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Since 1 January 2022 foreign IT companies who have over 500 thousand customers in Russia are obliged to open a local office in Russia. The new legislation is referred to in mass media as the Law on “landing” foreign IT businesses in Russia. Below we describe the new requirements for foreign companies in Russia as well as tax implications of foreign companies operating in Russian market in detail. We hope that this material will be useful for all foreign legal entities providing electronic services in Russia.

## **New requirements for foreign IT companies with 0,5 mln users in Russia to set up a local office**

The Federal Law on online activities of foreign companies in the Russian Federation (hereinafter – Law) was adopted on 1 July 2021. This Law establishes new requirements for foreign owners of Internet resources (meaning website, webpage or information system, or piece of software) whose daily audience exceeds 500 thousand Russian users. If such companies fall under certain additional criteria (as described below), they are obliged to create a local office in Russia starting from 1 January 2022. Local office may be established in the form of a branch, a representative office or a separate legal entity (a subsidiary) in Russia.

These new rules are applicable only if one of the following criteria is met:

- 1) the foreign information resource provides and/or distributes information in Russian, or in any of the state languages of Russian regions or in other languages of the peoples of the Russian Federation;
- 2) the foreign information resource distributes advertising targeted at customers located in the territory of the Russian Federation;
- 3) the foreign person processes data on users located in the territory of the Russian Federation; or
- 4) the foreign person receiving money from Russian individuals or legal entities.

The new legislation also applies to foreign resources serving as online messengers, advertising operators and hosting services, as long as such services target Russian users, irrespective of the number of daily users.



The new Law provides for potential sanctions such as prohibition of distribution of advertising of a foreign resource in Russia, prohibition of placement of advertising on the foreign resource, limitations on money transfers from and to the foreign resource from Russian entities and individuals (with the assistance of the Russian Central Bank), restriction on appearance in search results, etc. All of these measures can be applied by the Federal Service for Supervision in the Sphere of Telecom, IT and Mass Communications (Roskomnadzor) at its own decision, depending on the scope and duration of violation.

The legal aspect of the issue as well as legal peculiarities and challenges of the Law application has been previously covered by the ALTHAUS Group's Law Practice (for more information, see [ALTHAUS Legal Alert](#)).

## Foreign companies tax implications with respect to the new Law adoption

In general, foreign legal entities may be liable for taxation in the Russian Tax Authorities in the following cases:

- If they are recognized as Russian tax residents based on certain criteria;
- If their business activities create a foreign company's PE in Russia;
- If they receive income from a source in Russia (not connected with the activities of a foreign company's PE in Russia) that is subject to withholding tax.



Starting from 1 January 2022 foreign IT companies in order to fulfill the requirements of the new Law are obliged to set up a local office in the Russian Federation, which leads to the additional tax duties. From the perspective of taxation, setting up a local office in Russia means the imposition of tax obligations such as calculation and payment corporate income tax, value added tax, property tax, etc.

The tax burden of foreign companies depends on the chosen form of their legal presence on the territory of the Russian Federation – a local branch, a representative office or a subsidiary.

Establishment of a foreign companies' representative office or branch requires a comprehensive analysis, as it may affect tax status of this foreign company in the Russian Federation. When creating a branch or representative office, foreign company should register with the Russian tax authorities.

If a foreign company is involved in goods, work or services sale in Russia, then such registration may create VAT liability for payment or withholding (in certain cases) with respect of these operations, as well as corporate income tax if it qualifies for Permanent Establishment (PE) criteria

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*We notice that the general rule regarding the services in electronic form will also be applicable. That means that a foreign legal entity that provides services in electronic form specified in paragraph 1 of Article 174.2 of the Russian Tax Code, is subject to registration in the Russian Tax Authorities (so called “VAT registration”), if the place of sale is Russia. According to the paragraph 14 of the article 306 of the Russian Tax Code, such activity does not lead to a permanent establishment status, thus, it does not create a foreign company’s PE in Russia, provided it does not qualify for PE criteria.*

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If the option of a separate legal entity (as opposed to a branch or a rep office) is chosen, then only operations of such subsidiary will be subject to the Russian tax legislation, other group activity and operations will be excluded from the control of Russian tax authorities. Thus, this option, if properly structured, allows both to comply with the requirements of the new Law and to release other companies of a group from the taxation in the Russian Federation.

Each option has pros and cons, thus, foreign companies should assess their priorities while operating in the Russian market.

In November 2021 Roskomnadzor arbitrarily included 13 companies in the list, including Apple, Google, Zoom, Meta and Twitter and other IT giants (the full list of involved companies is available on the regulator’s website). Some of them have already begun to fulfill the abovementioned requirements. However, most foreign IT companies operating online in Russia are waiting for clear guidance and practical examples to emerge in the process of implementing the requirements of the provision on creating Russian local office during the 2022.

If you would like to know more about the new requirements for foreign companies to set up a local office in Russia and arising from the tax implications of the new Law or receive further information about carrying out business activities in Russia, please contact the experts of ALTHAUS Group, the exclusive representative of WTS Global in Russia.