WTO rules
  - Assistance in obtaining subsidies on a regular basis, preparation of required documents and support in submitting them to the relevant federal executive authorities
- ▶ Assistance in regulatory, customs and operational aspects of logistics processes under current conditions:
  - Analyzing options for continuing activities in Russia from the point of view of customs aspects and specific features of cross-border operations: pros and cons, risks, and potential impacts
- Preparing a defense file for management taking into account the risks of each option from the point of view of regulatory requirements, including customs administration aspects
- Advice on re-arranging contracts for supplies of goods across the Russian border
- Comprehensive analysis of contracts with service providers, in particular freight forwarders, carriers and customs brokers (including additions and amendments to existing contracts with providers of forwarding and customs services)
- Analyzing the implications of non-compliance with currency law in light of new rules.
- Assessing risks associated with the non-fulfilment of obligations by a foreign counterparty (a supplier of goods), and in particular of obligations to submit documents for the purposes of declaring goods, applying customs benefits, etc.
- Management of risks relating to the determination of the country of origin of goods made using Russian raw materials / components for import into foreign states in the context of sanctions
- Lobbying on a company's behalf for changes to the statutory framework in accordance with which prohibitions and restrictions are imposed on the exportation and importation of goods from/to Russia
- Analyzing sanctions imposed by foreign states on Russia and retaliatory measures (counter-sanctions) adopted by Russia which directly or indirectly affect a company's cross-border operations based on its product range (TN VED EAEU / OKPD 2 descriptions and codes of goods supplied, country of origin and importing country)
- Assessing risks associated with the accurate declaration of the customs value of goods.

# 07 BROWNFIELDS



# BUYING AN EXISTING BUSINESS

The acquisition of an existing business in Russia can generally be structured as a share deal or as an asset deal. Please see below a brief comparison of the two options.

	SHARE DEAL	ASSET DEAL
<b>Deal structuring</b>	A share deal can be structured (i) as an acquisition of shares in a Russian joint stock company (JSC), or (ii) as an acquisition of a participating interest in a Russian limited liability company (LLC), or (iii) as an acquisition of shares in a foreign holding company of Russian operating entities.	In Russia, asset deals are structured as the sale of specific assets/items recorded on the balance sheet of the seller(s) for a specific price.  The total purchase price for the asset deal will then need to be allocated to the various assets, and the allocated amounts should not be lower than the fair market value of the individual assets in order to mitigate subsequent tax risks in Russia.
<b>Transfer of historical risks</b>	In a share deal, the buyer inherits historical tax liabilities and risks of the target company. Thus, it is important for the buyer to conduct pre-acquisition tax due diligence covering the last three years and the current interim period.	In an asset deal, the seller's liabilities and risks generally do not pass to the buyer.  However, in certain cases the buyer may be liable for the seller's historical tax liabilities.
<b>Taxation — profits tax</b>	The acquisition of shares/participating interests is a tax-neutral event in Russia. The purchase cost forms the tax base in case of future disposal.	The acquisition of assets is a tax-neutral event in Russia. The purchase cost forms the tax base for future depreciation.
<b>Taxation — withholding tax (WHT)</b>	Under Russian domestic tax law, if (i) the seller is a foreign company which has no presence in Russia, and (ii) the company whose shares are sold is considered as “property-rich”, i.e., more than 50% of its assets consist directly or indirectly of immovable property located in Russia, income derived by such foreign company from the sale of shares (or participating interests) is subject to 20% capital gains tax in Russia. In this case, the buyer may have an obligation to withhold that tax as a tax agent.  It should be noted that Russia has concluded a number of double tax treaties, some of which may provide tax relief in this respect.	Under Russian domestic tax law, if the seller is a foreign company which has no presence in Russia and sells immovable property located in Russia, income derived by that foreign company from the sale of immovable property is subject to 20% capital gains in Russia. In this case, the buyer may have an obligation to withhold that tax as a tax agent.

	SHARE DEAL	ASSET DEAL
<b>Taxation — value added tax (VAT)</b>	The sale of shares (or participating interests) is not subject to Russian VAT.	<p>Generally, a sale of assets is subject to Russian VAT, for which an offset or refund may be claimed by the buyer if all the requirements are met.</p> <p>The applicable VAT rate may vary depending on the type of asset involved in the asset deal.</p>

### HOW CAN B1 HELP?

- ▶ General advice on tax and legal matters relevant to preparation for an M&A transaction
  - ▶ Due diligence of the potential acquisition target
  - ▶ Assistance in deal negotiations
- ▶ Advice on tax and legal matters relating to transaction documentation
  - ▶ Vendor assistance in preparing for disposal of a business
  - ▶ Vendor due diligence of a business planned for disposal



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## ABOUT B1 GROUP

B1 Group is a group of companies offering a full range of professional services, covering assurance, tax, law, strategy, transactions and consulting.

In over 30 years in Russia and 20 years in Belarus, we have assembled a strong team of professionals with broad expertise and a wealth of experience in delivering challenging projects. B1 Group is based in ten cities: Moscow, Minsk, Ekaterinburg, Kazan, Krasnodar, Novosibirsk, Rostov-on-Don, St. Petersburg, Togliatti and Vladivostok.

We help clients find new solutions, grow, transform and operate their business as well as strengthen their financial and human capital.

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