

Research article

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Features of Tax Regulation of the IT Industry in the Russian Federation and EAEU states



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Abstract

The article discusses the features of the application by the Russian Federation and the member countries of the Eurasian Economic Union (EAEU), Republics of Belarus, Kazakhstan, Kyrgyzstan, mechanisms of tax incentives for the development of the domestic IT industry. Tax incentives, a simplified taxation system and the taxation regime in the territory of the Special Economic Zones (SEZ), High-Tech Park (HTP) are analyzed. Special attention is paid to the consideration of the procedure for access and accreditation of companies for the opportunity to work in the territory of the SEZ or HTP with the use of a preferential tax regime. The article concludes that states as a whole apply all tax incentive mechanisms in a complex: tax incentives, a simplified taxation system, SEZ, HTP, however, there are differences in their use, which ultimately affects the level of stimulation of domestic IT industries. Russia uses a selective and differentiated approach, that is why most companies in the field are cut off from the preferential tax regime. The EAEU countries have developed more positive experience in this matter due to the simplification of the registration procedure required to enter the preferential zones, both for domestic and foreign IT companies and the admission to the HTP and SEZ of individuals specialists. The access of foreign companies from friendly countries as residents in the territory of the Russian SEZ will facilitate the introduction of new information technologies and the exchange of experience with domestic companies. The thesis is also substantiated that for a holistic and systematic stimulation of the development of the domestic IT industry, it seems inappropriate to differentiate companies into Software Company (companies specializing in high technologies) and companies not specializing in such technologies. Special attention is drawn to the need to expand the list of types of IT-activities that provide access to

domestic companies to the mechanism of preferential taxation. The article notes that the experience of tax incentives for the IT industry in the EAEU countries shows that the approach used makes it possible to unite the majority of domestic companies and specialists — individuals in the territory of a separate free economic zone or HTP, that is beneficial both for the companies themselves and individuals from — for preferential taxation, and to the state, which keeps them records and records of their IT products and discoveries. In the Russian Federation IT companies, unless they are included in the SEZ, are fragmented and more difficult to control in this sense. In general, it is concluded that in Russia it is necessary to ensure the uniform application of tax incentives for the domestic IT industry throughout the territory, which will contribute to its development and growth of competitiveness in the international market.



Keywords

IT-industry; IT-company; tax regulation; taxation; special economic zones; high technology park.

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Introduction

Coming of information technologies into various spheres of human life promotes the transition to a new, higher quality level of development of the industries and areas of the public sector such as economy, security, energy, medicine, education, ecology, culture, and other equally important areas of public life. According to the Strategy for the Development of the Information Technology Industry in the Russian Federation for 2014–2020 and until 2025, this industry must be developed to ensure the transition to a new post-industrial technological paradigm of society.¹ Such development is possible when various legal incentives are used, the tax incentive being one of them.

Most states offer various preferential regimes, exemptions, investment clusters, free economic zones, special economic zones and hi-tech parks.

¹ Decree of the Government of the Russian Federation No. 2036-p of 1.11.2013 'Strategy for the Development of the Information Technology Industry in the Russian Federation for 2014–2020 and until 2025'. Available at: URL: [https://www.digital.gov.ru>uploaded>-files](https://www.digital.gov.ru/uploaded>-files) (accessed: 03.02.2023)

Russian Federation has to compete for IT professionals and encourage the development of the IT sector, too. Among other things, this need has been reinforced by the current international situation: many well-known companies have decided to cease operations in Russian, and some professionals have left the Russian market. Moreover, there are problems in tax regulation of the Russian IT sector because approach to taxation is unstructured and inconsistent. Not all companies can obtain access to tax-heaven arrangements. This makes it difficult to achieve the goal set forth in the 'Strategy for the Development of the Information Technology Industry in the Russian Federation for 2014-2020 and until 2025' and in other documents pertaining to this sector that the state adopts. In view of the above it would be appropriate to draw the reader's attention to the experience of the member countries of the Eurasian Economic Union because their IT sectors have been growing and demonstrating good results in areas related to products, projects, start-ups, and services. Hence, consideration of the proposed topic is relevant and timely.

Subject of study: study tax exemptions, simplified tax system and legal regimes in the free economic zones, special economic zones and hi-tech parks of Russia and the EAEU member countries, and their comparative analysis.

Purpose of study: research the experience of applying tax incentives in the IT sector in the Russian Federation and Eurasian Economic Union, and justify of the need to introduce in Russia legal norms stimulating the development of the domestic sector.

Special methods of research have been used in studying the legal norms governing taxation of the IT industry in the EAEU jurisdictions like: comparative law, legal interpretation method, and formal-legal method.

1. Fiscal regulation concept: the main instruments used in the IT industry in the Russian Federation and EAEU states.

The tax law science determines tax regulation is government regulation of tax relations [Krasnyukov A.B., 2007]; [Lazarev V.I., 2009]; [Morozov A.A., 2011]. In analysing the contents of fiscal regulation, scholars include in it such concepts as tax policy, tax mechanism, tax administration, tax planning and forecasting, tax strategy, tax control, taxation [Aliyev B.K., 2008]; [Serdyukov A.E., Vylkova E.S., 2008]; [Stepanenko V.V., Ermakova E.A., 2012]. We share this position of the scholars: to be able to

influence the behaviour of subject involved in tax relations (both public and private), fiscal regulation must include the above tools and methods listed by the researcher. They are not used separately from each other, but in an integrated manner and to achieve a certain goal. The main purpose of fiscal regulation is to ensure a level of operation of the tax system where tax revenues would be collected on time, in full and with a view to making the best use of the financial potential of the national economy in the future. This purpose can be reached through the fiscal function of the tax, the essence of which is to fill the revenue side of the state budget.

However, depending on the industry or sector of the economy, fiscal regulation may differ or even have the opposite objective. The right approach to fiscal regulation of a sector of the economy implies the state's legal influence on the operations of agents in that particular sector through the application of the taxation mechanism in order to implement the fiscal or regulatory (incentive) functions of the tax, based on the principle of priority development of this sector in the interests of the state. In other words, the state, proceeding from the need to reach the country's development goals, applies different taxation instruments to the relevant industry (sector), increasing or decreasing the role of the fiscal or regulatory (incentive) functions of the tax. So, depending on the means of intervention and the legal instruments applied, government fiscal regulation may aim to encourage or discourage the development of a particular industry.

Tax law scholars suggest that tax incentives are a motivation mechanism based on a low-tax policy, optimisation of the composition and structure of the tax system, the level of tax burden, the rates of individual taxes, or on the use of a tax exemption system [Zhigunova E.N., 2014]. This type of tax incentive has a positive effect on certain areas or sectors of the economy. Tax deterrence is a less common form of state fiscal regulation because its aim is to restrain the development of certain sectors of the economy and investment activity; it is based on a policy of high taxes, general and selective high tax rates, increasing the list of tax payments, abolishing tax exemptions, etc. [Barulin S.V. et al., 2008]. E.g., in order to reduce a segment of the entertainment services industry such as gambling business, it would be sufficient to strengthen the fiscal function of taxation by raising the tax rate, expanding the tax base, complicating the licensing procedures (introducing the need to obtain additional permits), increasing the grounds for tax control, etc. All such actions would indicate that the fiscal function of the tax prevails over the regulatory (incentive) function.

Tax regulation is effected through the use of the relevant tools. As we have noted above, these are: tax policy, mechanism, administration, planning and forecasting, strategy, control, and taxation. The latter, i.e., taxation as an individual fiscal regulation tool, includes the tax subject (taxpayer), tax object, tax base and tax rates, sources of fiscal payments, benefits, sanctions, schedules, tax credits, tax holidays, tax clusters, special taxation regimes, tax amnesties, tax deductions, tax deferrals and tax instalments, ways of enforcing the tax obligation, and other elements. Depending on what elements prevail in the taxation process, fiscal or incentive, we can talk of tax incentives, tax deterrence or general fiscal regulation.

IT taxation mechanisms in Russia and the EAEU states are incentive-based because they use a fairly wide range of tax incentives and preferences. These include tax exemptions, special tax regimes, moratoriums on tax audits, preferential terms in the performance of tax obligations, free economic zones, special economic zones and hi-tech parks. Russian, Belarus, Kazakhstan, and Kyrgyzstan use the above tax incentives in some way or another, but there are differences in the procedures and grounds for their application that brings different results.

2. Fiscal regulation of the IT industry in the Russian Federation

According to Decree of the Government of the Russian Federation No. 2036-p of 1.11.2013 (hereinafter Decree 2036), the information technology industry is understood as the totality of Russian companies involved in the following activities: development of mass-market software products; service provision in the IT sphere; development of hardware and software complexes with high added value of the software part; remote information processing and provision in various environments, including the Internet². From the tax law perspective, this definition enables identifying the tax subject (tax payer) and the taxation object. In a general sense, the idea is to include individual IT professionals into the IT sector, too, because in 2021 there were approximately 1.7 Million individuals making a specialty out of IT.³ Today, they account for a significant share in the Russian IT sector, while also being taxpayers. Ac-

² Decree of the Government of the Russian Federation No. 2036-p of 1.11.2013 'Strategy for the Development of the Information Technology Industry in the Russian Federation for 2014-2020 and until 2025'. Available at: URL: <https://www.pravo.gov.ru> (accessed: 11.03.2023)

³ Statistics on outflow of IT professionals from Russia in 2023. Available at: URL: <https://www.inclient.ru>outflow> (accessed: 15.02. 2023)

cording to Article 19 of the Russian Tax Code, organisations and individuals charged with the obligation to pay taxes, levies and insurance payments respectively are recognised as taxpayers, levy payers and insurance payers in accordance with this Code⁴. This means that not only organisations but also individuals may be regarded as taxpayers in the field. The mechanisms for preferential taxation of individuals and legal entities working in the IT industry are different, because individuals work under a special tax regime, the simplified taxation system, while legal entities are entitled to benefits under the general taxation system.

Before looking at the specifics of preferential taxation of IT companies and individual IT professionals, one must define the object of taxation in the industry that would be universal for both the Russian Federation and the EAEU states. The object of taxation of revenues from information services provided or products made is manifold and therefore internally structured. Different tax and legal regulations apply to the object of taxation in the sphere, depending on the type of its manifestation.

Information collection, processing and distribution services are provided through information technologies whose efficacy determines the performance of other sectors of economy, companies, and individuals. The industry offers a wide range of information products intended to provide relevant information to subjects (clients and users). On the whole, the variety of information products can be categorised into the following areas of activity: software installation and configuration; mobile application development; IT outsourcing; infrastructure subscription services (software maintenance, hosting, programming, testing, etc.); Internet access services; website creation and software development; training and certification; cloud and virtual services⁵. The Russian Classification of Economic Activities (OKVED) gives a more detailed description of IT services.⁶ According to the OKVED, these services list includes: software installation and configuration; mobile application development; outsourcing; infrastructure subscription services including software maintenance, hosting, programming, testing, etc.; Internet access services; website creation and software

⁴ RF Tax Code No. 117-FZ. 05.08.2000 // Collection of Laws of the Russian Federation. No. 32, 2000, P. 3340.

⁵ IT Company / OKVED codes. Available at: URL: <https://www.regfile.ru>okved-nabor>it-kompaniya> (accessed: 15.02. 2023)

⁶ Russian Classification of Economic Activities OKVED No. 14 26.07.2022. Order of the Federal Agency on Technical Regulating and Metrology Rosstandart. Available at: URL: <https://www.classifikators.ru>okz> (accessed: 15.02. 2023)

development; training and certification; cloud and virtual services. Each of the areas (groupings) has its own further breakdown into types, and the list is quite long, with over 80 types. E.g., 62.01 — development of computer software; 62.02.1 — planning and design of computer systems; 63.11.1 — database creation and use, etc. The eligibility for tax incentives, and therefore the amount of the tax liability of the IT company, will depend on the type of information service or product provided.

According to Para 1, Article 56 of the Russian Federation Tax Code, tax and levy benefits are benefits provided to certain categories of taxpayers and levy payers as envisaged by the laws and regulations on taxes and levies in comparison with other taxpayers or levy payers, excluding the possibility of not paying tax or levy or paying it in a smaller amount⁷. Tax incentives are provided to taxpayers in various forms: tax exemption in perpetuity or for a certain period (tax holidays); exemption from taxation when certain types of income are removed from the object of taxation; reduced tax rate; tax deductions. Tax incentives in the IT industry include tax holidays, reduced tax rates and exemption of certain types of income from taxation. This variety of tax incentive forms demonstrates the state's commitment to support development of the Russian industry.

But how easy it for all Russian companies to get access to tax incentives and can any company have a subjective right to various forms of such incentives? Moreover, the very definition of an IT company in the Russian Federation may lead to the erroneous conclusion that any company engaged in IT activities is entitled to preferential tax treatment by virtue of this fact alone: in accordance with Para A, Part 4 of the Regulation on State Accreditation of Russian Organisations Acting in the Field of Information Technology⁸, a domestic company is a Russian organisation carrying out activities related to information technology. This impression could also be due to the fact that public policy has lately been proclaiming support for the IT industry as a whole, without dividing it into sectors. E.g., the Presidential Address of 23.06. 2020 announced the intention to support the Russian IT industry with tax incentives⁹; the Budget, Tax and Customs

⁷ RF Tax Code. // Collection of Laws of the Russian Federation No. 32, 2000, P. 3340.

⁸ Regulations on State Accreditation of Russian Organisations in the Field of Information Technology: RF Government Decree No. 1729. 30.09.2022. Available at: URL: https://base.garant.ru/405366137/#blok_1100 (accessed: 15.02.2023)

⁹ Available at: URL: <http://kremlin.ru/events/president/news/63548> (accessed: 11.03. 2023)

and Tariff Policy Guidelines for 2022 and for the planning period 2023 and 2024 also referred to the establishment of incentives for information technology companies¹⁰; furthermore, the Strategy for the Development of the Information Technology Industry in the Russian Federation for 2014-2020 and until 2025 itself largely focuses on stimulating the domestic industry. But in fact, the government takes a selective approach in regulating the industry taxation. Such selective and double taxation policies may result in under-achieving domestic industry development goals and falling behind those jurisdictions and countries that apply a consistent approach in taxing the national sector.

Upon analysing the law with respect to the payment of corporate income tax for Russian companies it may be concluded that some services and works are not included in the exempted category. Moreover, the rules for accessing the tax exemption are quite stringent, both in terms of obtaining and maintaining it. Para 1.15 of Article 284 of the Tax Code establishes a list of activities (operations) that give Russian IT-industry organisations the right to a tax exemption. These include the sale of copies of programmes and databases, granting and transfer of rights to use them, development of custom-made programmes and databases, their installation, testing, maintenance, etc. Such activities are considered to be more high-tech in relation to other information works and services. The list is exhaustive. But, only doing the activities from this exhaustive list is not enough to obtain an income tax incentive. The legislator sets out a number of other requirements that must be met at the same time: IT-company in question must have a state accreditation in the field of information technology, obtained by procedure established by the Government of the Russian Federation; revenues from the specified exhaustive list must account for at least 90% of the taxpayer's total revenue (which forces the latter to constantly prove its right to the benefit and, if it is lost, to honour the income tax obligation in full, possibly even with a penalty); the company must have at least seven employees in the accounting (tax) period. Only if all of the above requirements are met the company is entitled to an income tax exemption. The benefit itself can be characterised as actively incentivising, as it is presented in forms of tax holidays: 0% income tax payable to the federal budget and a reduced tax rate: 3% income tax payable to federal budget. As a result, the very idea of

¹⁰ Main directions of budgetary, tax and customs and tariff policy for 2022 and the planning period 2023 and 2024. Available at: URL: <http://www.minfin.gov.ru> (accessed: 11.03. 2023)

this tax incentive is highly positive, but access to this benefit is significantly limited. So what we have here is only a partial and very narrow incentive for the Russian industry—more precisely, for an individual segment of it (termed *Software Companies*—companies specialising in high technology). A similar situation exists regarding insurance payments¹¹ (Article 427 of the Tax Code). This excludes from preferential taxation a broad range of IT companies that provide other, no less important information services and products: website support services, distribution and maintenance of information materials on the Internet, information search; outsourcing, outstaffing, consulting, and advertising platforms; dealing services, marketplaces, PC installation and set-up services, crash recovery, software installation, etc. E.g., information companies develop products (mobile and web applications, online services, social media, anti-viral software). Outsourcing companies develop application software commissioned by third parties and provide them with technical support. Outstaffing companies ‘lease out’ technical specialists to work on the client’s individual projects. Consulting companies help put ready-made software into operation and provide software servicing. In our opinion, such activities of IT companies are important for the development of the Russian IT product/service market and need tax support measures, just like activities of hi-tech IT companies.

It has a sense also to remember an company operating in the field of IT services and technology should not exclusively focus on getting the benefit (which should be a secondary task) or keep adapting its activities to that end.

In discussing the profit tax concessions for IT companies, we should make one important point: they will only be in effect until 2024. This also raises questions because just one year is left. It is clear that within a specific fiscal year, tax exemptions are inversely related to tax revenue: the more significant and longer-lasting the tax incentives are, the lower are the state budget’s tax revenues, i.e. in terms of the budget, the tax exemptions are on the expenditure side. But the Government’s stated strategic goal of stimulating the Russian IT industry cannot be achieved in such a short term. Nor is it sufficient for the taxpayer to scale up its business. It would be correct to provide such a benefit for five years or longer.

Consequently, this selective and differential approach used by the state violates the principle of equitable taxation to effectively bar most compa-

¹¹ Collection of Laws of the Russian Federation, 2000, No. 32, Art. 3340.

nies from the preferential regime. In the future, that may slow down the development of the Russian IT industry.

Tax benefits for individual IT professionals in Russia is effected via a special tax regime, a simplified taxation system. As rightly noted by A.N. Kozyrin, 'the existence of a general tax regime and a special tax regime helps create more favourable conditions for the taxpayers engaging in economically and socially significant activities. In that case, a taxpayer is usually left with a choice: to continue on the general regime or switch to a special one' [Kozyrin A.N., 2021]. Information technology represents a socially significant economic sector. It will be correct to agree with the researchers who note that special tax regimes have a beneficial effect on the economy by reducing the tax burden on the taxpayer and by streamlining taxation and raising its efficiency for both parties (the tax authority and the payer) [Nogina O.A., 2017]; [Muradkhanova Z.S., Musayeva Kh.M., 2019]; [Gromov V.V., 2022]. That is especially relevant when it comes to taxing the incomes of IT start-ups (we mean natural persons working in the sector).

A simplified taxation system is more advantageous for the above category of taxpayers than any concessions made available under the general system, as it enables them to start their activities without the high tax pressure, which is the case under general taxation. Here we should remember that a newbie start-upper may not yet have such experience and as many clients as the one who has been worked in the IT service market for some time. So, the simplified system is for him/her the only way to start a business without bearing increased tax costs (including the mandatory insurance payments). The funds thus saved on taxes can be invested in the development of one's start-up or project. The general taxation system is unfavourable for an IT start-upper working individually, for it forces him/her to pay all the taxes in full (13% natural persons' income tax plus VAT) and to bear all the tax accounting and reporting duties. It is only natural that few IT experts use that system. And under the simplified system, the tax payments depend on income. The rate varies from region to region between 1 and 6 % (compared with the general tax system's rates, these are considered preferential and stimulative); a single tax is paid in advance, on a quarterly basis before the 25th day of the month. Besides, there is no duty to do tax accounting, with only the revenue to be recorded as the taxable base. The tax reporting duty is also simplified: one has to file a tax return once a year, by 30 April of the following year. So the simplified system is the simplest and most lucrative taxation system for individual professionals.

Individual professionals are also in demand as freelancers in the service market. Freelancer servicers are attractive to corporate clients as they do not have to bear the tax and social insurance duties and costs for hired employees, nor assume additional obligations and responsibility for any non-compliance. Such legal relations are of interest to the freelancers as well: they mean unconstrained work and ability to distribute one's time, choose among clients, do as much as one can, and work remotely. A professional can provide outsourced services. Outsourcing in IT means full or partial transfer of IT infrastructure development, support and testing functions and/or other tasks in this area to an IT company or individual professional [Gadzhিয়েva Ye. Yu., 2018]. Outsourcing in the field of information technology reduces the clients' costs and enables them to concentrate on their core activities [Lukoyanov I.V., 2015]. Outsourced IT services are in demand, so either a legal entity providing services or an individual may be an outsourcer. The revenue from the service provided is taxable.

A special tax regime, in the form of the simplified taxation system, is thus in place for individual professionals working in the IT sector of the Russian Federation as a tax incentive for their activities.

In addition to using the tax incentives and a simplified taxation system, companies of the Russian industry (RF residents) may operate in Special Economic Zones (SEZs). The SEZs are parts of the Russian Federation territory as defined by the Russian Federation Government where there is a special regime for doing business, and a free economic zone customs procedure may also apply.¹² As researchers note, SEZs are established to address the strategic, economic, social, foreign trade, and/or scientific and technological tasks faced by the country as a whole or some part of it [Panskov V.G., 2018]. The Russian Federation sets these very tasks as it decides to establish SEZs in its territory. Depending on the type of residents' activities permitted in the respective SEZ, these are subdivided into industrial and manufacturing, tourist and recreational, technology development and implementation, and port zones. IT industry companies, as residents conducting high technology activities, belong to technology development and implementation SEZs, which includes innovative activities, development and implementation of computer programmes, databases, integrated circuit topographies, information systems, etc. E.g., the SEZs in Petersburg and Tatarstan are innovative technology development and

¹² On Special Economic Zones in the Russian Federation. Federal Law No. No. 116-FZ 22.07.2005 / Collection of Laws of the Russian Federation, 2005, No. 12, P. 2147.

implementation ones that focus on knowledge-intensive and information-related technology.¹³

A SEZ is established for a 49-year period, and this is one of its advantages, especially when it comes to tax benefits for the Russian IT sector.¹⁴ The point is that long-term tax incentives (incentives) help IT companies accumulate their funds released from taxation and then invest them in new and promising projects and information technology, which ultimately benefits the state. E.g., in the *Technopolis Moscow* SEZ, companies specialising in information protection have invested RUB 3 Billion in their projects; the Russian company IVA Technologies from the IT cluster of the Moscow SEZ has managed to substitute foreign IT giants' products and to offer a free license to its video conferencing platform, and S-Terra CSP, a Moscow SEZ resident, has created its own innovative products for information protection and virtual private networking that protect data transferred via communication channels. And such impressive results were achieved within a year's time. Of course, should the preferential SEZ tax regime remain in place for a longer period (49 years), the Russian IT sector has every chance to become the most sophisticated one in the global IT industry.

In a SEZ there is a special regime that fosters the growth of its residents' activity. Tax incentives are used to attract them to work in the SEZ. IT companies receive considerable tax relief on all the main taxes and contributions. Analysis of the taxation of residents suggests that SEZs use a differential approach to setting their tax rates. The tax relief may differ. Thus, in the *Innopolis* SEZ, the preferential profit tax is 2% for the first five years; income tax, 1%; and property taxes, 0% for the first ten years; in *Technopolis Moscow* – 7% profit tax for the first five years; in the territory of the *Skolkovo* SEZ, 0% for ten years after getting participant status; in the Republic of Crimea and Sevastopol, 2% in the first three years after the company is entered in the SEZ residents' register, etc.¹⁵ The different approaches to setting the preferential regime results from the fact that there are few SEZs in

¹³ CNews Names Russian Regions Where IT Companies Pay the Smallest Taxes. Available at: URL: https://base.garant.ru/405366137/#blok_1100 (accessed: 18.03.2023)

¹⁴ But that is not to say that the duration of the tax benefit is the same. 49 years is the operating period of the SEZ itself, and the benefit in its territory may be provided for a shorter term. For example, preferential VAT rates are provided to Skolkovo residents. Residents are exempted from that tax for ten years. Anyway, a preferential regime for IT companies within a SEZ exceed the duration of a similar regime outside it.

¹⁵ Special Economic Zones for IT and Innovative Projects. Available at: URL: <https://sezinnopolis.ru> (accessed: 15.02. 2023)

Russia whose tax benefits have been established under the Tax Code. The existence of a preferential taxation regime in an individual SEZ may also be governed by a special regulation applicable in that zone only (e.g. the Federal Law 'On the Skolkovo Innovation Centre'¹⁶ establishes a tax exemption for the participants in that SEZ).

Social insurance benefits also have a positive effect on IT companies' development in SEZs (the reduced insurance contribution rate is 7.6%, including 6% for compulsory pension insurance, 1.5% for compulsory temporary disability and maternity insurance, and 0.1% for compulsory medical insurance). Resident IT companies dealing with information technology and products, unlike manufacturing resident companies, bear no significant capital expenses. Their main expenditure item is remuneration for their employees (highly skilled and thus well-paid IT professionals). To reduce such costs, lowered insurance contribution rates are established for IT companies; that helps accumulate funds and invest them in start-ups.

However, to become a SEZ resident, a company must pass accreditation under the new rules that have become more difficult and complicated. So some Russian companies have limited access to the SEZs, which leaves them outside the tax stimulation area. That generally precludes systematic support for the development of the Russian industry. It would be more appropriate to ensure uniform application of tax incentives in taxing the national IT industry in the whole territory of the Russian Federation.

3. Experience of EAEU Member Countries in Taxing IT Industry: Belarus, Kazakhstan, Kyrgyzstan

3.1. IT Industry in Belarus

From the international perspective, the Belarusian IT market is considered 'young', as more than 50% of Belarusian IT companies have been working for not longer than five years, and 31% have been providing their services for six to ten years. Only 17 % of companies have more than eleven years' experience in the market. Prominent among major companies in the market of Belarus are Science, Soft, EPAM, Belhard, IBA, and Belsoft. The information and computer services sector comprises more than 971 companies, of which only 24 (less than 2.5%) are state-owned. Most of compa-

¹⁶ On the Skolkovo Innovation Centre, see Federal Law No. 244-FZ 28.09. 2010 // Collection of Laws of the Russian Federation, 2010. No. 40, P. 4970.

nies are located in Minsk (more than 90%). The IT industry of Belarus is special in that most of its IT companies work on the grounds of the High Technology Park (HTP), with its preferential tax regime. For those Belarusian companies that are not residents and not eligible to switch to the simplified taxation system, the profit tax rate is 18%. The HTP was established in Belarus in 2005 by a Presidential Decree, and is considered one of the largest IT clusters in Central and Eastern Europe. The cluster's legal regime includes a broad range of preferences and exemptions in the tax, foreign economic, and migration areas. To become a participant, a company must have resident status and follow a simple registration procedure.

The companies working in HTP employ 24,000 programmers who implement high technology projects for clients from 61 countries. Its residents account for more than 80% of the industry. For five consecutive years, Belarus has been one of the world's top economies showing the most dynamic growth of IT indices, which reflects not only its modern and advanced information and communication infrastructure, but also shows how it is used by its society, business, and state.¹⁷ Over the past ten years (since 2013), export of IT services from Belarus has grown more than 50-fold. The software developed by the HTP is supplied to 67 countries, with half of the exports going to West Europe, and a little less, to the United States. Besides, HTP residents have entered the markets of the Philippines, Vietnam, Turkmenistan, and Mexico for the first time [Turban G.V., 2018]. In the meeting between the Presidents of Russia and Belarus on 18 February 2023, President Aleksandr Lukashenko confirmed that Belarusian IT companies had received orders from Russia worth more than USD 300 million.¹⁸ That attests to efficient co-operation with Russia as well.

All those data testify to a dynamic growth of the Belarusian IT market, which is only possible if considerable tax preferences are in place. Since 2005, an HTP with a preferential tax regime for companies has functioned in Belarus. HTP residents do not pay: VAT (20% rate), profit tax (18%), land tax on plots within the HTP, real estate tax on fixed assets located in the HTP, VAT on goods import into the custom territory, or customs duty (the rate for these taxes is zero). The Presidential Decree 'On the Development of Digital Economy' of 21 December 2017 established an even more

¹⁷ Support to IT Countries in the EAEU. Available at: URL: <https://grataned.com>laravel>filemanager>files> (accessed: 15.02. 2023)

¹⁸ RF Companies Order Products Worth USD 300 Million from Belarusian IT Sector. Available at: URL: <https://www.9111.ru> (accessed: 19.02. 2023)

preferential tax regime for IT activities in the Republic of Belarus and extended the pre-existing favourable tax regime till 2049. The positive experience of Belarus in taxing the IT industry consists, firstly, in its simple registration procedure for HTP residents that enables most of the Belarusian IT industry to work in a preferential zone and know its long-term prospects. And, secondly, it means complete exemption from the main taxes, which comprehensively encourages the industry's development.

3.2. IT Industry in Kazakhstan

The Kazakh IT industry has been actively developing and now includes big, medium and small business segments. The major companies in Kazakhstan are Yandex, Aviata, Tickets.kz, Documentolog, Glovo, inDirver, Wolt, Ticketon, Logicom, Asia-Soft, and EPAM. One well-known IT start-up project is the Chocofamily group of companies that offers e-commerce and other IT services in various areas. The state encourages the development of the IT industry by adopting various programmes that include tax support measures, in particular. The Government of the Republic of Kazakhstan developed a *Digital Kazakhstan* State Programme, under which an *Astana Hub* International Technopark for IT start-ups was founded in 2018. The Technopark performs a broad range of functions, including those related to IT activities.

The IT companies in the Technopark are fully exempt from the corporate tax, individual income tax, VAT and social tax on non-residents, land tax and property tax. Unlike in Russia and Belarus, foreign IT companies are also allowed to work in the Astana Hub, subject to a simple registration procedure. Since early 2021, 70 foreign companies have been registered in Astana Hub and have become part of its system to develop start-ups in Kazakhstan. They represent countries such as Russia, Kyrgyzstan, Belarus, Israel, UAE, South Korea, China, Japan, Singapore, the UK and the US.¹⁹ Astana Hub co-operates with foreign IT companies and attracts them as members of the technopark with tax resident status that entitles them to the same tax benefits as those granted to domestic IT companies. That became possible after the Government established a procedure for registering foreign legal entities on an extra-territorial basis, i.e. the IT company is no longer required to be located in the national territory, while the procedure

¹⁹ Astana Hub Advises 468 Foreign Companies on Relocation to the Republic of Kazakhstan. Available at: URL: <https://kapital.kz> (accessed: 17.02.2023)

itself may be passed on the eGOV.kz portal, which takes one to two days.²⁰ A foreign company may also work in Kazakh territory in the tax non-resident status and then pay its taxes on a non-preferential basis.

Kazakhstan has thus established a fairly streamlined regime of registration and working in the Technopark for its domestic IT sector as well as foreign IT companies, both attracted by preferential taxation. It should say that the IT industry follows the rule that greater openness is better for the country, for the entry of a foreign component into the domestic IT market will only strengthen the country's position in the sphere.

In this connection we see the situation in the Russian Federation is different. Firstly, there is nothing of this kind in Russia. Under the national tax law, a foreign company is recognised to be a tax non-resident from the outset and already has no access to a preferential tax regime. Secondly, amid the international sanctions many well-known foreign IT companies have decided to cease their activities in Russia: Microsoft suspended its sales of goods and services; Oracle — a developer of database management and analytics software; Cisco — a network solutions provider that held some 50% of the market of network infrastructure; Nokia, a leading global manufacturer of telecommunication equipment; Apple — services; Adobe — developer and seller of Photoshop, Premiere, and Lightroom software. Acronis, Arbor, Citrix, Docker, ESET, Unity, Miro, Pearson VUE, Zabbix, Matlab and some other companies have also announced that they leave the Russian IT market or suspend their activities.²¹ Russian-made analogues of those companies can certainly be developed (which is being done), but that will take time. So it would be appropriate to use Kazakhstan's experience in this area. A streamlined extra-territorial procedure should be adopted for foreign IT companies from friendly countries to register in resident status, which will give them access to preferential taxation in the SEZ.

3.3. IT Industry in Kyrgyzstan

It is export-oriented. 84% of its IT services are export products that go to countries like the USA, Kazakhstan, Russia, Australia, Singapore, Kuwait, Ireland, the UK, etc. In 2013, a High Technology Park was established in Kyrgyzstan. Its main purpose is to support the software development sector

²⁰ Ibid.

²¹ They Quit for Good: which IT Companies Left Russia. Available at: URL: <https://hightech.fm>it-companies-went-away> (accessed: 17.02. 2023)

of the IT industry. The HTP now includes 100 resident companies, most of them foreign IT businesses.²² It is a zone with a special tax law regime that for its residents. This special tax regime exempts the residents from taxes and provides insurance contribution benefits for 15 years since the HTP was created (i.e. till 2028). HTP residents pay 0% profit and sales taxes, a 5% income tax and make deductions of 1% of revenue to maintain the HTP ecosystem.

Access to those tax preferences is provided by HTP resident status. Registered as resident may be a national or foreign legal entity or individual who/that derives at least 90% of their income from IT activities listed in the HTP Rules. Yet, the Kyrgyz law provides for a lengthier procedure of getting one than in Kazakhstan. It starts with primary registration for six months, with a certificate issued to this effect. After six months, the IT company is expected to submit a report on its activities and confirm the grounds for getting a permanent HTP resident status. If the HTP's management body, the Directorate, finds the company's activities conducted during the (six-month) primary registration period to have been proper, the entity will be finally registered as an HTP and a report to this effect will be entered in the register of HTP residents. Final registration is of unlimited duration and is confirmed by certificate. Foreign individuals and legal entities may be registered as residents irrespective of their location. Such a favourable tax policy boosts both national companies' and foreign IT businesses' interest in the HTP in Kyrgyzstan. The number of residents grows from year to year. In our opinion, a broad list of IT activities that permit entry into the HTP is another tax incentive for the Kyrgyz IT industry. Here the legislator does not distinguish between Software Companies (specialising in high technology) and other IT activities. In other words, the state provides full and uniform support in the field.

So, it will be appropriate to take into account both the Kyrgyz and Kazakh experience in designing tax benefits for the Russian IT industry. This includes a simpler registration procedure for both domestic and international IT businesses as zone residents; allowing individual professionals to register in the SEZ (in Russia, only IT companies have access to the SEZ). And, no less importantly for the Russia — also along the lines of Kyrgyz law, this means a wider list of IT activities (works/services) that permit state accreditation and granting SEZ resident status. In Kyrgyzstan their list is broader, which naturally facilitates IT businesses' access to a favourable taxation regime, encourages the development of the national IT industry and makes it more competitive in the international IT industry market.

²² Support for IT Companies in EAEU...

Conclusion

In taxing IT industry, Russia and EAEU countries use a set of tax benefit mechanisms such as tax incentives, a simplified taxation system, special economic zones, and HTPs. The Russian Federation uses a selective and differentiated approach to tax benefits for its IT industry that separates most companies from the preferential taxation regime. In the future, that may lead to weak and slow development of the Russian IT industry. It should ensure uniform use of tax incentives in taxing IT industry in the whole territory of the Russian Federation.

Positive experience of taxing the sector in Belarus consists, firstly, in a simple registration procedure for HTP residents that enables most of the Belarusian industry to operate in the preferential zone in the long run, and, secondly, in complete exemption from the main taxes combine to stimulate the Belarusian industry. In Russia, the procedure for entering the SEZ is rather complicated and requires accreditation of an IT company, that includes a set of strict and imperative conditions and actually weakens overall development of the IT industry.

It will be proper for the Russian Federation to take into account the Kazakh experience of streamlining the procedure for the registration of foreign IT companies from friendly countries in resident status, on an extra-territorial basis, that will provide access to preferential taxation in the SEZ. Foreign companies' resident access to SEZ in Russia promotes implementation of new information technology and exchange of experience with Russian IT companies.

The positive experience of Kyrgyzstan in tax benefits for its IT industry consists in a simplified procedure for registration and access to its HTP established for national and international IT companies and individual IT professionals and in a broad list of IT activities that does not distinguish between Software Companies (specialising in high technology) and those not specialising in such technology. In Kyrgyzstan, their list is broader, which improves IT businesses' access to a favourable tax regime, encourages the development of the industry and makes it more competitive internationally. Such rules should be used to stimulate the domestic IT industry.

The experience of tax benefits for the IT industry in the EAEU countries shows that the approach used helps bring most of the national IT companies and individual IT professionals together in a special economic zone or HTP, which is beneficial both for those companies and individuals, due

to preferential taxation, and for the Government that takes stock of them and the products and discoveries they make. In the Russian Federation, IT companies are fragmented and more difficult to monitor in this respect, unless they work in the SEZ.



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