

New VAT regime for e-services

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Author: [Irina Dmitrieva](#)

On 1 January 2017 the special VAT regime for “electronically supplied services” (“**e-services**”) comes into effect, as introduced by Federal Law No. 244-FZ dated 3 July 2016.

The e-services are defined as “services performed over an IT network (e.g. Internet), automated with the use of IT”.

E-services include:		E-services do not include:
<ul style="list-style-type: none"> • Downloading/accessing software, games, databases • Online advertising • Services of social networking sites • Providing content (e-books, images, music, video, etc.) including for remote access 	<ul style="list-style-type: none"> • Services of classified ads portals and online trading platforms • Cloud computing • Real-time automatic services in response to the user's data input • Access to search engines; web analytics; web administration services; domain registration; hosting services 	<ul style="list-style-type: none"> • On-line shopping if supply not via Internet • Sale (licensing) of software and data bases on tangible media • Consulting services by e-mail • Internet service providers • Similar others

The e-services¹ are recognized as supplied at the place of the customer and are subject to Russian VAT when the customer is in Russia.

If a foreign operator (acting not through its subdivision in Russia) supplies e-services to a business customer in Russia or through an intermediary in Russia, such customer or intermediary is, as before, responsible for withholding of Russian VAT when making payment to the foreign operator. If however such **foreign operator supplies e-services to individual customers in Russia, then the new VAT rules will apply as follows:**

- **Place of an individual customer.** An individual customer is deemed to be in Russia if his/her living place is in Russia; or if he/she purchased the service by using a Russian bank (or a Russian electronic money operator), a network address registered in Russia, or a phone number with the Russia's country code.
- **VAT rate and due date.** Revenue (payments for services) collected from individual customers is deemed to be inclusive of Russian VAT (at a rate of 15.25% of gross revenue). The VAT-able revenue calculated, on cash basis (at the last day of the quarter after payment is received). The VAT amount is due to the state budget within 25 days following the end of the quarter.
- **VAT invoice.** No facture (VAT)-invoices are required.
- **VAT compliance.** As a general rule, the foreign operator itself is responsible for calculating and paying the VAT to the state budget. If however it engages a foreign intermediary (the “intermediary”)

¹ Under current VAT rules, some of these services are grouped within the categories of “software licensing”, “software/database development and modification” or “data processing” (that also are recognized as supplied and taxable at the customer's place).

for settlements with individual customers, then the intermediary is responsible for the VAT compliance (as a tax agent for the operator). In particular, the operator (or its intermediary if applicable) has to:

- register for tax purposes in Russia (through an e-mail or a “personal electronic taxpayer office” at the Federal Tax Services’ website);
 - file quarterly VAT returns (through the “personal electronic taxpayer office”);
 - pay the VAT to the state budget;
 - keep records on delivery of services to individual customers (including information on the customer’s place);
 - provide (upon request) information and documentation to the Russian tax authorities.
- **VAT administration by the Federal Tax Service.** A few specific rules are established:
 - the information on the operator’s (or the intermediary’s) tax registration in Russia is not protected by the tax secrecy regime;
 - the tax authorities are permitted to request (from facilitators of money transfers) the information on the operator’s collections, and to conduct a desk audit (and charge VAT) based on available information on activities of the operator or other similar taxpayer (if the VAT filing is overdue for more than six months);
 - extended term for conduct of a desk audit of a VAT return and for conduct of additional investigations (six and two months instead of the usual three and one month, respectively);
 - mandatory de-registration of the operator (or its intermediary if applicable) in case of failure to file VAT return (for more than six months), submit requested documents (for more than three months), pay VAT, together with late-payment interest and fines if any (for more than 12 months). Such de-registration would deprive from usage of the “personal electronic taxpayer office” for one year, but would not eliminate the overdue tax liability.

The new VAT regime for e-services will apply along with the VAT exemption for licensing of software and databases. Absent of any clear distinction between “software as a service” and software as an IP right, using this exemption for e-services would likely lead to disputes with tax authorities. This exemption is also expected to be abolished soon.

Providers of e-services need to evaluate their business model and determine the impact of the new VAT rules.

White & Case LLC
4 Romanov Pereulok
125009 Moscow
Russia

T +7 495 787 3000

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