

Russia

Legal overview

Executive Summary

The Russian legal system is in the process of continuous transformation since the USSR's collapse 25 years ago. In recent years it has become quite modern with the adoption of the best business practices from English law and the rest of the world. The rate of change and complexity do, however, mean that those deciding to do business in Russia find it is beneficial to have a local advisor to assist with compliance and to reduce costs and the administrative burden.

Registered Companies and Partnerships

The types of companies in Russia are similar to English law. You can choose among branches of your parent company, partnerships, limited liability companies (public or private) or individuals can register as individual entrepreneurs.

Each type of companies has a number of tax systems applicable to it with various tax rates, periods and other.

In addition, the type of the company should corresponds to the business type (for example banking services, international trading, broadcasting, etc.)

Classification of Registered Companies

The most common types of companies in Russia are:

- Company limited by shares ("OOO" in Russian) (which has a close similarity to "LLC")
- Company limited by shares (private or public) ("AO" or "IAO" in Russian) (which is similar to a JSC)
- Companies with unlimited liability (partnership), which is very rare

Even for companies, in certain limited circumstances courts can extend shareholders liability beyond their share interest – see "Share Capital" below.

Memorandum and Articles of Association

Every company should have articles of association – the main constitutional document for the company. Usually AoA are very similar to each other for the same types of company. The AoA contain information about type of the company, the size of the share capital, the number and type of governing bodies, the city of incorporation and similar details.

Share Capital

The liability of the shareholders in a company is usually limited to their contribution to the issued shares. Those in partnerships have unlimited liability. In certain situations, when the liability of the company is social or is tax related, the liability could be extended to the private property of the shareholders. To do so, however, requires a court decision.

Public Offer of Shares

There are number of requirements for public companies in Russia such as number of shareholders, minimum share capital etc. The public companies have stricter regulations of their corporate and tax duties, have to have Board of directors, oversight committees and independent auditors. They must also report and publish their results on a quarterly basis.

The steps required to permit a business to provide an initial public offering of its shares (IPO) is broadly similar to other jurisdictions and is based on MoEx (Moscow Stock Exchange) rules.

General Meetings

All companies have to have an Annual General Meeting in a highly regimented order, so every company has its own “corporate calendar” for each year. Depending on company type and the AoA statement, powers should be distributed among three levels of ruling bodies – the General meeting, the Board of Directors and the Managing Committee or Managing Director (CEO/General Director).

Directors

Every company should have at least a Managing Director (CEO) unless it is required by law to have a Board of Directors. For public companies a Board of Directors is mandatory, for private companies, this is a decision of the shareholders. The Managing Director has full power and responsibility for the company except the

matters reserved to the Board and General Meeting.

Financing of a Company

The methods of financing private (non Government) companies are shareholder contribution by equity (including rights) or money by bank or other company loan. It is prohibited for non-shareholders to grant a financing to company without compensation.

Commencement of Business

The process of establishing a company is relatively simple and takes approximately one week to obtain a registration number of the taxpayer (called an “INN”). It takes one further day to open a bank account. There are number of methods, chosen by shareholders, of paying taxes and preparing accounts for tax authorities. The preferable system depends on size of the business and its type, number of shareholders and other matters.

Mergers and Acquisitions

In the last two years, the hottest topic for Russian legislation has been “De-offshorisation”. This means a transition of Russian equity to companies incorporated in Russia from widely used offshore and low tax jurisdictions.

Companies based in Russia can, subject to legal requirements, also acquire the share capital of other companies or purchase their businesses.

Corporate Insolvency

The insolvency of a company in Russia is tightly connected to liquidation procedure and usually occurs where one or more shareholders raise a dispute with the company or its management. Otherwise, a more common practice to avoid the formalities of insolvency is to sell the shares of the company to a special law firm’s special purchase vehicle (SPV) but the potential pit-falls in the process and consequent liabilities mean it should only be undertaken by a well-trusted law firm in Russia.

Winding Up of Companies

Liquidation is very complicated process in Russia as the legislation system is trying to protect shareholders equity in the best way. A special institution appoints Arbitrary managers to lead the process when the company has a large number of shareholders or there is a dispute about companies assets. Every liquidation

of a significant company will usually trigger criminal courts trial which can last for several years.

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Tax overview

Company registration

Every new business, whatever its legal form, must register with the Regional Fiscal Body within a territory, where a new legal entity is going to be known as a local resident. As almost all payments to the social funds in the Russian Federation are now collected by Taxation Bodies, who are also responsible for all administrative procedures related to the payments to the social funds, all necessary registration with those funds is also provided by such Regional Fiscal bodies.

Setting-up taxation

There are no setting-up costs in terms of taxation in the Russian Federation except for a small fee for registering the company with the Regional Fiscal Body.

National current benefit taxation

Corporate income tax

Taxable profits of both companies and branches doing business in the Russian Federation are subject to 20% corporate income tax rate except some groups of small enterprises for whom special taxation plans can be applied (6% turnover tax, 15% income tax or deemed income tax instead of all applicable taxes).

Controlled foreign companies legislation was implemented in the Russian Tax Code in 2014.

The Russian Federation has developed tax facilities in order to stimulate activities and innovation. These include special economic regions with a reduced rate of the corporate income tax, even down to 0% in some cases.

Trade levy

There is a special so-called “trade levy” established on retail sales in the Russian Federation with a rate specific for the every municipality of the Russian Federation (except the cities of federal significance (Moscow, Saint Petersburg and Sevastopol) - the levy applicable there shall be established by the Tax Code and laws of those cities).

Other taxes (VAT, property taxes)

VAT is levied at a standard rate of 20% from January 1, 2019 for most goods and services. A reduced rate of 10% applies to food, books and certain other necessities. There is a zero rate for the list of goods / services, including export of goods. Certain operations are VAT exempt, including medical services, banking services and school education.

VAT is charged on the transaction value. The tax collected by the business from its customers is balanced with the deductible tax paid by the business to its suppliers, and the resulting balance is paid to the tax authorities on the basis of a tax return declaration, which is filed on a quarterly basis. Any negative balance of these amounts is refunded. foreign company may, under certain conditions, reclaim Russian input VAT.

There are the following taxes levied on the property of legal entities in the Russian Federation: Land tax and Property Tax.

Legal entities and individuals who have “rights in rem” to the land (right to ownership, the right of the inherited life possession of the land plot, the right of the permanent (perpetual) use of the land plot), are the payers of the land tax. Legal entities and individuals who possess a right of the fixed term use of land without consideration or who are lessees of that land, shall not be recognized as tax-payers of Land Tax.

Land Tax is paid on the annual basis and is determined by a cadastral value of a land plot multiplied by 0.3% for land plots of agricultural, housing funds, private subsidiary farming plots and others (listed in the article 394 of the Tax Code), and multiplied by 1.5% for land plots of other types.

For legal entities Property Tax can apply both to real estate and other immovable property (except land, water resources and other natural resources) that count as fixed assets according to the Russian standards of accounting.

Property Tax is calculated as an average annual historical total value of the fixed assets deducted by the amortisation values. Tax rates vary depending on the regional laws and should not exceed 2.2%.

Treaties for the avoidance of the double taxation

There are a number of double taxation treaties between the Russian federation and other countries which cover almost all of the greater industrially developed countries and many others.

Benefit distribution (national withholding taxes, international tax exemption options)

The Russian federation levies a dividend withholding tax on profit distributions by resident companies to foreign shareholders. The Russian dividend withholding tax rate is 15%. This rate may be reduced, often to 5% or to zero on the basis of double tax treaties. However these preferences are applicable only if the shareholding is not held with the main objective or one of the main objectives to avoid taxation and the structure is not artificial

Tax treatment of losses

Losses of the tax period may be deducted from the net profit for the current period as follows (deductible losses may comprise of economically reasonable and approved expenditures):

during the same taxation period, set off of loss against another element of the company's income; and

against profit of the following annual taxation periods succeeding the taxation period in which losses arise but for the tax periods from January 1, 2017 to December 31, 2020 tax base for the current tax period may not be reduced by losses for more than 50 %.

The above rules are not applicable to losses arising in any taxation period when a tax-payer applied the tax rate equal to 0%.

Those rules are not also applicable to losses related to the sale or other transfer of shares in Russian legal entities at certain conditions.

Amounts of amortization charged are also considered as deductible expenses. These amounts, in general, should be spread over the period of the remaining life of an asset.

Employee obligations (taxes on salary, social security payments)

In general, an employer is obliged to calculate and withhold personal income tax equal to 13% from payments to employees and

must pay this to the tax authorities. Withholding and paying over the correct amount of tax on wage is the responsibility for the employer as a tax agent. An employer is also obliged to calculate and pay to the tax authorities social security / social insurance payments: mandatory pension insurance, mandatory medical insurance and mandatory social insurance. The total amount of social insurance payments varies but relates to the different businesses and is normally 30% of monthly wages.

Withholding personal income tax and social insurances are normally paid on a monthly basis up to the 15th day of the month after that in which the benefit or wages were paid.

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