

# Approaches to the Optimization of Fiscal Regulations in Cross-Border Transactions for the Provision of Electronic Services

## Enfoques para la optimización de las Regulaciones Fiscales en Transacciones Transfronterizas para la prestación de servicios electrónicos

DOI: <https://doi.org/10.17981/juridcuc.20.1.2024.05>

Fecha de Recepción: 2023/04/24. Fecha de Aceptación: 2023/12/05.

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To cite this article:

Gurinovich, A. G. y Shakhmametiev, A. A. (2024). Approaches to the Optimization of Fiscal Regulations in Cross-Border Transactions for the Provision of Electronic Services. *Jurídicas CUC*, 20(1), 131–156. DOI: <http://doi.org/10.17981/juridcuc.20.1.2024.05>

### Abstract

This article analyzes areas where it is possible for an individual state to use foreign experience and international standards to increase the efficiency of its tax regulation and fill legislative gaps. A qualitative case study was chosen as the methodology. Following the analysis of international standards and rules related to the taxation of transactions with digital goods and services, the main principles and algorithms of modernization of the tax system are identified. A generalizing analysis of the main models and concepts of legal tax regulation of digital goods and services transactions developed within the framework of the OECD was carried out. Taking into account the expansive dynamic of the use of digital products not only in business, but also in state administration, a practically realizable potential to apply previously developed international rules in modern conditions were identified, in particular, the possibility of remote interaction between tax authorities and taxpayers. The results obtained allow us to note some aspects of international transactions for the provision of services in electronic form, which, as it seems, can serve as recommendations for improving the legal regulation of their taxation.

**Keywords:** Income tax; OECD countries; tax policy; taxation

### Resumen

Este artículo analiza áreas en las que es posible que un Estado individual utilice la experiencia extranjera y los estándares internacionales para aumentar la eficiencia de su regulación tributaria y llenar vacíos legislativos. Se eligió un estudio de caso cualitativo como metodología. Tras el análisis de las normas y reglas internacionales relacionadas con la tributación de las transacciones con bienes y servicios digitales, se identifican los principales principios y algoritmos de modernización del sistema tributario. Se realizó un análisis generalizador de los principales modelos y conceptos de regulación fiscal legal de transacciones de bienes y servicios digitales desarrollados en el marco de la OCDE. Teniendo en cuenta la dinámica expansiva del uso de productos digitales no solo en los negocios, sino también en la administración estatal, se identificó un potencial prácticamente realizable para aplicar reglas internacionales previamente desarrolladas en condiciones modernas, en particular, la posibilidad de interacción remota entre las autoridades fiscales y los contribuyentes. Los resultados obtenidos permiten señalar algunos aspectos de las transacciones internacionales para la prestación de servicios en formato electrónico, que, al parecer, pueden servir como recomendaciones para mejorar la regulación legal de su tributación.

**Palabras clave:** Impuesto sobre la renta; país de la OCDE; política fiscal; tributación.



## INTRODUCTION

Most significant developmental trait of world economy in the modern day is the near ubiquitous use of digital products. This happens while the turnover and range of ‘intangible’ goods in electronic digital form are constantly expanding. It makes sense that the development of a new (digital) economy makes developing new taxation rules necessary. These should not only take into account the specifics of the circulation of digital products, without creating obstacles for it, but also ensure the fiscal interests of states.

The electronic-digital form of economic relations, the introduction of which was a consequence of the development of information and telecommunication technologies at the end of last century, is becoming one of the most important areas of business activity. It provides new opportunities to enhance and improve the quality of economic activity at the international level. The most popular areas of e-commerce are advertising, placing orders and processing transactions, making payments, other types of services, as well as selling goods in digital form.

This has inevitably impacted tax regulation. International efforts over the past few decades have led to the development of a common architecture for the application of taxes in the area of digital product turnover. The problems of its taxation are relevant for Russian Federation –RF–. This may be evidenced by the amendments to its Tax Code –TC–, which came into force in 2017 (RF State Duma, Federal Law No. 117-FZ [FTS], 2000; RF State Duma, Federal Law No. 244-FZ, 2016) and established the rules for the payment of Value Added Tax –VAT– in regards to providing electronic services.

Thus, the general principles of taxation of services in electronic form, developed at the beginning of this century, remain relevant. However, this not only includes, but also objectively requires their improvement, including taking into account national specifics. With this in mind, a question arises: can special rules that increase the

fiscal burden on the main actors of the global industry of services provided in electronic form be established in the norms of national law without a coordinated approach?

In the context of recent economic difficulties, the search for remote forms of organizing labor, social, cultural relations in a difficult epidemiological situation, the study of the possibility of using tax instruments in the provision of services in electronic form following DTT becomes especially relevant.

In addition, most countries, including Russia, are increasingly using digital technologies in the process of improving tax authority operations, management in taxation, interactions between government institutions and taxpayers. In fact, by virtue of these technologies, it has been possible to create a technical base and ensure control over taxation or services in electronic form. According to the Federal Tax Service –FNS– of Russia (*Federalnaya Nalogovaya Sluzhba*), the list of foreign internet companies registered in the RF as VAT taxpayers in the provision of electronic services by 2020 includes more than 2 500 organizations.

These trends and changes in national legislation and in developing international rules require more careful consideration of legal aspects of the current state of taxation of services in electronic form, including identifying promising areas of improvement.

Based on the foregoing, the purpose of this study is to assess the possible use of internationally developed basic principles and models of taxation of services in electronic form, the need to modify them within a particular jurisdiction, based on the specifics of its tax system and the level of technical support.

Therefore, in the article:

- Basic rules developed at the international level in the framework of harmonizing approaches to the development of indirect taxation of electronic services are identified;
- situations where, in the absence of international standards, states can independently adopt rules for taxation of electronic services, including the income of their suppliers are outlined;

- an assessment of individual manifestations of autonomous state fiscal intervention in the digital economy is given;
- approaches to prospective development taxation rules of services in electronic form are analyzed at the international and national (using Russia as an example) level;
- recommendations on the possible improvement of tax legislation in Russia in terms of applying tax in the field of electronic services are formulated and substantiated (including taking into account foreign experience).

At the moment, there are a number of scientific studies that cover development of international principles and rules for taxation of cross-border transactions for the provision of services and the transfer of goods in electronic form and partially touch upon aspects of their implementation in national legal systems (including Russia).

[Carreau et al. \(2017\)](#) indicate in their fundamental work that historically the service sector was, until recently, (and in many respects continues to be) one of the domains of privileged state intervention. Nevertheless, at the international level, during negotiation processes under the General Agreement on Tariffs and Trade –GATT–, under the auspices of the [International Monetary Fund – IMF–](#) and the [World Trade Organization – WTO–](#) (1948), significant liberalization of the conditions for the provision of cross-border services was achieved ([Carreau et al., 2017](#)). It seems that moving on to solving tax problems in certain sectors of services (in particular, electronic) became possible by the virtue of this.

At the same time, one cannot but agree with [Lamensch \(2015\)](#) that the rules for taxation of transactions for the provision of services in electronic form developed both at the international level, including integration associations of states, and within individual countries, should be constantly enhanced, based on changes in the digital environment and new development trends in material production and provision of services.

[Bernard \(2002\)](#) in his work “*Les nouveaux impôts*” examines taxation of international transactions carried out via telecommunication networks (in particular, the —Internet—) from both theoretical and practical (with a high degree of pragmatism) standpoints. The author notes that new areas of activity related to high technologies are fundamentally changing the basic conditions of taxation. Therefore, a question naturally arises: is it possible to adapt the —classical— types of taxes to these areas or must special (—new—) taxes be established? At the same time, the author emphasizes that cross-border transactions on the Internet for tax purposes should be qualified as services for tax purposes ([Bernard, 2002](#)).

[Castagnede \(2002\)](#) and [Oberson \(2001\)](#) express largely similar positions regarding the specifics of establishing the tax and legal status of a permanent establishment when using telecommunications in international commercial transactions. In doing so, [Castagnede \(2002\)](#) analyzes in more detail situations associated with the provision of services in electronic form ([Oberson, 2001](#)).

At the same time, [Miller and Oats \(2006\)](#) citing, like the above authors, similar arguments regarding the specifics of establishing emergence of permanent establishment of non-residents when conducting transactions in electronic form, show the particular features of the national approach (using Great Britain as an example). In addition, in their study, the authors touch upon the impact of digitalization of international transactions on transfer pricing ([Miller & Oats, 2006](#)).

[Nyssen \(2018\)](#) provides in his research a detailed analysis of applying VAT specifically in regards to transactions for the provision of services in electronic form. The paper contains both critical assessments of the VAT regulation system within the European Union —EU— and recommendations for adapting it to the specified operations ([Nyssen, 2018](#)).

Results of the analysis of the impact of the digital economy on the tax system are presented in “Taxes in the digital economy. Theory and methodology” ([Mayburova & Ivanova, 2019](#)). The authors

showed changes in elements of the legal composition of taxes, as well as certain types of taxes impacted by digitalization (Maybu-rova & Ivanova, 2019).

An analysis of existing studies and positions shows that it is the aspects of development of existing international legal framework for taxation of services in electronic form, including through norms of national tax legislation, as well as the study of potentially integrating new fiscal instruments in this segment of the economy can be studied in more detail.

A qualitative case study was chosen as the methodology. In preparing the article, regulatory legal acts, international documents, scientific works of Russian and foreign scientists who considered issues of taxation of services in electronic form, were used.

The normative and legal basis of the work included provisions of the Tax Code of the Russian Federation –FTS–, provisions of the Model Convention on the Taxation of Income and Capital Organization for Economic Cooperation and Development (*Model Tax Convention on Income and on Capital*, Organisation for Economic Co-operation and Development [OECD], 2019a), Comments to the OECD Model Convention (*Comments to the OECD Model Convention*, OECD, 2019b), other OECD documents (*Conditions cadres pour l'imposition du commerce électronique*, OECD, 1998; *Taxation and Electronic Commerce. Implementing the Ottawa Taxation Framework Conditions*, OECD, 2001; *Préparer le futur de l'économie Internet*, OECD, 2008a; *The Seoul declaration for the future of the internet economy*, OECD, 2008b; *Action plan on base erosion and profit shifting*, OECD, 2013; *International VAT/GST guidelines*, OECD, 2017; *Program of work to develop a consensus solution to the tax challenges arising from the digitalization of the economy*, OECD, 2019c), legislative norms, by-laws of the competent state authorities of Russia (*List of foreign Internet companies registered in the RF as VAT taxpayers in the provision of electronic services*, FNS, 2020; *Letter No. 01-02-03/03-233*, RF Ministry of Finance [Minfin], 2005; *Federal Law No. No. 117-FZ*, RF State Duma,



2000; *The Geneva Ministerial Declaration on global electronic commerce*, WTO, 1998; Doha work programme, WTO, 2005) and other countries (*Selected tax policy implications of global electronic commerce*, USDT, 1996; *Modernizing VAT on cross-border e-commerce*, European Commission [EC], 2020; *Directive 2000/31/EC*, European Parliament [EP] & Council of the European Union [EUC], 2000).

## DISCUSSION

In the course of the work carried out, the following was established. The emergence of global computer networks (the Internet being the most significant), the use of modern communication methods and the development of the digital product industry have created conditions for organisations to access the world market freely and to establish commercial relations with counterparties from other countries. At the same time, location has become less significant for large and small enterprises, and initial costs have decreased. However, this, of course, did not lead to a total withdrawal into the virtual space of all trade and business relations.

The rapid expansion of the international e-services sector has highlighted new tax issues. They are due to, among other things:

- *The use of conventional controls* being extremely difficult in e-services given their —virtual— nature and the mobility of actors;
- *Electronic services*, which, generally provide a high degree of mobility to the contractor and the customer, not always fitting into the framework of well-established ideas about the physical and economic connection of these persons to fiscal jurisdiction.
- *Commercial structures*, which provide electronic services, being very mobile and able to quickly process a change of location. This is an additional factor in the intensification of competition between different tax jurisdictions.
- *The electronic nature of services and ample opportunities for automating processes for their provision* creating opportunities for virtual economic space to emerge.

Many international organizations deal with taxation issues in the field of e-commerce. WTO, OECD, International Electronic Commerce Association play the most important role, however. For example, at the 1998 annual conference WTO, during the Geneva Ministerial Declaration on Global Electronic Commerce, members agreed on a moratorium on applying customs payments for the cross-border movement of goods in electronic form (WTO, 1998), which was later extended during the Doha work program in Hong Kong (WTO, 2005).

The positions of individual countries, primarily the United States –US–, which was among the first states to conduct a detailed study of this issue and officially proposed a comprehensive solution, are also important in developing international rules for taxation of e-commerce. The US Treasury Department –USDT– (1996) released Selected Findings from Tax Policy in Global Electronic Commerce, which highlighted the need for clear tax rules to eliminate double taxation and the importance of developing new tax administration techniques to ensure taxation of e-commerce. This document also announced the decision by the United States to apply the same principles of taxation to e-commerce as to ordinary business activities, and not to establish new special taxes for Internet business (USDT, 1996).

Despite some success and the demonstrated interest of states in common rules for taxing electronic services, an agreement on the main issues has still not been reached. So, the US adheres to the position according to which the transfer of electronic products is equivalent to the supply of goods (property) (Stupak, 2016). As a consequence, this had made it possible to apply the rules of the WTO legal system. The EU proceeds from the fact that the provision of services in electronic form is a type of service (electronic). The position on the qualification of income received from the provision of electronic services (goods) is similarly formulated (Directive 2000/31/EC, EP & EUC, 2000).



*OECD Position on Taxation of Electronic Services.  
General approaches*

The OECD is most active organisation that deals with developing rules on taxation of electronic services and trade today. It should be noted that the development of rules for the taxation of electronic services and commerce, which is carried out within the framework of the OECD, is not limited to indirect taxes only. The current level of development of international communications demanded the introduction of clarifications in the legal system of regulation concerning direct taxes.

The main direction of the OECD's activities in regulating the international circulation of electronic services is the creation of favorable legal conditions for its further development. With regard to taxes, this finds expression in the development of basic tax rules, which, on the one hand, do not create barriers to the development of the digital economy, but on the other hand, prevent erosion of the tax base and tax evasion.

In November 1997, under the auspices of the [OECD \(2001\)](#), the International Conference “*Removing Barriers to Global Electronic Commerce*” was held, in which not only the members of this organization, but also other states and representatives of the business world participated. In the final document of this forum, the previously conducted analysis of the problems of taxation of services and goods in electronic form was summarized, and principles were formulated, which, together with a general concept for further areas of work were reviewed and approved in the same year at the OECD Ministerial Conference (*Tax Framework Conditions*, also referred to as the *Ottawa Tax Framework Conditions*). These principles can be characterized as follows ([OECD, 2017](#)):

- *Neutrality*. This principle assumes that taxation should be neutral and fair in relation to electronic and common (conventional) commerce, as well as to various types of e-commerce. Decision-making should be based on economic and not fiscal considerations. Taxpayers who are in similar conditions and carry out identical transactions should be subject to similar taxation.

- *Tax collection cost optimization.* According to this principle, the costs incurred by taxpayers and tax authorities related to the implementation of established tax rules should be reduced as much as possible.
- *Certainty and simplicity.* This principle requires tax rules to be reliable, precise, clear and easy to understand, providing taxpayers with the ability to anticipate the tax consequences of a transaction, primarily with regard to the determination of the taxpayer (the person liable to pay tax), as well as the method of calculation and due date for tax payment.
- *Efficiency and fairness.* According to this principle, taxation must ensure the receipt of the amount of tax calculated in the established manner by a certain date. At the same time, it is necessary to take measures aimed at minimizing the opportunities for fraud and tax evasion. The adoption of these measures must be reasonable and proportionate to real risks.
- *Flexibility.* This principle focuses on ensuring that taxation systems are flexible and dynamic, evolving in unison with the pace of evolution of forms and methods of commercial transactions.

The [OECD Ministerial Conference \(2008a\)](#), held in Seoul (South Korea), the theme of which was announced as “*The Future of the Internet Economy*”, was a significant event in the development of international cooperation in the field of e-commerce. This conference highlighted the important role the Ottawa Tax Framework has played in developing e-business. The final documents of the Conference (*Préparer le futur de l'économie Internet*, [OECD, 2008b](#)), practically without touching upon specific issues of taxation, presented topical problems of the development of cyber economy at a new, more in-depth level. This approach, can be seen as a recognition of the successes of the OECD in harmonizing the terms of taxation of electronic services and trade.

### *Indirect taxation*

The Ottawa tax framework mainly covered the rules for the application of Consumption Taxes –VAT– in the international commercial exchange of electronic products. In short, these conditions were reduced to the following recommendations (*Conditions cadres pour l'imposition du commerce électronique*, OECD, 1998):

- in order to eliminate double taxation or the possibility of unauthorized non-payment of tax, transactions related to the supply of services and goods in electronic form are subject to VAT in the state where their consumer is located;
- the OECD rules for VAT on international electronic services and commerce cannot be applied to other service sectors, formal localization of which is possible (for example, provision of hotel services, transportation);
- if electronic services are provided to residents by a non-resident, then the latter, if possible, must pay the tax independently (the so-called registration method of tax collection);
- if national legislation provides for such a method of taxing non-resident suppliers, then the registration procedure needs to be simplified (tax registration), including the possibility of using electronic forms of registration, submitting tax reports, as well as organizing information exchange with foreign tax authorities.

The results of the OECD's efforts deserve attention: the basic principles formulated in the above-mentioned documents, and measures were in demand and put in practice. This avoided both the defiscalization of e-commerce and the introduction of special taxes.

### *Income taxation*

The OECD's work on preparing tax rules for international e-commerce is not limited to indirect taxes. It makes sense that features of applying direct taxes to international electronic services have

their own specifics. This required, among other things, adjustments to the previously developed rules (the following documents on the application of direct taxes are available in the website of the [OECD Tax Database \(n.d.\)](#)).

As part of the practical application of the Ottawa Tax Framework and in order to analyze the fiscal potential of e-commerce revenues, the OECD Tax Committee formed a Working Group on Income Taxes. In early 2001, it presented a paper that identified four promising areas for adapting direct taxation to e-commerce:

- adjusted definitions of ‘permanent establishment’ in relation to international transactions in this area;
- methodology of calculating the taxable share of profit in the permanent establishment’s state that arises for a non-resident from the possession and use of a server on the territory of this state for the provision of services in electronic form;
- identification and classification of types of payments carried out when performing e-commerce transactions;
- clarification of the concept of “effective management location” for the purposes of using it in international circulation of services and goods in electronic form ([OECD, 2001](#)).

The proposals formulated within the framework of solving these problems have not yet been fully accepted but have been formalized in various ways. So, at first, the Working Group on corporate income tax actively practiced the publication of interim documents: discussion reports, analytics, methods. For the most part, such publications had the status of recommendations (for example, the methodology for calculating the —foreign— share of the profits of the permanent establishment of an organization providing electronic services at its location). Later, a number of documents prepared by this body became the basis for making additions to the Comments to the OECD Model Tax Convention.

The institution of a permanent establishment in regards to avoiding international double taxation, apparently, can be considered one of the main in the system of international regulation of taxes

on corporate income. It is natural that it is filled with new content in relation to enterprises that supply goods and provide services in electronic form. As a general rule, within the framework of the regulation of taxes on income of organizations, a permanent establishment is an office or other permanent place of business of a foreign structure or its dependent agent. In practice, it is often very difficult to identify the location of suppliers of goods and services in electronic form. Because of this, the term —virtual presence— came into circulation.

Apparently, it is quite natural that the issue of potentially recognizing the server, which is used to provide services in electronic form, as a permanent establishment was one of the to be explored. A decision on it was proposed by the OECD in 2000 in the form of recommendations and additions to the Comments to the OECD Model Tax Convention. In short, its essence is the following:

- simple placement of a non-resident’s website on a server in another state is not considered a permanent establishment on its territory;
- if there is not only the server hosting the website, but also the software and hardware complex, including fully automated, in such a state then a permanent establishment emerges.

In 2015, the OECD published a plan to counter the erosion of the tax base and removing profits from taxation (*Action plan on base erosion and profit shifting*, [OECD, 2013](#)), the so-called BEPS plan. Among other things, this plan (paragraph 1) contains recommendations for reforming the taxation system for e-commerce, in particular, it suggests introducing a new taxation linkage based on the ‘significant economic presence’ criterion –SEP–, considering the possibility of taxing transactions carried out in electronic form in the state where income is generated, improving the rules of indirect taxation of e-commerce entities. In addition, the OECD, together with the Group of 20 (G20) at the 7th session in May 2019, agreed on the “*Programme of Work to Develop a Consensus Solution to the Tax Challenges Arising From the Digitalization of the Economy*” ([OECD,](#)

2019c). The main goal that was pursued in the development of this document was to justify the right to levy taxes by states on whose territory the bulk of the profits of foreign companies are generated from the provision of electronic services by them.

Legal regulation of the circulation of services and goods in electronic form is not limited to civil and tax legislation. In this area, the norms for the protection of intellectual property are also important. Therefore, payments made between the seller (supplier) and buyer can be considered as ordinary payment for services rendered (goods transferred), or can act as royalties. If the tax legislation establishes different taxation regimes for these payments, then, therefore, they must be accurately identified. In the absence of this, there is a high risk of multiple taxation or unauthorized avoidance of tax altogether.

The classification that is currently used actively is based on the division of income categories based on the essence of the electronic service (the volume of rights to a digital product transferred to a buyer). So, if the transfer of goods in electronic form through communication channels or the provision of electronic services to the end consumer for his own needs is carried out, then, as a rule, it is recognized that the supplier has received income from which he is obliged to pay tax in accordance with the general procedure. However, if the transaction provides the buyer of an electronic product with the right to further distribute it, the profit is considered to be royalties.

It is worth noting that the OECD recommendations were of great importance for solving the issue of qualifying income received from commercial transactions in the turnover of electronic services and electronic goods. In accordance with them, it was proposed to single out standard payments and group them by type. Most of these qualify as “ordinary” business income (which is subject to the [OECD Model Tax Convention, 2019a](#), Art. 7). At the same time, the following payments are recognized as royalties (income from copyright and licenses provided for in Article 12 of this Convention, [OECD, 2019a](#)):



- for providing access to content for reproduction for distribution;
- for providing technical support for software,
- for receiving unpublished technical information about a product or process.

*Problems of legal regulation of taxation of international electronic commerce in the Russian Federation. Legal basis*

The tax regulation of electronic services currently applied in Russia is still far from perfect. It reflects many problems, the solutions of which are already partially given in the OECD documents, which allowed the states that adopted them to improve their tax system. Unfortunately, to date, Russia has not developed a comprehensive concept for the development of legal regulation of taxation of the creation and circulation of digital products, including goods and services.

Based on the position of its official bodies reflected in the explanations of tax and customs legislation, for many years Russia has often simply equated ordinary trade and the provision of electronic services. At the same time, the inadmissibility of applying special rules to the latter was noted. But gradually these views have evolved. For example, one of the letters of the [Minfin RF \(2005\)](#) notes:

Considering the wide spread of entrepreneurial activities carried out on the computer network of the Internet - games for money - in the opinion of the Ministry of Finance of Russia , the issue of taxing these activities deserves attention and requires its legislative settlement (párr. 1).

As a consequence of the fact that the tax legislation did not take into account the challenges posed by e-services and commerce for many years, at least two problems have become increasingly apparent. First, the specificity of the electronic form of activity has not always been adequately (i.e. meeting the needs of the national economy and the fiscal interests of the state) reflected in the taxation regulation system for —ordinary— transactions. Second,

ignoring this specificity and international practice has led to the destabilization of the competitive environment. These issues have manifested in the form of unauthorized tax avoidance by some entities and in imposing excessive tax burden on others, as well as in discriminatory conditions for domestic producers in foreign (and often in domestic) markets.

### *Profit taxation*

In terms of income tax, Russian organizations that provide electronic services and are engaged in e-commerce pay this tax on income received by them from these activities and reduced by the amount of expenses incurred (RF State Duma, 2000, FTS, Art. 247). In accordance with Art. 311 of the Tax Code of the Russian Federation (RF State Duma, 2000, FTS), these organizations also include the income they receive from sources outside of Russia in the tax base. When foreign organizations receive income in the territory of Russia in the form of royalties, they are taxed in accordance with the generally established procedure in accordance with subparagraph 4 p. 1 of Art. 309 of the Tax Code of the Russian Federation at the source of payment (RF State Duma, 2000, FTS).

Due to the expansion of the market for electronic services provided by non-resident organizations in the Russian Federation directly to individuals - end users, questions often arise about the need to recognize the —virtual— permanent establishments of such organizations. As mentioned above, in regards to the solutions offered by OECD, a full consensus had not been reached. Naturally, this creates risks for re-taxation of income received by e-service providers. The Tax Code of the Russian Federation (RF State Duma, 2000, FTS, Art. 311, p. 3) contains a mechanism for offsetting amounts of taxes paid in other states when calculating income tax in Russia. However, this offset is only possible if:

- it is provided for by an agreement with other states as a way to avoid double taxation;
- the amount credited does not exceed the amount of the tax itself in Russia.

The general definition of the term ‘permanent establishment’ proposed in the Tax Code of the Russian Federation ([RF State Duma, 2000, FTS](#), Art. 306, p. 2), is formulated as an approximate non-closed list of forms of organization and types of activity and does not establish special rules for identifying a representative office of a foreign organization that provides electronic services on Russian territory. This definition allows for the possibility of recognizing ‘another place of business of the organization’ as a permanent establishment ([RF State Duma, 2000, FTS](#)). Therefore, in theory, there is a formal (but clearly fragile) basis to qualify a website and server located in Russia and used by a foreign organization to provide electronic services to Russian residents as its permanent establishment.

#### *Value added tax*

The rules for its application, established by the Tax Code of the Russian Federation, almost a decade and a half, practically ignored the specifics of this type of activity. Until 2016, there was virtually no VAT regulation in relation to international transactions for the provision of electronic services. Some fragments of such regulation, if they could be identified, then it would be very much conditional, on a subject basis. In principle, being an integral part of the general rules for levying VAT on selling services and jobs, they only selectively, in relation to individual operations, allowed (and retained) some exceptions. So, in accordance with the Tax Code of the Russian Federation for VAT purposes ([RF State Duma, 2000, FTS](#), Art. 148, p. 1, subpara. 4; p. 1.1, subpara. 4), the place of provision of jobs (services) for the development of computer programs and databases is not recognized as the territory of the Russian Federation if the buyer of the jobs (services) does not operate on Russian territory. Therefore, in this case, the specified jobs (services) are not recognized as subject to VAT. This position is very important. Taking into account the still present potential of Russian software developers, it creates

equal competitive conditions for them and foreign suppliers and makes it possible to activate the foreign economic direction of their activities.

Large-scale changes in tax legislation dedicated to the collection of VAT when performing transactions via the Internet were approved in 2016 in the form of Federal Law No. 244-FZ “*On Amendments to Parts One and Two of the Tax Code of the Russian Federation*” (RF State Duma, 2016). These changes came into force on January 1, 2017. In short, the changes are as follows:

*Services in electronic form*

For the purposes of calculating VAT by foreign organizations engaged in e-commerce, in the Tax Code of the Russian Federation (RF State Duma, FTS, 2000, Art. 174.2, p. 1 of), offers a fixed definition of the concept of ‘provision of services in electronic form’. It does so by specifying the types of such services provided through the information and telecommunications network.

In addition, for the purposes of collecting VAT, the following operations are excluded from the list of services in electronic form (The use of the legislative definition of this clause (“in particular”) in the conceptual apparatus does not seem to have been successful):

- sale of goods (jobs, services), if, when ordering via the Internet, the delivery of goods (performance of jobs, rendering of services) is carried out without using the Internet;
- implementation (transfer of right to use) programs for electronic computers (including computer games), databases on tangible media;
- provision of consulting services by e-mail;
- provision of services for granting access to the Internet.

With regard to services rendered on Russian territory by foreign organizations in electronic form (except for cases when they are provided through the permanent establishment of this organization in Russia) (RF State Duma, FTS, 2000):

- the tax base is determined as the cost of services, taking into account the amount of tax, calculated based on the actual prices of their implementation (Art. 174.2, p. 2), the moment the tax base is determined is the last day of the tax period in which payment (partial payment) for services was received (p. 4 of Art. 174.2);
- the cost of services rendered in foreign currency is converted into rubles at the exchange rate of the Central Bank of the Russian Federation established on the last day of the tax period in which payment (partial payment) for these services was received (Art. 174.2, p. 4);
- the calculation and payment of tax is carried out by these organizations or, in cases established by the Tax Code of the Russian Federation, by a tax agent (Art. 174.2, p. 3);
- the amount of tax is determined as the percentage of the tax base corresponding to the estimated tax rate of 16.67 percent (Art. 174.2, p. 5);
- payment of tax by foreign organizations is made no later than the 25th of the month following the expired tax period (Art. 174.2, p. 7).

*Place of business.*

In relation to individuals who are not individual entrepreneurs who purchase services in electronic form from foreign organizations, the territory of the Russian Federation is recognized as the place of business of the buyer if at least one of the following conditions is met:

- the buyer's place of residence is the Russian Federation;
- the location of the bank in which the account used by the buyer to pay for services is opened, or the electronic money operator through which the buyer pays for the services is located on the territory of the Russian Federation;
- the buyer's network address used when purchasing the services is registered in the Russian Federation;

- the international country code of the telephone number used to purchase or pay for services is assigned to the Russian Federation (*Tax Code of the Russian Federation*, [State Duma, FTS, 2000](#), Art. 148, p. 1, subparagraph 4).

The provision by a foreign organization of services in electronic form where the place of sale is Russian Federation, does not warrant the formation of a permanent establishment of this organization in the Russian Federation (*Tax Code of the Russian Federation*, [RF State Duma, FTS, 2000](#), Art. 306, p. 14).

### *Registration*

Registration (deregistration) with the tax authority of a foreign organization that provides services in electronic form, the place of sale of which is recognized as the territory of the Russian Federation (with the exception of a foreign organization that provides these services through a separate subdivision located on the Russian territory and makes settlements directly from buyers, as well as a foreign intermediary organization recognized as a tax agent) is carried out by the tax authority on the basis of an application for registration (deregistration) and other documents, the list of which is approved by the Ministry of Finance of Russia. These applications are submitted no later than 30 calendar days from the date of the beginning (termination) of the provision of these services (*Tax Code of the Russian Federation*, [RF State Duma, FTS, 2000](#), Art. 83, p. 4.6).

### *Personal Account. Tax reporting and workflow*

To receive documents from the tax authority and submit the latest information and information regarding the provision of services in electronic form (including tax returns), a foreign organization registered with tax authorities uses the taxpayer's personal account. Access to it is provided on the date of registration, and the submitted documents are in electronic form. Forms are signed with a reinforced unqualified electronic signature and are recognized as



equivalent to paper documents signed with a handwritten signature of a representative of such an organization (*Tax Code of the Russian Federation*, [RF State Duma, FTS, 2000](#), Art 11.2, p. 3; Art. 23, p. 5.2; Art. 174.2, p. 8). Prior to providing a foreign organization with access to the personal account of a taxpayer, documents that are used by tax authorities when exercising their powers are transferred to any email address of such a foreign organization known to the tax authority. In this case, the date of receipt by the foreign organization of the relevant document is the day following the day of its transmission to the e-mail address (*Tax Code of the Russian Federation*, [RF State Duma, FTS, 2000](#), Art. 31, p. 6). Foreign organizations that provide services in electronic form and are tax-registered do not draw up invoices and do not keep purchase books, sales books, a register of received or issued invoices in regards to the provision of such services (*Tax Code of the Russian Federation*, [RF State Duma, FTS, 2000](#), Art. 169, p. 3.2).

#### CONCLUSIONS

To sum up, the following can be noted:

1. At the international level, mainly within the OECD or under the auspices of this Organization, a lot of work has been done on all the most significant aspects of taxation of cross-border transactions for the provision of services or the transfer of goods in electronic form. The results of this work are presented in various documents (resolutions of ministerial conferences, Comments to the OECD Model Convention, recommendations, etc.). Despite the fact that these documents are of a recommendatory nature, many states use the methods and rules contained therein to adapt national tax systems to the realities of the new (digital) economy.
2. Efforts made at the international level to agree on common principles of taxation of cross-border transactions for the provision of services or the transfer of goods in electronic form have not only reduced the risk of excessive fiscal pressure on e-commerce, but also taken additional measures to curb the possibilities of tax evasion, and also to improve the efficiency of tax control.

At the same time, given the scale of the digital economy and the pace of its development, the results achieved should be considered only as an initial stage. The agenda includes not only the improvement of mechanisms for the payment of indirect taxes in the provision of electronic services, but also the development of tax rules for transnational companies that generate income in the digital plane,

3. Analysis of the reception by national legislation (in particular, the tax legislation of Russia) of the internationally developed general principles and rules for the use of consumption taxes when performing cross-border transactions for the provision of services in electronic form allows us to conclude that such principles and rules make it possible to carry out modernization of the taxation system and adapt it to the challenges of the new (digital) economy over a short span of time. As shown by Russia's experience, the rules proposed by the OECD have retained their practical significance. Despite this, initially these rules need to be constantly updated, and also can be modified in the process of implementation into the national system of tax regulation (taking into account its specifics).

### *Recommendations*

The research carried out and the results obtained allow us to note some aspects of international transactions for the provision of services in electronic form, which, as it seems, can serve as recommendations for improving the legal regulation of their taxation.

1. The definition of services in electronic form, given in *Tax Code of the Russian Federation* (RF State Duma, FTS, 2000, Art. 174.2), quite closely covers the diversity of economic activity in this area. But, on the other hand, it is limited to the Internet. At the same time, some types of services in electronic form named in the Tax Code of the Russian Federation (RF State Duma, FTS, 2000) will probably require clarification. So, television and radio broadcasting are not directly named among them. For now, perhaps, these types of activity falls in certain cases under the service of granting rights to use information materials, audiovisual works via the Internet, including by providing remote access for viewing or listening.

In addition, foreign organizations may not pay VAT when transferring exclusive rights to programs for electronic computers or databases, if such transfer is carried out on the basis of a license agreement. While the corresponding norm remains in force (*Tax Code of the Russian Federation*, [RF State Duma, FTS, 2000](#), Art. 149, p. 26). It appears that these transactions, which fall outside the scope of the provisions on taxation of services in electronic form, should be integrated into the general system of such taxation (not necessarily solely for fiscal reasons).

2. Cross-border transactions for the transfer of goods and the provision of services in electronic form may be carried out through the use of telecommunication networks other than the Internet. For example, this includes paid TV and airtime sales, data transmission, and corporate and national autonomous networks. Taking into account the trends and rates of development of the digital industry and the objectively lagging reaction by the legislators, it is now necessary to introduce into the taxation rules more limited, for instance, in subject composition and nomenclature, taxation objects and fiscal regimes for conducting commercial transactions in such telecommunication networks.
3. The economic priorities of public policy seem to imply the development of an integrated approach and the possibility of applying various taxation regimes to electronic services. So, at present, services for hosting a website or virtual server on the Internet of third parties are in great demand. If this service is provided by a Russian firm to a non-resident, then the place of its implementation in accordance with general rules will be recognized as the place of business of this firm (i.e. the territory of the Russian Federation, if it is actually located there). Consequently, as long as the performer (service provider) operates in Russia, then Russia will be recognized as the place of their implementation, which will lead to VAT being applied to this operation. Apparently, in order to increase the competitiveness of domestic organizations and develop the Russian market for these services, it would be rational to adjust the taxation rules by making them VAT exempt.

4. Projects of interstate economic integration with the participation of Russia are currently being implemented. The issues of taxation of transactions for the transfer of goods and the provision of services in electronic form in legal regulation of such processes are not only not singled out as a relatively independent area of interaction, but are not actually considered as potentially such. The results of studying the regulation of these issues within the framework of the European Union allows us to propose a recommendation to take advantage of this regulatory experience more actively in improving the legal framework of Russia's integration processes with other states. Within the framework of such associations, when developing common approaches to taxation of services in electronic form, the accumulated experience of the EU is valuable but its plans for radical reform of earlier rules are very significant too (*Modernizing VAT on cross-border e-commerce*, EC, 2020).

## REFERENCES

- Bernard, P. (2002). Les nouveaux impôts. In T. Francois, *L'Impôt. Archives de philosophie du droit* [Vol. 46, pp. 229–240]. Dalloz.
- Carreau, D., Juillard, P., Bismuth, R. & Hamann, A. (2017). *Droit international économique*. Dalloz.
- Castagnede, B. (2002). *Precis de fiscalite internationale*. PUF.
- EU. EC. (2020). *Modernizing VAT on cross-border e-commerce*. [https://taxation-customs.ec.europa.eu/modernising-vat-cross-border-e-commerce\\_ga](https://taxation-customs.ec.europa.eu/modernising-vat-cross-border-e-commerce_ga)
- EU. EP & EUC. (2000). *Directive 2000/31/EC*, on certain legal aspects of information society services, in particular electronic commerce, OJ L 178. <http://data.europa.eu/eli/dir/2000/31/oj>
- IMF and WTO, *The text of the general agreement on tariffs and trade – GATT–*, 1 January 1948. [https://www.wto.org/english/docs\\_e/legal\\_e/gatt47.pdf](https://www.wto.org/english/docs_e/legal_e/gatt47.pdf)
- Lamensch, M. (2015). *European value added tax in the digital era: A critical analysis and proposals for reform*. IBFD.
- Mayburova, I. A. & Ivanova, Yu. B. (Eds.). (2019). *Taxes in the digital economy. Theory and methodology. Monograph*. UNITY-DANA.

- Miller, A, & Oats, L. (2006). *Principles of international taxation*. Totel Publishing.
- Nyssen, L. (2018). Adaptation du système TVA de l'Union européenne au commerce électronique en quatre questions [*Master de spécialisation*, Université de Liège]. Matheo. <http://hdl.handle.net/2268.2/4875>
- Oberson, X. (2001). *Precis de droit fiscal international*. Staempfli Editions.
- OECD. (2019a). *Model tax convention on income and on capital (Full Version)*. (2019). OECD Publishing. <https://doi.org/10.1787/g2g972ee-en>
- OECD. (2019b). *Comments on the articles of the model tax convention*. OECD Publishing. <http://www.oecd.org/berlin/publikationen/43324465.pdf>
- OECD. (2019c). *Program of work to develop a consensus solution to the tax challenges arising from the digitalization of the economy*. OECD/G20 Inclusive Framework on BEPS. [www.oecd.org/tax/beps/programme-of-work-to-develop-a-consensus-solution-to-the-tax-challenges-arising-from-the-digitalisation-of-the-economy.htm](http://www.oecd.org/tax/beps/programme-of-work-to-develop-a-consensus-solution-to-the-tax-challenges-arising-from-the-digitalisation-of-the-economy.htm)
- OECD. (2017). *International VAT/GST guidelines*. OECD Publishing. <http://dx.doi.org/10.1787/9789264271401-en>
- OECD. (2013). *Action plan on base erosion and profit shifting*. OECD Publishing. <http://dx.doi.org/10.1787/9789264202719-en>
- OECD. (2008a). *Préparer le futur de l'économie Internet*. OECD Ministerial Meeting. <https://www.apr-strasbourg.org/downloaddocument/20234/preparer-le-futur-de-l-economie-internet.pdf>
- OECD. (2008b). *The Seoul declaration for the future of the internet economy*. OECD Ministerial Meeting. <https://doi.org/10.1787/230445718605>
- OECD. (2001). *Taxation and Electronic Commerce. Implementing the Ottawa Taxation Framework Conditions*. OECD Publishing. <https://doi.org/10.1787/9789264189799-en>
- OECD. (1998). Conference conclusions Conferencia Ministerial de la OCDE [*Report SG/EC(98)14/FINAL*]. [https://one.oecd.org/document/SG/EC\(98\)14/FINAL/en/pdf](https://one.oecd.org/document/SG/EC(98)14/FINAL/en/pdf)

- OECD. (n.d.). *OECD Tax Database*. <https://www.oecd.org/tax/tax-policy/tax-database/>
- RF. FNS. (2016, december 12). *List of foreign Internet companies registered in the Russian Federation as VAT taxpayers in the provision of electronic services*. <https://lkioereg.nalog.ru/ru/registry#>
- RF. Minfin. (2005, May 27). Letter No. 01-02-03/03-233, on the taxation of gambling on the Internet. *Accounting. Taxes. Law.*, No. 14. <https://e.gazeta-unp.ru/>
- RF. State Duma. (2016). *Federal Law No. 244-FZ*, on amendments to parts one and two of the Tax Code of the Russian Federation. <http://www.kremlin.ru/acts/bank/40969>
- RF. State Duma. (2000). *Federal Law No. No. 117-FZ*, The Tax Code of the Russian Federation. <http://www.kremlin.ru/acts/bank/15925>
- Stupak, J. M. (2016). The Internet Tax Freedom Act: In Brief [CRS Report]. Congressional Research Service. <https://fas.org/sgp/crs/misc/R43772.pdf>
- USDT. (1996). *Selected tax policy implications of global electronic commerce*. Office of Tax Policy. <https://home.treasury.gov/system/files/131/Report-Global-Electronic-Commerce-1996.pdf>
- WTO, *Doha work programme*. December 22, 2005. [https://www.wto.org/english/thewto\\_e/minist\\_e/min05\\_e/final\\_text\\_e.htm](https://www.wto.org/english/thewto_e/minist_e/min05_e/final_text_e.htm)
- WTO, *The Geneva Ministerial Declaration on global electronic commerce*. May 25, 1998. [https://www.wto.org/english/tratop\\_e/ecom\\_e/mindecl\\_e.htm](https://www.wto.org/english/tratop_e/ecom_e/mindecl_e.htm)

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