

# Crisis Management Legislation

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## New government powers: tax administration and control

On 1 April 2020, the President of the Russian Federation signed Federal Law No. 102 of 01.04.2020 On amending Part One and Part Two of the Tax Code of the Russian Federation and some statutory instruments of the Russian Federation.<sup>1</sup>

Pursuant to the revised version of Article 4 of the Tax Code of the Russian Federation (TC RF), the following additional powers are vested in the Russian Federation's government for the year 2020:

- 1) to suspend, abandon or postpone tax control procedures, including checks on the completeness of calculations and the payment of taxes associated with related party transactions. Also, suspending the terms provided in the TC RF, *inter alia*, with respect to when tax audits can be appointed or conducted (due to the fact that the above-mentioned tax control procedures have been suspended or postponed);
- 2) to postpone the deadlines for the payment of taxes (or making tax prepayments), including payments related to special tax regimes, charges or insurance contributions;
- 3) to postpone the deadlines provided in the regional laws on taxes and duties, and in the regulatory legal acts of municipalities concerning local taxes and charges regarding prepayment of the transport tax, the corporate property tax, and the land tax. In turn, the supreme executive bodies of the regions of the Russian Federation are also authorised to pass legal acts for 2020 that will postpone the deadlines for the payment of taxes subject to special tax treatment, as well as regional and local taxes, and the sales tax;
- 4) to postpone the deadlines for submission to the tax authorities of tax returns (and tax calculations), financial statements, and/or other documents (information);
- 5) to postpone the deadlines for sending and satisfying requests for the payment of taxes, charges, insurance contributions, penalties, fines and interest, and the deadlines for making decisions to collect taxes, charges, insurance contributions, penalties, fines, and interest;
- 6) to establish additional grounds for granting delays in the payment of taxes, insurance contributions, penalties, fines and interest (or the right to pay in instalments) in 2020, and to change the procedure for and conditions of granting this delay or the right to pay in instalments;
- 7) to establish the grounds and conditions concerning the non-application or specific application of certain methods for securing the payment of taxes, charges, and insurance contributions;
- 8) to establish the grounds and conditions under which a taxpayer will not be held liable for its failure to submit (or failure to submit in time) its tax returns (calculations), financial statements, and/or other documents (information) to the tax authorities.

The law also defined **a working day for the purposes of the TC RF** more accurately. In accordance with the revised version of Article 6.1, a working day is any day that is not considered by Russian legislation or any act of the Russian Federation's President as a day off, a public holiday and/or a non-working day. As such, for calculation purposes in accordance with the TC RF, the period of time declared as non-working in a respective presidential decree shall be deemed to be the non-working days of all taxpayers to which these decrees apply.

<sup>1</sup> <http://publication.pravo.gov.ru/Document/View/0001202004010079>

## Based on the additional tax powers granted to it, the Russian Federation's government adopted Resolution No. 409 of 02.04.2020 On measures to be taken to ensure sustainable economic development (hereinafter, the Decree)

The Decree was published and came into force on 6 April 2020.<sup>2</sup>

The Decree approved several support measures both for organisations (sole proprietors) operating in the spheres most affected by the outbreak of coronavirus<sup>3</sup>, and other taxpayers.

The most important support measures include:

- simplification of procedures to postpone the payment of taxes, charges, and insurance contributions (or granting the right to pay them in instalments) for taxpayers operating in the spheres most affected by the downturn caused by coronavirus. In line with certain government resolutions, a postponement or the right to pay in instalments may be granted using a fast-track procedure to those strategic, systemic and economic 'backbone' enterprises in other spheres of the economy that have been affected by coronavirus;
- rescheduling tax payments for 2019 and for Q1 and Q2 2020 for small and medium-sized businesses, which are included into the register of small and mid-sized businesses, operating in the spheres most affected by coronavirus;
- a three-month postponement of the deadlines for filing tax returns (other than VAT) and submitting calculations, if the filing deadline falls in March–May 2020; and postponement concerning the submission of VAT reporting and calculations of insurance contributions for Q1 2020 until 15 May 2020;
- suspension of some control activities until 1 June 2020;
- postponement of deadlines for responding to requests from the tax authorities.

## The support measures provided in the Decree are set forth in more detail below.

### 1. Support measures for small and medium-sized businesses

These measures apply to organisations and sole proprietors included as at 01.03.2020 in the Unified Register of Small and Medium Enterprise in accordance with Federal Law No. 209-FZ of 24.07.2007 *On the Development of Small and Medium-Sized Enterprises in the Russian Federation (hereinafter, the SME Register)* operating in spheres most affected by COVID-19. The actual list of businesses shall be approved by the Russian Federation's government. The type of activity of a company can be identified by making reference to the company's core business code. Information on company's core business code can be found in the Unified State Register of Legal Entities, or in the Unified State Register of Sole Proprietors:

- **a six-month postponement** of the deadline provided in the TC RF for payment of **corporate profits tax**, and for tax paid when applying the **simplified tax system and single agricultural tax for 2019**;
- **a three-month postponement** of the deadline provided in the TC RF, Art. 227, clause 6, for payment of the **Personal Income Tax (PIT) for 2019**, payable by sole proprietors;
- **postponement of the deadline provided in the TC RF for the payment of taxes (other than VAT, professional income tax, and taxes paid by tax agents) and making tax prepayments:**
  - for March and Q1 2020 – postponed **for 6 months**;
  - for April–June, for Q2 2020 and the first 6 months in 2020 – **for 4 months**;
- **postponement for 4 months** of the deadline provided in the TC RF for payment of the tax when patents are applied, if the due date falls on Q2 2020;
- **the deadlines for making prepayments towards the transport tax, corporate property tax, and land tax are set as follows:**
  - for Q1 2020: on or before 30 October 2020
  - for Q2 2020: on or before 30 December 2020

<sup>2</sup> <http://publication.pravo.gov.ru/Document/View/0001202004060004>

<sup>3</sup> For example, in regard to applying legislation on repayment holidays, the list of the most affected industries was approved by the Russian Federation Government Decree No. 434 of 03.04.2020

The above provisions will apply to constituents of the Russian Federation and municipalities, as well as to the cities of Moscow, St. Petersburg and Sevastopol, in accordance with the laws and regulatory legal acts which require the respective taxes to be prepaid;

— **for micro-sized businesses:**

- **a six-month postponement** of the deadline provided in the TC RF for payment of **insurance contributions** calculated with respect to distributions and other remunerations paid to individuals for the period from **March to May 2020**;
- **a four-month postponement** of the deadline provided in the TC RF for payment of **insurance contributions** calculated with respect to distributions and other remunerations paid to individuals for **June and July 2020** and insurance contributions that are due **on or before 1 July 2020** and which were calculated with respect to the amount of income of a sole proprietor taxpayer if the amount of income exceeds RUB 300,000<sup>4</sup>;
- **a 6 month postponement of the deadline for paying contributions to the Mandatory Social Insurance Fund against Industrial Accidents** and Job-Related Illnesses, which were accrued on distributions and other remunerations paid to individuals for the period from March to May 2020; and a 4 month postponement for those accrued for June and July 2020.

## 2. Measures impacting all taxpayers:

- 1) postponement of the deadlines for filing tax returns and submitting calculations:
  - the deadline for taxpayers and tax agents to file **tax returns (other than VAT returns)**, tax calculations on income amounts paid to foreign organisations and taxes withheld, calculations of personal income tax amounts calculated and withheld by tax agents, calculations of prepayments, and financial statements, **the due date for which falls on the period in March–May 2020**, is postponed **for 3 months**;
  - the deadline for **presentation of VAT returns and calculations of insurance contributions for Q1 2020** is postponed until **15 May 2020**.

Given the above, it appears from the Decree that postponement of the deadlines for filing tax returns and calculations does not mean there will be a respective postponement of deadlines for the payment of taxes (or for tax prepayments), including in cases where the TC RF provides that the tax shall be paid (or the tax prepayment shall be effected) on or before the filing

date of the tax return (calculations). **Postponement of the deadlines for payment of taxes (or making tax prepayments) or insurance contributions for SME as described above (clause 1 of the Decree) does not entail postponement of the deadlines for submitting tax returns or calculations;**

- 2) the deadline for organisations to file tax monitoring applications for 2021 **is postponed for 3 months**;
- 3) **the following activities are suspended until 31 May (inclusive):**
  - deciding whether to conduct **on-site (follow-up on-site)** tax audits, audits on the completeness of calculations, and tax payments in relation to related-party transactions;
  - conducting **on-site (follow-up on-site)** tax audits, audits on the completeness of calculations, and on the payment of taxes in related-party transactions. The time periods for these audits (as provided in the TC RF and including periods provided in Articles 100, 101 and 101.4 of the TC RF) have also been suspended;
  - deciding whether or not (by the tax authorities, in accordance with Article 76 of the TC RF, clauses 3 and 32) to suspend operations involving bank accounts and electronic money transfers;
  - initiating compliance audits (to be led by the tax authorities) to check that currency laws of the Russian Federation have been observed;
  - conducting compliance audits by the tax authorities to check that the currency laws of the Russian Federation have been observed, unless violations of Russian currency laws were identified during previous audits and the period of limitation for launching administrative proceedings in relation to these violations expires before 1 June 2020. In these cases, compliance with Russian currency laws may be audited and administrative proceedings continued only with respect to these violations;
- 4) the deadline for **taxpayers, payers of insurance contributions** and tax agents to provide documents (information), explanations, or be requested to provide any documents (information) and clarifications required by laws on taxes and duties **is postponed for 20 working days** if such requests are received **from 1 March to 31 May 2020 inclusive**;
- 5) the deadline for **payors of social insurance contributions related to Industrial Accidents and Job-Related Illnesses** to provide documents (information), provide explanations and other data, or respond to requests to provide any documents (information) and clarifications required under Federal Law, is postponed **for 20 working days** if

<sup>4</sup> [Click this link to read the document](#)

such requests are received **from 1 March to 31 May 2020 inclusive**;

- 6) the deadline for taxpayers, payers of insurance contributions and tax agents to submit documents (information), provide explanations, or be requested to provide any documents (information) and clarifications **as part of desk tax audits of VAT returns** in accordance with laws on taxes and duties **is postponed for 10 working days** if such requests are received **from 1 March to 31 May 2020 inclusive**;
- 7) the deadline for organisations in the financial markets to provide financial information for the fiscal year 2019 and prior fiscal years, and to provide that information to the federal executive body in charge of control and supervision of taxes and charges (to the extent provided in clause 18a of the Regulations for financial market organisations), **is postponed for 3 months**. This covers the provision of information on clients; processes (including documentation processes); analysis of information about clients; beneficiaries and/or entities in direct or indirect control of those entities; and checks on whether reasonable measures have been taken to ascertain the tax residency of clients. This also covers checks on beneficiaries and entities in their direct or indirect control, including checks on the reliability and completeness of information provided by a client, and checks on the scope, conditions, procedures and terms of presentation of this information to the federal executive body in charge of control and supervision in the sphere of taxes and charges, as approved by Russian Federation Government Decree No. 693 of 16 June 2018 *On international automatic exchange of financial information with competent authorities of foreign countries (territories)*;
- 8) **no penalties for tax violations under Art. 126 of the TC RF** and for the violations under Art. 26.31 of the Federal Law *On Mandatory Social Insurance against Industrial Accidents and Job-Related Illnesses*, which were committed in the period from 1 March to 31 May 2020 inclusive, will be applied; and no infringement proceedings will be carried out in relation thereto;
- 9) The **preclusive term** for sending a request to pay taxes, charges, insurance contributions, penalties, fines, or interest, and for taking the decision to collect taxes, charges, insurance contributions, penalties, and fines, as well as the term for sending a request to pay insurance contributions to the Mandatory Social Insurance Fund against Industrial Accidents and Job-Related Illnesses, Penalties and Fines, and for taking the decision to collect insurance contributions for the Mandatory Social Insurance Fund against Industrial Accidents

and Job-Related Illnesses, Penalties and Fines, **is extended for 6 months**.

### 3. Granting a delay in the payment of taxes, tax prepayments and insurance contributions (or the right to pay them in instalments)

In addition to the rules already provided in the TC RF, the Decree has approved delays in paying taxes, tax prepayments and insurance contributions (or the right to pay them in instalments) for taxpayers operating in the areas most affected by coronavirus. The list of these areas shall be approved by the Russian Federation's government.

Furthermore, the Decree also provides **strategic, systemic and backbone enterprises** hit by the coronavirus downturn and not operating in spheres mentioned before the opportunity to obtain delays or the right to pay in instalments, **subject to targeted decisions by the Russian Federation government**.

Under these Rules:

- strategic organisations are those on the list approved by Russian Federation Government Decree No. 1226-r of 20.08.2009;
- systemic organisations are those on the list approved by the Government Commission for Improving the Sustainable Development of the Russian Federation. Earlier, in Letter No. 8952-RM/D18i of 23.03.2020<sup>4</sup>, the Ministry of Economic Development gave a List of Systemic Organisations, which now comprises 646 organisations;
- an organisation is recognised as a backbone enterprise if, according to estimates based on the organisation's insurance contributions for the last four fiscal periods, the average number of insured persons exceeds 5,000 people.

These Rules apply to **taxes**, prepayments and insurance contributions that **became due in 2020** (except for the mineral extraction tax and excise tax).

An organisation or a sole proprietor is entitled to a delay in the payment of taxes or payment of taxes in instalments **if impacted by at least one of the following circumstances**:

- 1) it experiences a decline in income of more than 10%;
- 2) it has a more than 10% decline in income from the sale of goods (works, services);
- 3) it has a more than 10% decline in income from the sale of goods (works, services) related to transactions that are subject to VAT at the rate of 0 percent;
- 4) it is making a loss according to its corporate profits tax returns for the reporting periods of 2020, provided that there was no loss for 2019.

A delay or the right to pay in instalments will be granted based on a respective application, provided that it was filed on or before **1 December 2020**. The decision whether to grant a delay or the right to pay in instalments shall be taken by the tax authorities at the location / registration as a major taxpayer.

The Rules provide a short list (compared to those provided in the TC RF) of the documents required in order to be granted a delay or the right to pay in instalments. The Rules also state that taxpayers need not provide a security if delay is granted for a period of up to 6 months.

Delay is granted for periods **from 3 to 12 months** depending on the criteria provided in the Rules (unless a shorter period is requested by the party concerned in the application); the right to pay in instalments is granted for periods **of 3 to 5 years** (unless a shorter period is requested by the party concerned in the application). Note that the Rules allow for delay or the right to pay in instalments only **once**. However, a second application may be filed to ask for a delay (or for the right to pay in instalments) within the Rules if initially the entity concerned asked for a delay (or for the right to pay in instalments) for a shorter period. If the total period of the delay exceeds 6 months, the taxpayer will have to provide a security.

If the taxpayer concerned files an adjustment return (amended calculation) or it is found in the course of a tax audit that this taxpayer did not meet the conditions for granting a delay or the right to pay in instalments, **the decision to grant the delay or the right to pay in instalments will be revoked and a penalty will be accrued** as of the date provided in the TC RF for the payment of taxes with respect to which the taxpayer had accidentally been granted a delay or the right to pay in instalments.

#### 4. It has also been provided that a delay in the payment of insurance contributions (the right to pay in instalments) to the Mandatory Social Insurance Fund against Industrial Accidents and Job-Related Illnesses

is granted by the Social Insurance Fund of the Russian Federation in accordance with the provisions of Articles 26.2, 26.4 and 26.5 of the Federal Law On Mandatory Social Insurance against Industrial Accidents and Job-Related Illnesses, which sets forth the procedure for allowing delayed payment of insurance contributions (or the right to pay them in instalments) to entities which have suffered damages from natural disasters, technogenic catastrophes, or other force majeure circumstances, based on information obtained from the tax authorities regarding the decision to grant a delay in payment of insurance contributions (or the right to pay them in instalments) in accordance with the above Rules, approved for the same period for which the delay in payment of insurance contributions (or the right to pay them in instalments) was granted by the tax authorities.

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