

The Ministry of Finance has identified measures to reduce the negative consequences for business of the suspension of double taxation agreements with Western countries. Because of this, Russian business risks paying more tax on payments to "unfriendly" countries. In fact, the Finance Ministry proposed to return the previous tax exemptions on several types of payments. In addition to interest on loans and royalties for software, the list includes payments for the lease of aircraft, the purchase of sea vessels and the broadcasting of Western content

The Finance Ministry is going to protect six types of payments abroad from the growth of the tax burden due to the suspension of tax agreements with Western countries: interest on loans, licence payments for unique software, aircraft rent and related insurance payments, purchase of sea vessels, sports and entertainment broadcasts. This is stated in the "Basic directions of budget and tax policy for 2024-2026" published on 28 September. Earlier, the Ministry of Finance announced only preservation of privileges on interest on loans.

"Donation of tax legislation in connection with the suspension of agreements is our number one priority now," Deputy Finance Ministry head Alexei Sazanov said at the VII Moscow Financial Forum. Amendments to the Tax Code are planned to be introduced to the State Duma in the autumn session. They will apply to payments from 8 August, the date of suspension of the agreements.

President Vladimir Putin has suspended tax exemptions on passive income from Russia for organisations from 38 "unfriendly" countries. These are not only Cyprus, Malta and Luxembourg, where Russians often registered structures, but also countries whose companies, despite sanctions, maintained strategic investments in Russia - France, Germany, Japan, etc. The measure was a response to the EU's blacklisting of Russia as a non-cooperative jurisdiction on tax matters.

Double tax treaties (DTTs) allow to reduce tax on dividends from 15% to 5-10% (depending on the jurisdiction), and on interest on loans and royalties from 20% to 0%. The increase in taxes due to the suspension of SIDN actually falls on the shoulders of Russian business, as contracts with foreign companies often have a special clause stating that they must receive a certain net amount of income, Anna Modyanova, a partner in the tax practice of TeDo, explained to Forbes. Therefore, the business community has asked for the negative consequences to be "cured" with amendments to the Tax Code.

In which cases benefits will be retained

The exceptions will affect the most important for the economy financial flows between Russian companies and independent foreign counterparties, Anna Modyanova notes. These are those cases where tax growth "may hit certain industries particularly hard (air transport, IT sector) or lead to a significant increase in the cost of financing for Russian businesses (interest on loans)," explains Natalia Kuznetsova, a partner in the Tax and Law Department at DRT.

The Ministry of Finance, as promised, will retain the possibility of not paying tax or applying a reduced rate on interest payments to banks and export credit agencies in "unfriendly" countries. This will make it possible to avoid making loan servicing more expensive.

Privileges and exemption from tax on licence payments for software without analogues in Russia will remain. Russian companies still use foreign software. "If no changes are made to the Tax Code, the burden on Russian business will actually increase, as many contracts contain a clause on increasing remuneration by the amount of taxes, although formally taxes on payments to "unfriendly" countries are paid for foreign persons," Valeria Khmelevskaya, partner at Brand & Partner, explained to Forbes.

Separately, the Ministry of Finance will protect companies that have leased aircraft, aircraft engines and auxiliary power units from tax increases in the West until 5 March 2022. They will still be able to apply tax relief on payments for leasing, insurance as a result of settling claims. "The problem was highlighted by business, and we are responding to it," Alexei Sazanov explained to journalists at the Moscow Financial Forum. The increase in taxes on payments for aircraft leasing could lead to difficulties in the industry and a rise in ticket prices, says Marina Belyakova, partner at B1. Exceptions will also be made in case of purchase of marine vessels in the West. The main thing is that the parties to the transaction should not be affiliated. The tax increase will not affect the payment of royalties for broadcasting foreign sporting events and entertainment content.

The Ministry of Finance has not yet specified whether a reduced tax rate or full exemption will be retained for the above types of payments. It is likely that the old taxation rules which were in force before the freezing of SIDN will be retained, believes Natalia Kuznetsova.

Exemptions won't "cure" everything

"Compensation" measures cover a fairly large volume of transactions negatively affected by the suspension of the agreements," says Marina Belyakova. But there could have been more options to "make a bed", says Natalia Kuznetsova.

The Ministry of Finance has failed to take into account several other important situations. For example, payments for international transport, freight of sea vessels and containers. They are important for many export-oriented industries, stresses Marina Belyakova. Foreign ship owners and carriers of Russian goods will shift the taxes increased as a result of the suspension of SIDN to Russian shippers, warned Kept partner Evgenia Wolfus.

In Kuznetsova's opinion, it would be advisable to return privileges for all licence payments under contracts with independent persons. According to her, it also looks somewhat illogical to grant privileges for payments for rights to entertainment and sports content, but not to grant privileges for educational content, for example. It would also be possible to consider preserving privileges on payments for complex financing instruments (for example, derivatives) and liabilities recognised in accounting before the freezing of LEDN, Kuznetsova believes.