

# A charge for Internet advertising is not an April Fool's Day joke

*FAO: CEOs and employees of companies' legal departments*

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**Pepeliaev Group advises that less than in a month, starting from 1 April 2025, the new version of the Law on Advertising will introduce mandatory charges for advertising on the Internet.<sup>1</sup>**

The charge (3% of income received) will be paid by distributors of advertising, operators of advertising systems and other persons involved in publishing advertising on the Internet. Advertisers will also feel the burden of the costs because the charge will most likely affect the cost of advertising services.

The Russian Government will establish the procedure for how the charge will be calculated. However, players of the advertising market should, even at this stage, be re-reading their advertising agreements and get to grips with their new obligations.

If your company publishes information about itself or other persons on the Internet or facilitates such activities, then, as you prepare for the charge to be introduced, you should be answering the following questions:

1. Is the information published considered to be advertising?

## **Pepeliaev Group's comment**

First and foremost, it is essential to determine whether the information meets the criteria outlined in article 3 of the Law on Advertising. Even if it does, it is important not to rush into equating your content with "advertising." Numerous exceptions to the general rule can have a significant influence on how material is ultimately classified. In practice, this issue is resolved on a case-by-case basis, taking into account all specific circumstances, methods, conditions and purposes of publishing such information.

2. What is your company's role in publishing the advertising? What specific services does it provide? Is it recognised to be liable for the charge?

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<sup>1</sup> <https://sozd.duma.gov.ru/bill/600974-8>.

### **Pepeliaev Group's comment**

Practice shows it is not that simple to distinguish one's role (advertiser, advertising distributor, etc.) within the chain of counterparties involved in an advertising campaign. It is crucial to identify the specific function that your company performs: does it determine the item that is advertised and the content of the advertisement? Does it put the information into a form that is ready for distribution, or does it just disseminate it? This question should be addressed now, as it directly affects your obligation to pay the new charge.

3. Where and on which platforms is the information published?

### **Pepeliaev Group's comment**

The most obvious platform for publishing advertising on the Internet is a company's official website. However, the list of potential platforms is much broader: messaging services, smartphone applications, marketplaces, and even banned social networks. It is worth considering now what potential and, perhaps, less obvious online platforms could host the advertising. It should not be forgotten that the law exempts from the new charges advertisements published on platforms operated by TV- and/or radio-broadcasters, news agencies, certain state-affiliated media outlets or those receiving subsidies from the public purse, as well as resources of major print publications.

4. What constitutes income from such services?

### **Pepeliaev Group's comment**

For taxation purposes, income is defined as an economic benefit (article 41 of the Russian Tax Code). Typically, this means revenue or the cost of a service, which, once expenses are deducted, becomes the company's profit. However, since this charge is not formally part of the general system of taxes and levies, we cannot rule out that the definition of income and the rules for calculating it could differ.

However, given that the new charge is imposed on income from publishing advertising rather than profit, it is important to examine how this income is generated. Your company's income from publishing advertising might be artificially inflated to cover associated costs and expenses. Certain expenses and fees may directly influence the transaction price and, consequently, the income from the service being sold. In such a case, contractual relationships and the parties' mutual obligations need to be reconsidered, with any unjustified inflation of income being eliminated.

5. How should contractual models be changed and which agreements should be amended to avoid paying the charge on non-taxable income?

### **Pepeliaev Group's comment**

The new charge applies exclusively to specific types of income which are specified in the Law. Agreements should be revised to expressly determine the cost of relevant services and taxable income and then separate it from non-taxable income. It is not permissible to merge such income with other revenues or receive payment for services as a single fee, without the price being broken down. We believe that a failure to do so may result in the entire payment under an agreement or the agreement price being subject to the new charge.

6. Should accounting policies be amended to accurately and timely reflect income from online advertising?

## Pepeliaev Group's comment

Payers of the new charge should carefully consider whether to adjust their systems for booking income from advertising services. This is so that income earned from advertising services is isolated from revenues generated by other services that are ancillary to advertising being distributed, and that should not be included in the tax base for the charge. For intermediaries within the advertising chain, it is essential to separately account for agency fees that are subject to the advertising charge. Advertisers that engage foreign companies or private individuals to distribute advertising should establish relevant procedures for the advertising charge to be accounted for and withheld when settlements are carried out with such distributors. We strongly recommend formalising these adjustments within your accounting policies.

## Help from your adviser

Pepeliaev Group's specialists have extensive experience of providing legal support to clients in the field of legislation on advertising, taxes and bookkeeping.

They continually monitor changes in the legislation on advertising and stand ready to give prompt advice on any legal aspects that arise in connection with the new provisions being adopted.

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