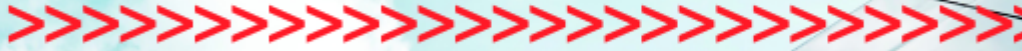


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Tax Radiography of Company Data in Russia from July 2017



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In July 2017, Russia's tax agency will disclose data about companies for the first time. What should businesses expect? What is the potential effect of this decision?

The countries of northern Europe (Norway, Sweden and Finland) are marked out not only by the high level of their tax burden but also by the fact that much data about taxpayers (including individuals) is publicly available. Following their example, the Russian Federal Tax Service will, on July 25, 2017, post for the first time on its official site significant information, in open data form, all companies that have been registered with the Russian tax authorities (as at the end of 2016, there were 4.7 million such companies). Previously, more than simply not needing to be published, this information was considered a "tax secret" under the Russian Tax Code. As before, information about individuals is not subject to disclosure.

This possibility arose in connection with the adoption of Federal Law No. 134-FZ dated May 1, 2016; the procedure for publication was approved by Order No. MMV-7-14/729@ of the Head of the Russian Federal Tax Service dated December 29, 2016.

Information to be Published

The following information for the previous calendar year will be freely available:

- amount of income and expenses according to data from a company's reports and accounts (financial statements);
- the average headcount of the company's employees; and
- the amount of taxes paid by the company (for each tax).

The following will be published monthly:

- amount of arrears, penalties and fines, tax offences committed and sanctions for them; and
- special tax regimes applied by the taxpayer along with whether the taxpayer participates in a consolidated group of taxpayers.

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The draft law also proposed the publication of the aggregate amount paid to employees for the previous year. Based on this data and information about the employee headcount, it would have been possible to judge what the average salary was within the company. This could have led to an increase in social tension, and to avoid such a prospect, deputies excluded this provision from the draft law when approving the final version of it.

On July 25, 2017, the information for 2016 will be published (in terms of tax offences, information will be published about decisions of tax authorities that came into force in June 2017). Information about insurance contributions, which the tax agency is administering from 2017, will be published for the first time in 2018.

Consequences for Taxpayers and Society

In the explanatory note to the draft law, deputies stated that, in Russia, as in the majority of countries, the trend has evolved for state executive authorities to disclose information about those involved in business transactions. This makes the country's entire economy more transparent.

This development could influence the state of the tax system and even bring about tectonic shifts in the broader social relations that have evolved. It is beyond doubt that the information will be sought after not only by journalists but also the public, companies and state authorities.

Of greatest interest is information about taxes paid as well as arrears, penalties and fines. This is because information about employee headcount and about income and expenses is freely available as part of the reports companies submit to state statistics bodies.

The Federal Tax Service itself has long been insisting that information about legal entities should be published. It entirely justifiably believes that this information allows companies to check their counterparties more carefully and select the most solvent in order not to be drawn inadvertently into tax evasion schemes.

The publication of this data will allow individuals to better assess the economic position of companies when investing in the construction of residential properties as well as in cases when financial institutions are raising funds from the public.

This information will allow companies to take a decision on the selection of counterparties, on whether to grant payment deferrals or whether additional guarantees are needed, on whether to take part in joint projects, and on the prospects for recovering debts.

The new information will be used by regional and local authorities to plan their budgets and their dealings with the largest taxpayer companies doing business in their areas. This really could be a "most favored" regime—or the reverse could be true. In the Republic of Bashkortostan, a concept is being prepared that will provide for the creation of a special regional institution for increasing proceeds to the public purse. There is no doubt that this institution will use the new data in its work.

Considerable transparency in economic relations may have the effect of discouraging corruption, espe-

cially in procurement exercises for state and municipal needs; this is because fictitious (sham) companies often receive the orders.

Official information about taxes paid allows an unofficial ranking of taxpayers to be put together, and for a company's business reputation to be made dependent on the share it assumes of the financing of public needs.

In our view, in future, the accumulated amount of taxes paid (a type of tax capital) could have been used for the purpose of granting to taxpayers tax benefits, tax advantages and subsidies from government funds. Today, a company that has paid tens or hundreds of millions of roubles into the public purse over many years is on an absolutely equal footing with a business that regularly transfers assets to a new company so as not to pay tax. This is reminiscent of the Soviet "wage levelling" approach, when people received a more or less equal salary irrespective of the contribution they made to work. Recording taxes paid in previous years will allow relationships with the state to move from formal equality to genuine equality, commensurate with each person's contribution to the common cause.

Finally, the new information may be used to assess the tax burden of companies in a sector; here, the leaders and backmarkers will be identified, which is an additional source for investors to make assessments. Comparing the tax burden of companies will aid an understanding of whether a competitive environment is being observed within a particular sector.

Of course, in most cases, business people will use this information to check a potential counterparty's "tax dependability" as well as to monitor its current state. Today, companies have to do this so that they do not face tax liability for a lack of due care in selecting a supplier which has subsequently disappeared without paying value added tax and profit tax. Such "missing" suppliers are called "fly-by-night companies" and the tax agency estimates that there are around 700,000 of them in Russia. Even though goods may have been supplied and paid for, tax authorities enjoy the support of the courts in recovering from the buyer taxes that the supplier has not paid (along with penalties and fines)—in the absence of legal grounds for doing so. In effect, the government has shifted a part of its tax oversight functions onto taxpayers, threatening them with having to pay the tax debts of their counterparties. At any rate, the additional information resource will help to make the process of selecting counterparties more manageable. Moreover, it allows for the identification of workplace abuses, when managers divert profit to companies they control that have been intentionally embedded in purchases or sales. The information will also be used to improve numerous commercial electronic services that check and assess counterparties.

According to the information sheet of the high-priority project "Developing an automated information system for the Russian Federal Tax Service" (the "Tax-3'AIS"), by the end of 2020, taxpayers will have assistance available thanks to the implementation of the "climate control" information system. This will allow the risks of dealing with a specific taxpayer to be assessed. The placement of the new information resource on the tax agency's official website will allow good faith taxpayers to mitigate reputational risks. It

will create conditions for healthy competition, reduce the opportunity to resort to shady dealings when doing business and make the business environment more transparent. In summary, it makes the Russian economy more attractive for investment.

New Opportunities and New Questions

The law provides that information about taxes paid when goods are imported into the customs territory of the Eurasian Economic Union will not be published, nor will information about taxes received from a company acting as a tax agent. Understandably, personal income tax and other taxes that a company withholds and pays to the government as a taxpayer cannot be regarded as the company's taxes. But to exclude customs payments is justified only by the fact that the tax agency lacks information about them. This should be eliminated as the work of the tax and customs authorities is integrated.

The new standards of openness in tax information will pose new questions about the balance between public and private interests. The European Court of Human Rights recently had to decide one of these questions further to an application from a Finnish company. Therefore, an extremely careful approach

will be needed to determining the volume of information to be published and the procedure for publishing it. According to the Federal Tax Service's order, information about offences, as well as about arrears, penalties and fines, will be published after a decision of a tax authority, based on the results of a tax audit, comes into force. In general, such a decision comes into force after any appeal from the taxpayer has been considered by a superior tax authority. In this context, it is not taken into account that the decision could subsequently be appealed in court and be declared wholly or partially invalid. The order makes no provision for the publication of information about either a court appeal in relation to amounts of tax assessed, or the results of any such appeal. This could cause reputational damage to a company, meaning that the provisions of the order need to be reworked. The best solution would be for the information in question to be published not as soon as the decision comes into force, but only after any court proceedings have finished or if there has been no court appeal by the statutory deadline set for one.

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