



Belarus

Brief review of the key amendments to the Tax Code in 2019

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On the New Tax Code

The revised version of the Tax Code of the Republic of Belarus (the TC 2019) was adopted and came into force on 1 January 2019.

Please find below a brief review of the key amendments to the tax legislation introduced by the TC 2019.

General issues of tax administration

Taxation principles

The TC 2019 stipulates the presumption of bona fide taxpayers and the principle of stability, whereby a taxpayer will be deemed acting in good faith as long as this has not been disproved, and taxes and fees (duties) may not therefore be changed during a fiscal year.

Accounting statements provided to the tax authority

In 2019, the TC 2019 abolishes the obligation of foreign organizations that do not conduct business through a permanent establishment in the Republic of Belarus to provide annual financial statements no later than 31 March of the year following the year under review.

Deadlines for notifications, exemptions, and penalties

The following deadlines have been amended:

- ▶ The term during which Belarusian organizations are required to notify the tax authorities about the opening or closing of an account in a bank or other credit organization outside the Republic of Belarus has been increased from five to ten working days.
- ▶ The TC 2019 also obliges Belarusian organizations to notify the tax authorities about any movement of funds on accounts in a bank or other credit organization outside the Republic of Belarus no later than 31 March of the year following the year under review.
- ▶ The term established for using an entitlement to unused tax exemptions has

been increased from three years to five years.

- ▶ The term for collecting tax has been limited: taxes will not be collected if a demand to contribute them is not presented within five years after the tax contribution deadline.

Maximum late payment interest

The TC 2019 limits the maximum late payment interest charged on the basis of a tax inspection results. The late payment interest will not exceed the amount of the tax due.

Tax offset and tax reimbursement

Pursuant to the TC 2019, the deadline for offset and reimbursement of overpaid tax has been increased from three years to five years.

VAT

Actual moment of sale

The TC 2019 includes several amendments pertaining to the definition of the actual moment of sale, which are targeted at harmonizing tax and financial accounting. For example, in accordance with the general rule, the date of the transfer of work performed (services provided) in accordance with duly executed primary documents (acceptance acts and so on) is deemed the day of the performance of the work (provision of services). In this context, it is irrelevant for VAT purposes whether the client signed the aforementioned documents for the month under review before the 20th day of the following month or not.

Date of property rights transfer

At the taxpayer's choice, the date of property rights transfer is either the day the property right was transferred in accordance with a duly executed primary accounting document, or the final calendar day of the month in which the transfer of property rights took place.

Profits tax

Gratuitous transfer

The TC 2019 does not require a taxpayer gratuitously transferring goods (work, services, or property rights) to take into

account the amounts associated with the gratuitous transfer. Neither the expenses on a gratuitous transfer nor any revenue should be recorded for profit tax purposes by such taxpayers.

Investment deduction

The amount of the investment deduction which a taxpayer is entitled to when assessing the profits tax for the month, during which the accrual of depreciation on a respective asset begins, has been increased from 10% to 15% of the historical cost for buildings and constructions, and from 20% to 30% for machines and equipment.

Standard costs

The TC 2019 includes an article covering standard costs for profits tax purposes. These include business trip expenses, fuel and electricity, property loss or damage, expenses on management services provided by individual entrepreneurs or organizations applying special tax regimes, as well as expenses on controlled debt.

Provisions for doubtful debt

Taxpayers are entitled to include in their overheads doubtful debt provisions in the amount not exceeding 5% of revenue. In this context, depending on the date of the receivables' origin, there are special terms for calculating provisions:

- ▶ With respect to debt overdue by more than 90 calendar days, there is an entitlement to include its total amount in the provisions deductible for profits tax purposes.
- ▶ With respect to debt overdue by 45 calendar days to 90 calendar days, there is an entitlement to include 50% of the debt in the provisions deductible for profits tax purposes.
- ▶ With respect to debt overdue by less than 45 calendar days, no provisions are allowed.

Transactions with securities

The period of exemption from tax on profits from transactions with securities issued by Belarusian juridical persons is extended for an indefinite period of time.

Thin capitalization rules

There is a small amendment to the thin capitalization rules restricting the deduction of costs considered as a controlled debt beginning from 2019.

In this context the ratio of total controlled debt to equity as of the year end is calculated based on the total controlled debt to all persons deemed to be organization founders in accordance with the thin capitalization rules. Previously, the controlled debt ratio to equity was calculated separately for each person deemed to be a foreign or Belarusian founder.

Therefore, in 2019, it will become more probable that the allowable ratio of controlled debt to equity will be exceeded and that some taxpayers will find themselves within the scope of the thin capitalization rules.

Special rates for reinvesting profits

The TC 2019 introduces reduced profits tax rates on the dividends received by Belarusian organizations.

In particular, reduced rates of 6% and 0% are applicable in the event profits are not distributed between the participants in (shareholders of) an organization but were used to develop the organization in the previous three or five years, respectively.

The profits tax rate on distributed dividends (irrespective of their distribution frequency) was 12% previously.

Transfer pricing

Related parties list

The related parties list was significantly broadened as of 1 January 2019, which entailed an increase in the number of controlled transactions. For example, organizations whose founders are related natural persons holding shares of more than 20% in such organizations are deemed related parties, amongst others.

The TC 2019 also introduces a notion of the "actual owner" of an organization defined as a natural person who can, directly or through related parties, exert definitive influence on the governance of such organization or its

business operations. Relations between the organizations owned by one and the same natural person are deemed relations between related parties.

Value thresholds above which transactions are deemed controlled

The TC 2019 stipulates a significant increase of value thresholds above which transactions are deemed controlled for TP purposes:

- ▶ From BYN100,000 (approximately US\$46,000) to BYN400,000 (US\$185,000) for transactions with related parties (except for transactions with large taxpayers), and
- ▶ From BYN1m (US\$463,000) to BYN2m (US\$926,000) for foreign transactions of large taxpayers completed with related parties and taxpayers' transactions involving strategic goods. Further, as far as large taxpayers are concerned, only their foreign transactions with related parties are subject to control, whereas previously large taxpayers' transactions were subject to control irrespective of with which person they were completed.

Also, as of 1 January 2019, only transactions with real properties completed by related parties or organizations (individual entrepreneurs) applying special tax regimes are subject to control.

Mandatory annual TP documentation

The TC 2019 establishes an obligation to prepare TP documentation with respect to large transactions on an annual basis, if their aggregate annual amount with one person exceeds BYN2m (US\$975,000):

- 1) Transactions completed by large taxpayers with related parties.
- 2) Foreign transactions with strategic goods. Therefore, beginning from 2019, taxpayers are required to provide TP documentation on large transactions to the tax authorities by their request. The request can be issued no earlier than five months after the end of the calendar year, during which such transactions were completed.

Advance pricing agreements with the tax authorities

The TC 2019 stipulates the possibility for large taxpayers and taxpayers who completed transactions in the amount exceeding BYN2m to conclude advance pricing agreements (APAs) with the Tax and Duties Ministry of the Republic of Belarus. An advance pricing agreement may be concluded for a term not exceeding 3 calendar years.

Taxpayers are exempt from the mandatory annual preparation of TP documentation with respect to transactions within the scope of an advance pricing agreement. The tax authorities, however, retain the right to inspect the taxpayers' compliance with the APA terms. In the event transactions within the APAs' scope comply with their terms, no additional profits tax will be charged.

Withholding tax and other issues of taxation of foreign organizations in Belarus

Reporting period for withholding tax

Pursuant to the TC 2019, a calendar quarter is deemed the tax period for withholding tax. Previously, the tax period for which the tax agent submits a profits tax return was a month.

Actual owner of income

The previous procedures for a tax agent's actions in the event that, in distributing dividends, it has doubts that their recipient is their actual owner, also apply to distribution of other passive income, i.e. interest and royalty.

Furthermore, the TC 2019 establishes an opportunity to apply the exemption for the actual owner's income with respect to a foreign organization that does not have contractual relations with an income-distributing Belarusian organization, is not the direct recipient of income but is the actual owner of the income.

Under such conditions the exemption can be applied in the amount stipulated in the relevant bilateral double-tax avoidance agreement with the foreign country in which the actual income owner which is a foreign organization has a permanent location. In this context the tax agent is required to provide to the tax

authority confirmation of the permanent location of such foreign organization, as well as copies of the documents attesting to the existence of respective obligations with regards to such income.

Permanent establishment of a foreign organization

The TC 2019 stipulates an increased period for recognizing the place where work is performed or services are provided by a foreign organization through its permanent establishment in the Republic of Belarus. Previously, the term was 90 days, but it has been increased to 180 days in 2019.

In addition, the TC 2019 introduces the definitions of a foreign organization's management and general and administrative costs incurred outside the Republic of Belarus but eligible for a profits tax deduction by a foreign organization operating in the Republic of Belarus through a permanent establishment. The aforementioned costs are understood as costs which are classified, pursuant to Belarusian law, as direct and indirect management costs and which may be deducted for tax purposes.

Personal income tax

Tax deductions

The TC 2019 proposes not restricting the maximum amount of social deductions for contributions under agreements of voluntary life insurance, additional pensions, and medical costs.

The amount of tax deduction granted to a natural person by the tax agent in relation to a property divestment has been increased from 10% to 20% of the total taxable income received by the natural person from the property divestment.

The amount of tax deduction granted for actual and documentarily certified expenses on the acquisition or sale of securities, also has been increased from 10% to 20% of the income generated from transactions in such securities.

Tax residency of natural persons

The TC 2019 stipulates a norm whereby, if a natural person is not deemed to be a tax resident of any country, he/she is deemed a tax resident of the Republic of Belarus in the event he/she is a citizen of the Republic of Belarus or holds a residence permit of the Republic of Belarus.

It also specifies that, in defining, pursuant to the rule of 183 days, tax residency of a natural person, the actual time spent in the Republic of Belarus includes the time of short vacations outside the Republic of Belarus (for an aggregate term of no more than 2 months during a calendar year) rather than vacation of any duration.

Tax returns of natural persons

It has been proposed to extend the deadline for submitting personal income tax returns by natural persons required to provide the aforementioned returns with respect to income received in the previous year, from 1 March to 31 March. The receipt of income by a natural person from abroad is one of the examples where the natural person is required to provide a personal income tax return.

It has also been proposed to extend the deadline for paying personal income tax in accordance with the submitted tax return from 15 May to 1 June.

Reduced tax rates in the event of profit reinvestment

The TC 2019 stipulates reduced rates of personal income tax on dividends received by natural persons.

In particular, rates of 6% and 0% are applied if the profits were not distributed between the participants in (shareholders of) an organization but were spent on developing the organization in the previous three or five years, respectively.

Real estate tax and land tax

The TC 2019 does not provide regional councils and the Minsk Municipal Council of Deputies with the right to increase up to tenfold the rates of real estate tax on unused or inefficiently used real properties and the rates of land tax on sites occupied by the aforementioned real properties.

It is noteworthy that the TC 2019 does not include increased rates of real estate tax on properties under construction above the established limit. Also, the ten-fold increase in the rates of land tax will not apply to sites provided for temporary use but not returned by the established deadline, willfully occupied or used in a way other than their intended purpose.

EY tax and legal services in Belarus

1) Corporate and indirect tax services

- ▶ Preparation of conclusions on tax issues, including the tax implications of external financing
- ▶ Tax analysis of contracts and transactions
- ▶ Advice on the application of EEC legislation, including such issues as customs clearance, declaration and payment of customs duty
- ▶ Liaison with the tax authorities, including the preparation of official inquiries and assistance in resolving disputes with the tax authorities

3) HR services

- ▶ Assistance in recruiting professionals (lawyers, accountants, tax professionals)
- ▶ Management of HR records and HR audits
- ▶ Management of hiring and employment-termination records
- ▶ Advice on compensation programs for staff and management

5) Preparation of personal income tax declarations

- ▶ Tax interviews and determination of personal tax liabilities
- ▶ Preparation of standard personal income tax declarations (calculations)
- ▶ Assistance with personal income tax payments
- ▶ Reconciliation of a foreign national's tax balance with the Belarusian tax authorities
- ▶ Assistance in obtaining tax residency certificates
- ▶ Assistance in obtaining a refund of withheld personal income tax

7) Transaction support

- ▶ Comprehensive legal and tax support for development and construction projects as well as real estate transactions
- ▶ Legal and tax transaction structuring (in Belarus and abroad)
- ▶ Legal and tax due diligence
- ▶ Legal and tax support for investment projects
- ▶ Preparation of investment agreements and involvement in obtaining approvals at various levels
- ▶ Support for privatization transactions

2) Legal services

- ▶ Subscription services
- ▶ Registration of legal entities and representation of foreign companies, legal support for changes in corporate structure
- ▶ Assistance in obtaining special permits (licenses) and other required permissions
- ▶ Drafting and legal analysis of agreements
- ▶ Preparation of conclusions on various legal issues and transactions, including the legal implications of external financing

4) International aspects of tax

- ▶ Corporate restructuring, including for purposes of external financing
- ▶ Advice on transfer pricing law
- ▶ Advice on the tax laws of other countries (including Russia, Ukraine and Kazakhstan)

6) Global mobility services

- ▶ Advice on international tax issues affecting individuals
- ▶ Advice on social security of foreign nationals
- ▶ Migration support services, including assistance in obtaining the required permits and registering employment contracts between foreign nationals and employers in the Republic of Belarus
- ▶ Assistance in obtaining visas and temporary residence permits

8) Intellectual property services

- ▶ Preparation of legal conclusions concerning the protection and use of intellectual property
- ▶ Advice on financial and tax accounting implications for intellectual property rights
- ▶ Advice on the customs clearance of goods containing intellectual property
- ▶ Advice on e-commerce (via the Internet) involving intellectual property

9) Transfer pricing services

- ▶ Analysis of transfer pricing risks and risk management
- ▶ Advice on transfer pricing issues
- ▶ Preparation of transfer pricing documentation (economic justification of prices)
- ▶ Adaptation of group-wide transfer pricing documentation to meet Belarusian legal requirements
- ▶ Analysis of transfer pricing implications for specific business structures
- ▶ Resolution of transfer pricing controversies and assistance with tax audits

10) Accounting services

- ▶ Set up of accounting, including tax accounting
- ▶ Maintenance of accounting records in compliance with the laws of Belarus
- ▶ Preparation of financial statements and filing with the Belarusian authorities
- ▶ Calculation of salaries and related tax and non-tax payments
- ▶ Tax accounting, preparation and filing of tax declarations
- ▶ Preparation and filing of statistical reports in compliance with the law
- ▶ Preparation and transformation of Belarusian accounting data to meet international standards for the parent company

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