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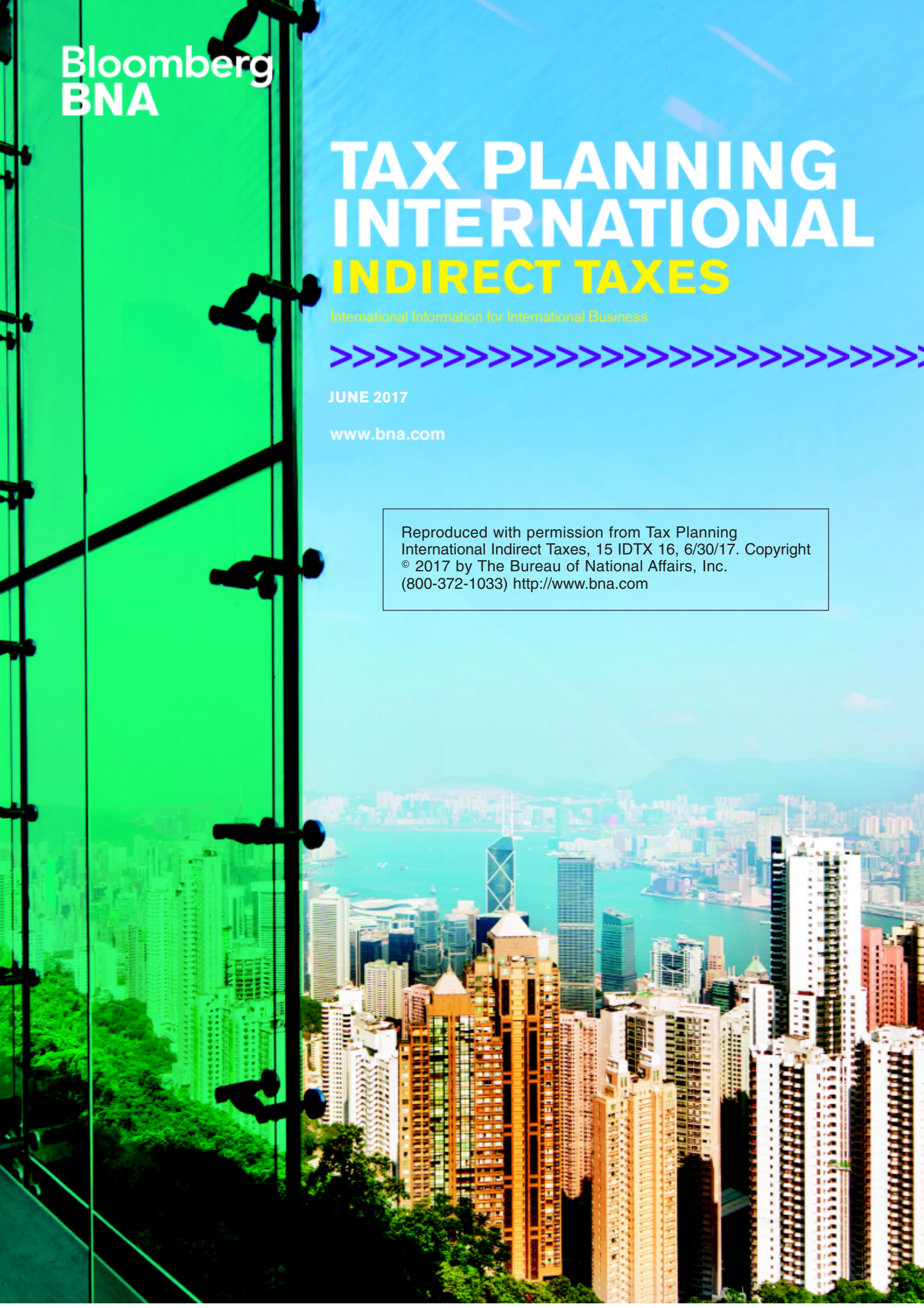
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# Belarus Introduces VAT on Electronic Services



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From January 1, 2018, Belarus will introduce a VAT on electronic services provided by foreign companies to consumers. A similar VAT is already in operation in the EU and Russia. This article examines the upcoming changes in Belarus tax law and provides comparison with the measures in the EU and Russia.

Starting from January 1, 2018, Belarus will introduce value added tax applicable to electronic services (“e-VAT”) provided to Belarusian individuals by foreign companies (business-to-consumer (“B2C”) supplies). Business-to-business (“B2B”) supplies will not be affected. A similar e-VAT has been introduced in the European Union (“EU”) from January 1, 2015—the mini one stop shop (“MOSS”) scheme—and in Russia, from January 1, 2017. This article is designed to address the upcoming changes in Belarus tax law, as well as to provide a general comparative analysis.

## Background

In October 2016 the law implementing changes to the Tax Code of the Republic of Belarus (“Belarus Tax Code”) was adopted. Amongst the new changes the law introduced was that, starting from January 1, 2018, electronic services (“e-services”) provided to Be-

larusian individuals by foreign companies shall be subject to e-VAT at a rate of 20 percent (the e-VAT rate applicable in Russia is 15.25 percent. In the EU the e-VAT rate applicable varies depending on the state that is the buyer’s location: the list of VAT rates per country can be found at: <http://src.bna.com/pmW>).

Analogous changes introduced in Russia were the result of a long debate by legislators. The main “pro” argument was that Russian companies, which are paying VAT on e-services provided to Russian individuals, are being placed at a disadvantage, with foreign companies enjoying VAT-free supplies to Russian individuals. That argument was also backed with a concern that foreign companies most probably shift the new VAT burden to the customers in the form of price increases, or even cease to provide services.

“E-VAT discussion” in Belarus referred to e-VAT as a logical step in combating tax avoidance, especially in regard to companies registered in tax haven jurisdic-

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tions and receiving income from Belarusian customers, as well as a form of adherence to commonly accepted standards (for example, Russia, the EU). As regards the EU, it can be added that the MOSS scheme was not something completely new, since non-EU suppliers had to use an almost identical scheme—VAT on Electronic Services (“VoES”)—for many years. Nevertheless, both EU and non-EU suppliers had to shift to MOSS scheme from January 1, 2015.

The introduction of e-VAT can be also characterized as a step towards implementing the OECD BEPS Action Plan (Action 1. Addressing the Challenges of Digital Economy) by the OECD member countries.

### E-Services

The table below provides e-services definitions for Belarus, Russia and the EU.

Belarus	Russia	EU
Services delivered by a foreign company over the internet in an automated fashion with the use of information technology, inter alia with involvement of foreign intermediary for payments	Services delivered over the internet or other similar electronic network in an automated fashion with the use of information technologies (although the Tax Code of the Russian Federation (“Russian Tax Code”) does not mention intermediaries in the e-services definition, it provides that foreign companies involved in payments for e-services by Russian individuals are subject to e-VAT registration and payment)	Services delivered over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention, and impossible to ensure in the absence of information technology

It is evident that all three definitions have similarities and refer to provision of services over the internet in an automated fashion with the use of information technology. At the same time, the EU definition refers to a “minimal human intervention” criterion that has a strong evaluative accent.

The table below is designed to provide a guide on business sector, e-services scope covered by e-VAT with relevant exemptions, as well as some examples of foreign companies that may be affected by e-VAT in Belarus.

Business Area	Companies	E-Services	Exemption
Software, including computer games, databases	Software (computer games) developers	Licensing of software (including computer games), databases (including updates, additional functions provided)	Realization (licensing) of software (including computer games), databases on tangible media
Online products	Streaming, music/video service providers, photo stock service providers, e-libraries, internet TV channels	Licensing of electronic books, information and educational materials, graphic images, music, audiovisual works via the internet, as well as providing remote access for reviewing and/or listening via the internet	
Ads, ad space	Website owners	Advertising services via the internet, providing advertising space	



Online commerce	E-commerce (trading) platforms	Services on placing sales offers via the internet for goods, services, property rights, services on provision of technical, organizational, information and other capacities with the use of information technologies and systems for establishing contacts and making deals between sellers and buyers (including provision of trading platforms in real-time mode)	Realization of goods/services when they were ordered via the internet and delivered without internet use (online retailing), provision of advisory services via email. Overall—provision of services on internet access
Data search, automated online services	Data search providers, stock exchange portals, online translators	Automated services for data search, selection, sorting and provision to users (including stock exchange reports, automated online translation) via the internet, search services and services on provision of information on potential customers to clients	
Internet presence	Web development, web analytics companies, outsourcing service providers	Services on maintenance and support of internet presence for personal goals or for commercial activity, support of users' electronic resources (websites, webpages) and access to these with modification options, as well as information system administration services	
Information storage and processing	Data storage companies, data processing centers, cloud service providers	Information storage and processing if the person that provided information can access it via the internet, providing computing power in real-time mode for placing information in an information system	
Hosting, domain names, search engines, website statistics	Hosting companies, domain name registrars, search engines, website traffic and statistics analytics tools	Providing domain names and hosting services, providing access to search engines on the internet, keeping statistics on websites	

It should be noted that although there is some difference in wording, the list of e-services for Belarus e-VAT is almost identical in scope to the one introduced in Russia (article 174.2. of the Russian Tax Code (<http://src.bna.com/ppE> (available in Russian only))).

With regard to Russia, the issue with transfer of rights to the software and licensing of the software should be mentioned. There is a provision in the Russian Tax Code that exempts licensing of software from VAT (subparagraph 26 paragraph 2 Article 149) which is silent on the licensor nationality and licensee status (a legal or a natural person) that shall be covered by the exemption. Taking into account that the e-services scope includes provision of the rights to software that is taxable with e-VAT, it is not clear how e-VAT rules are supposed to work together with the licensing exemption, and in particular whether licensing to individuals shall be subject to e-VAT.

With regard to the EU list (see the list of electronically supplied services at <http://src.bna.com/ppH>), it is more detailed and is designed to address more definite situations when businesses should be required to pay

e-VAT—e.g., it separately mentions online automated installation of filters on websites, firewalls, desktop themes or accessing/downloading music, jingles, excerpts, ringtones or other sounds—which allows the minimizing of implementation discrepancies. If compared to the Belarus e-services list, it is doubtful whether jingles, excerpts, ringtones or other sounds may be attributed to a piece of music in its narrow description. Taking into account the general wording used, it is possible that the Belarus list may be modified for the purpose of making it more specific.

The above services are subject to e-VAT if provided to individual—customers in the territory of Belarus. Individual—customers are provided with services in the territory of Belarus when at least one of the following criteria is met:

- the individual is factually present in the territory of Belarus;
- the bank or e-money operator used by the individual is located in the territory of Belarus;
- the individual used an IP address registered in Belarus for purchasing e-services;

- the individual used a phone number with a country code registered in Belarus for purchasing e-services.

Identical criteria regarding individuals are applicable in Russia. The Russian Tax Code additionally indicates that an individual shall not be registered as an individual entrepreneur in Russia. In Belarus, individual entrepreneurs as well as legal entities, when purchasing services from foreign companies in the territory of Belarus, are subject to payment of VAT in Belarus instead of such foreign companies; so there should be no overlapping with the e-VAT provisions due to specific regulations regarding individual entrepreneurs already existing in the Belarus Tax Code.

### E-VAT Payers

As in Russia, e-VAT registration in Belarus is obligatory for foreign companies providing e-services and foreign companies providing intermediary payment services based on commission, agency or other similar agreements (payment intermediary) in relation to e-services purchased by the Belarusian individuals. (There is no clear list of the companies falling under the criteria for payment intermediary, e.g., banks, payment aggregators, payment service providers are not specifically excluded for e-VAT purposes. However, if they operate based not on commission, agency or other similar agreements, they should not be included in the definition of payment intermediary). Foreign payment intermediaries are subject to the same e-VAT obligations as foreign companies providing e-services.

The Russia Tax Code refers to such payment intermediaries as tax agents. If there is a payment intermediary registered in Russia and administering payments for e-services purchased by Russian individuals from foreign companies, it is also regarded as a tax agent and is subject to payment of e-VAT to the budget. Belarus e-VAT amendments do not specifically refer to payment intermediaries, either foreign or domestic, as tax agents, but establish analogous rules for e-VAT payment as when intermediaries are involved in Russia. Both the Belarus amendments and the Russian Tax Code provide that only that payment intermediary which is directly involved in settlements with individuals shall calculate and pay e-VAT, no matter whether there is any direct agreement between such an intermediary and a foreign company to carry out

any settlements. However, both are silent on what exactly the “directly interacts” wording means.

The practical realization of e-VAT in Russia shows that several major foreign companies supplying e-services to Russian individuals have registered in Russia for e-VAT purposes, e.g., Apple Distribution International, Google Commerce Ltd, Microsoft Ireland, Netflix International B.V., Wargaming Group Ltd, Bloomberg, the Financial Times (see more at <http://src.bna.com/ppL> (available in Russian only)).

### E-VAT Registration and Payment

Foreign companies providing e-services and foreign payment intermediaries shall be registered for e-VAT in Belarus. The registration starts from January 1, 2018. Belarus law does not provide for any separate VAT registration, so companies have a single tax registration, with a single taxpayer number used for payment of any taxes in Belarus to which they may be subject. The new e-VAT registration will be the first VAT registration ever in Belarus and is designed for foreign companies only. The registration obligation does not depend on the services amount, i.e., there is no threshold for e-VAT registration.

The technical side of the registration can be managed either by the authorized representative of the foreign company submitting to the tax authorities a signed paper registration form (an e-VAT registration form has recently been released for public discussion and comments (available in Russian only: <http://src.bna.com/ppQ>)) or by the foreign company itself. If the foreign company wants to perform the registration itself, it can either use the registered mail correspondence for that purpose, or an electronic document form. Please note that by “electronic document” Belarus law refers to a document in electronic form signed with a digital signature: the key certificate to the digital signature shall be issued by the authorized Belarusian state certification center.

Unlike the Russian Tax Code (paragraph 14 Article 306), the new amendments in Belarus do not specifically state that e-VAT registration itself should not lead to permanent establishment of a foreign company in Belarus. Therefore, it is not clear how permanent establishment risks for foreign companies providing e-services and payment intermediaries will be assessed by the Belarusian tax authorities.

The main e-VAT characteristics are shown in the following table.

e-VAT base	e-VAT rate	e-VAT amount	e-VAT return	e-VAT payment
e-services cost	20%	e-VAT base multiplied with e-VAT rate	e-form is available via a taxpayer account powered by Ministry of Taxes portal (an e-VAT return form has been recently released for public discussion and comment (available in Russian only: <a href="http://src.bna.com/ppT">http://src.bna.com/ppT</a> ))	Quarterly, upon submission of e-VAT return

Please note that provision of e-services free of charge is not specifically excluded from the e-VAT registration obligation. Potentially, administrative liability for carrying out activity in Belarus without tax registration may be applicable to a foreign company. At the same time, from a practical perspective it would be difficult to calculate the penalty, as the administrative fine amount is 20 percent of the income received from the activity subject to tax registration.

### Practical Remarks

The new e-VAT amendments pose certain questions that remain to be answered to ensure prompt and smooth implementation of the new e-VAT regulations by foreign companies, for example:

- would e-VAT registration lead to permanent establishment of a foreign company in Belarus;
- what companies are meant exactly under “payment intermediaries” and are in fact subject to payments of e-VAT when several intermediaries are involved?

It is also not clear whether there would be any special liability provisions implemented for breach of e-VAT rules, such as deregistration for failure to pay e-VAT (as in Russia’s example; paragraph 5.5. Article 84 of the Russian Tax Code).

From the Belarusian customer’s perspective, it is unclear whether foreign companies will cover the additional e-VAT sums at their own cost or increase the price for e-services. Both variants, depending on the foreign company-provider, are possible.

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