

LT in Focus

Tax & Legal



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Windfall tax: puzzling out the details

We have been keeping an eye on the new tax initiative since this February, when the Ministry of Finance first announced its plans to withdraw a part of big businesses' windfall tax generated thanks to the favourable market conditions.

The initiative has evolved since then: from a voluntary contribution and an increased income tax rate to a lump-sum mandatory tax payment.

Recently, the [bill](#) on the windfall tax finally reached the State Duma.

Let us dive into the details in our new LT in Focus.



A new tax type — lump-sum taxes

Along with the bill on the windfall tax, another bill was submitted to the Russian State Duma, introducing a new type of charges — lump sum taxes, which will also include the windfall tax.

These taxes have the following common features:

- they are introduced by federal laws;
- a special procedure may be envisaged to determine the tax base;
- some of the mandatory taxation elements may be missing (for example, the windfall tax does not have a tax period).



Who are the payors?

The tax will have to be paid by Russian entities and foreign permanent establishments, whose average profit for 2021 and 2022 exceeded RUB 1 billion.

Regardless of the profit amount, exemption will be granted to:

- companies registered as small- and medium-sized businesses as at 31 December 2022;
- Russian entities established after 1 January 2021 (except those created via a reorganisation of companies incorporated before 1 January 2021);
- foreign companies that started operating in Russia via permanent establishments after 1 January 2021;
- companies that were paying the single agricultural tax from 1 January 2018.

The tax will not be charged on the following mining companies:

- entities producing hydrocarbons in 2022;
- organisations that were, as of 31 December 2022, registered as oil refiners, if in their excise tax calculations for 2022 the value of KdEMp (the ‘fuel damper’) was other than zero for at least six months;
- companies that in 2022 were members of the consolidated taxpayer groups (CGT) that in 2022 included organisations specified in Paragraphs 1 and/or 2 of this list;
- organisations that, as of 31 December 2022, were registered as oil refiners and had an effective contract for the provision of oil refining services

In fact, the provisions of the bill establish a legal basis for the windfall tax.

Now that lump sum taxes will be formalized in the Russian Tax Code, the question arises whether the windfall tax can be charged again, should the government need more funds.

Apparently, once the procedure for charging extraordinary taxes has been tested, introducing another tax will be easier, so a certain risk does exist.

Nevertheless, as of today, the Government assured the business community that the windfall tax will be an one-off payment.

with an organisation specified in Paragraphs 1 and/or 2 of this list;

- Russian entities being direct participants of the organisations specified in Paragraphs 1 and/or 2 of this list with an interest of at least 75 percent as of 31 December 2022;
- companies that produced coal in 2022;
- organisations engaged in the production of liquefied natural gas (LNG), if before 31 December 2022 they exported at least one batch of LNG under an exclusive gas export license.

According to the authorities, exemptions were granted as the tax burden for these companies is already high enough due to the additional mineral tax charges.

As the bill was drafted, many sectoral departments and business associations requested for expanding the list of exemptions.

For instance, such request was [submitted](#) by the electrometallurgy industry players, for which an excise tax on liquid steel was introduced last year.

Also, many [noted](#) that the concept of the bill did not take into account the investment component; consequently, the tax will have to be paid both by those who received an opportunistic “windfall profits” and those whose higher yields were sourced from investments in business development.

As we understand, the bill introduced to the Russian State Duma has already been aligned with the relevant ministries; therefore, the expansion of the list of exemptions is unlikely.



How will windfall profits be determined?

The tax will be charged on windfall profits calculated under the following formula:

$$\frac{\text{2022 profit} + \text{2021 profit}}{2} - \frac{\text{2019 profit} + \text{2018 profit}}{2}$$

Profits will be determined as the sum of the CIT bases for the corresponding year less the losses carried forward from prior years.

The following profits will be excluded from the calculation of windfall profits:

- CFC profits;
- dividends;
- proceeds from the sale of shares / participation interests, for which income tax is zeroed;
- profit of parties to special investment contracts (SPIC) signed with the Russian Government and taxed at a beneficial tax rate;
- income from certain securities enjoying beneficial tax rates;
- income received from multinational holding companies or by multinational holding companies enjoying beneficial tax rates;
- profit received by parties to investment encouragement and protection agreements (IEPA) from the underlying investment project(s).

Please note the nuances of calculating the windfall tax:

- the CIT base will be used; therefore, if a company is

loss-making, the tax base will be deemed to be zeroed and the taxpayer will be unable to fully offset the losses received in one period against the profit of another period;

- the exemption is granted only to the companies registered after 1 January 2021; therefore, the companies established in 2020 that did not report any profit in 2018 and 2019 will, in fact, pay tax on their average profit for 2021 and 2022;
- businesses normally taxed at lower rates (IT, health, agricultural producers, residents of advanced development territories and special economies zones) will not be exempt;
- the windfall profits formula does not provide for any adjustment for investments: companies reinvesting their profits will have to pay tax on a par with other payers;
- the windfall tax cannot be expensed;
- a full deduction in 2022 of exchange losses without adjusting for a positive exchange effect on the same foreign exchange assets/liabilities may lead to an underestimation of the 2022 taxable profit and, as a result, to a miscalculation of the windfall tax.



Calculation of windfall profits in case of restructuring

In the event of restructuring, the arithmetic mean profit for the periods preceding the restructuring is determined as follows:

- in case of a merger, based on the data of merged entities;
- in case of a split up, based on the data of the

reorganised entity whose assets are transferred to a newly created organisation, in a pre-agreed proportion;

- in case of an acquisition, based on the acquired entity's data.



How will the tax be calculated for members of consolidated taxpayer groups?

The bill sets the following rules for the CGT members:

- the tax base is determined for the CGT as a whole;
- the tax base is determined by a company that in 2022 was the CGT's responsible taxpayer;
- the tax base is determined by the CGT's responsible

taxpayer with regard to the companies being members of the CGT as of 31 December 2022;

- such companies must provide the responsible taxpayer with the information necessary to calculate the tax.



At what rate will the tax be paid?

The tax will be charged at a rate of 10 percent; a sort of a discount will be available for the early payment of tax (by way of making a security deposit): the tax can be reduced by the amount of deposit transferred in October— November 2023.

The deduction will be limited at 50 percent of the tax amount.

This security deposit will be credited towards the tax liability less the deduction.

Taking this all into account, the effective rate in case the tax is actually paid in 2023 (via security deposit) can be five percent.

This mechanism of discounting tax rates for early payors is a brand-new taxation approach.

Yet, the terms of the proposed security deposit scheme are not quite clear.

In particular, according to their current version, in the event of a full or partial return/offset of the security deposit, the tax deduction will be zeroed.

Therefore, returning/offsetting even a minor part of the security deposit will disentitle the taxpayer of the deduction.

Neither is it entirely clear whether the "crediting" of the security deposit towards the payment of the windfall tax itself can be considered an offset, depriving the taxpayer of the deduction entitlement.

These ambiguities give rise to reasonable fears in the business community that, in the end of the day, the tax will still have to be paid at a rate of 10 percent.

The issue was raised by the Russian Union of Industrialists and Entrepreneurs, which [requested](#) giving the taxation mechanism another brush.



When will the tax be paid and filed?

The tax will have to be paid by 28 January 2024.

At the same time, as we noted above, the amount of the security deposit made in October— November 2023 will be counted towards the payment of the tax.

The tax will be fully paid to the federal budget.

The tax return will have to be filed by 25 January 2024.

No returns have to be filed for zero taxes.



Outstanding issues

The key outstanding issue is how to account for further income tax adjustments: for instance, if a taxpayer files an amended income tax return or the tax authorities assess back taxes after a tax audit.

Taxpayers face the risk of always paying additional taxes at a rate of 10 percent (in the event of additional assessments) or being unable to recover the overpaid

windfall tax (if the tax liabilities are reassessed downwards).

The Russian Union of Industrialists and Entrepreneurs draw attention to the issue and [called for](#) introducing technical amendments to the bill.

The text might be reworked for the second reading.

We recommend assessing the potential impact of the bill on your tax burden and will be happy to answer any questions you may have.

Partners

Contacts

Tax & Legal Partners and Directors



Pavel Balashov
Managing Partner Tax &
Legal
pbalashov@delret.ru



Irina Androncheva
Director
iandroncheva@delret.ru



Emil Baburov
Director
ebaburov@delret.ru



Evgenia Bondareva
Director
ebondareva@delret.ru



Anton Zykov
Partner
azykov@delret.ru



Natalia Ivantsova
Director
nivantsova@delret.ru



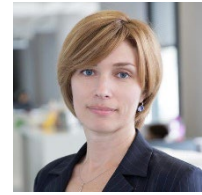
Alexandra Kalinina
Director
akalinina@delret.ru



Tatiana Kiseliova
Partner
tkiseliova@delret.ru



Anna Klimova
Partner
aklimova@delret.ru



Elena Kovalevich
Partner
ekovalevich@delret.ru



Nikita Korobeynikov
Director, Head of Legal
nkorobeinikov@delret.ru



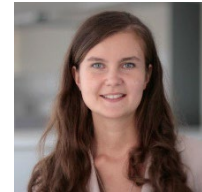
Tatiana Kofanova
Partner
tkofanova@delret.ru



Natalia Kuznetsova
Partner
nkuznetsova@delret.ru



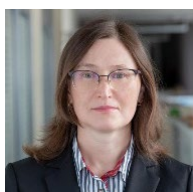
Dmitry Kulakov
Partner
dkulakov@delret.ru



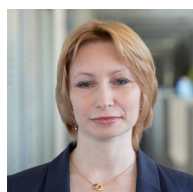
Yulia Krylova
Director
ykrylova@delret.ru



Anastasia Matveeva
Director
amatveeva@delret.ru



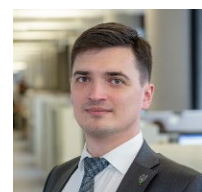
Yulia Orlova
Partner
yorlova@delret.ru



Ekaterina Sivenkova
Director
esivenkova@delret.ru



Elena Solovyova
Partner
esolovyova@delret.ru



Yuriy Khalimovskiy
Director
yukhalimovskiy@delret.ru



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