# Planned amendments to the rules for tax monitoring

*FAO employees of companies planning to switch to tax monitoring and of companies that have adopted this type of control*

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**Pepeliaev Group advises that the Finance Ministry has prepared amendments to the Tax Code that affect, among other things, the regulation of tax monitoring.**

A draft law containing large-scale amendments to the Tax Code has been published on the federal portal for draft regulations[1]. Among other things, the Draft Law provides for amendments to the regulation of tax monitoring. Let us consider them.

## Adopting tax monitoring

It is planned that, in order to switch to tax monitoring, a company will need to comply with one of the three established money-based criteria (at least RUB 80 million of taxes paid / RUB 800 million of income / an asset value of RUB 800 million), rather than all of them, as is the case at present.

### Pepeliaev Group's comment

The 2020 concept of developing monitoring already provided for the range of participants in monitoring to be expanded owing to the possibility being granted to companies to switch to monitoring when they reach any of the money-based criteria. Now these provisions have been reflected in the Draft Law. The adoption of the amendments will be the third reduction of money-based criteria for accession to monitoring since monitoring appeared.

## Conducting tax monitoring

The Draft Law provides for another expansion of the powers of tax authorities conducting monitoring:

- the list of grounds for an inspection (article 92 of the Tax Code) is being increased. It will be allowed to conduct an inspection if the following have

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[1] https://regulation.gov.ru/Regulation/Npa/PublicView?npaID=154001#

been identified: any contradictions (discrepancies) in the documents (information) of the company or incorrect payment of taxes. An inspection may also be performed during an audit of actual costs within the framework of investment protection and promotion agreements ('IPPAs');

- The right is being added to seize items (article 94 of the Tax Code).

**Pepeliaev Group's comment**

When monitoring had only just appeared, the tax authorities had the right to request documents (information) connected with the payment of taxes.

As time passed, the powers of inspectorates expanded, and if the Draft Law is adopted in the wording that is being examined, then the powers of inspectorates conducting monitoring will be equated to the powers within the scope of field audits.

In view of such an expansion it would be more logical to repeal (or at least narrow down) the grounds for conducting field audits of the current participants in monitoring: within the scope of an audit by a higher-level tax authority of a lower-level authority and in connection with a failure to comply with a grounded opinion (article 89(5.1) of the Tax Code).

It is not clear why these grounds for conducting field audits should be retained if the volume and speed of the transfer of information from companies to tax authorities within the scope of monitoring are continually growing and the powers of an inspectorate within the scope of monitoring become just the same as the powers within field audits. What new information can the tax authority communicate further to a tax audit in this situation if a company's activity can be audited in detail within the scope of monitoring? This state of affairs is nothing but excessive tax control, which contradicts the declared principles of tax monitoring.

Unfortunately, the Draft Law does not contain any provisions changing the grounds for tax monitoring to be conducted.

## Cessation of tax monitoring

The draft law more than doubles the list of grounds for tax monitoring to terminate early. Among the new grounds are:

- a systematic (on more than two occasions during the period of monitoring) breach of the procedure and timeframes of the tax authority's access to the company's information systems;

- if the regulation of information interaction / information systems / the system of internal control of the company does not comply with the requirements established by the Russian Federal Tax Service.

Also, it is proposed to add to the Tax Code a regulation that the Federal Tax Service approves the procedure for conducting a compliance audit with respect to the information systems of a company under monitoring.

**Pepeliaev Group's comment**

The proposed amendments are obviously aimed at increasing the discipline of companies under monitoring in terms of meeting the requirements for information systems and for an internal control system.

On the one hand, it is reasonable that once there are specific requirements established for transferring to and staying under monitoring (including the requirements relating to information systems and an internal control system), failure to comply with such requirements should give rise to negative implications. On the other hand, is this really a good time for such a stringent measure of liability as terminating monitoring early when, for instance, requirements for information systems have been breached? The Federal Tax Service's requirements for information systems of companies under monitoring are constantly updated and become increasingly complex. For companies, this means considerable labour and financial costs. While all of this is happening, the economic situation in the country is not becoming any easier.

In terms of the requirements for the internal control system, it is not clear what specific requirements are meant. Companies may switch to monitoring having developed such a system to different levels. What would be the level against which the systems are supposed to be compared under the new rule?

We assume that the amendments under consideration will not help to make tax monitoring more popular.

As a minimum, one would have to make reservations that mitigate the grounds for applying the consequences of companies breaching the relevant requirements (for instance, it could be specified that only a systematic breach of requirements and only a breach that has impeded the conduct of monitoring gives rise to the relevant negative consequence). It also has to be specified what is understood by the internal control system not complying with the requirements put forward by the Federal Tax Service.

## The conduct of tax monitoring with respect to companies that are successors of participants in monitoring

A number of amendments are dedicated to the specifics of conducting tax monitoring with respect to companies that are successors of participants in monitoring.

Now, the state registration of the termination of a company's activities as a result of a reorganisation is a ground for monitoring to be terminated ahead of time (article 105.28(1)(4) of the Tax Code).

According to the Draft Law, once the reorganisation is completed, tax monitoring will be automatically conducted with respect to the successor company (which does not have to comply with the money thresholds).

Reorganised companies will need to check whether the tax monitoring information provided prior to the reorganisation is up-to-date. When any discrepancies are identified, such reorganised companies will have a month from the date of reorganisation to update the data.

If the successor company wants to leave monitoring after the reorganisation, then it will be necessary to file a statement that it is withdrawing from the conduct of monitoring.

**Pepeliaev Group's comment**

Provisions regarding the right for monitoring to be retained after a reorganisation will definitely make life easier for successor companies. In such a situation, a reorganisation will give rise only to the need to update information relating to tax monitoring with respect to the new company, rather than going through the procedure of transferring to this form of control.

## The conduct of tax monitoring with respect to participants in IPPAs

Under the current regulation, parties to IPPAs must provide the tax authority, within the first period when tax monitoring is conducted, with information about the actual expenses incurred after the entry into an IPPA.

It is proposed to establish that, in the first period when monitoring is conducted, information about the actual costs will be provided from the earlier of the following dates:

- when a resolution is passed to approve the budget for capital expenses;
- when a resolution is passed to carry out an investment project;
- when the IPPA is entered into.

**Pepeliaev Group's comment**

The amendments are aimed at providing for more thorough tax monitoring with respect to companies that have entered into an IPPA.

Please be reminded that such companies do not have the choice as to whether or not to switch to tax monitoring. This form of control is compulsory for them.

## What to think about and what to do

At present, it is too early to say in what form the amendments proposed by the Draft Law will be adopted. However, it may be stated with a high degree of certainty that the concept itself of the amendments will not change.

Therefore, companies that were planning to enter monitoring and that comply with one of the money-based criteria can start contemplating the transfer in more detail.

For companies subject to monitoring, it would be prudent to conduct an audit of information systems and the internal control system.

## Help from your adviser

Pepeliaev Group's team has an extensive track record of advising clients on issues connected with entering tax monitoring and being subject to this form of control.

We are ready to assist you with: the diagnostics of the internal control system and with developing recommendations for how to improve it; preparing documents required to switch to tax monitoring and providing support during the transfer to monitoring; and improving the system of internal control and internal documents.

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