

Top 10 Changes to Russian IP, IT and Media Law

2010 Results



NEWSLETTER

1. Tax benefits: for IT companies and others

Federal Laws №272-FZ of 16.10.2010, №339-FZ of 08.12.2010, and №432-FZ of 28.12.2010 amend the Federal Law on Insurance Contributions to the Pension Fund of the Russian Federation, Social Insurance Fund of the Russian Federation, Federal Mandatory Medical Insurance Fund, and Territorial Mandatory Medical Insurance Funds, and the Federal Law on Mandatory Pension Insurance in the Russian Federation

Reduced social insurance contribution (PF, FSS, FOMS) rates for information technology (IT) companies, which were effectively cancelled upon the abolition of unified social tax from 1 January 2010, have been reinstated. The amendments give IT companies the right to beneficial rates if the following conditions are met:

- state accreditation;
- at least 90% of income derives from core activities; and
- at least 50 employees.

The transitional period in which the beneficial rates apply has been extended to 2019, and the rates have been revised. In 2010–2017, insurance contributions will be 14%, in 2018 – 21% and in 2019 – 28%. The beneficial rates apply to relations arising since 1 January 2010.

Other companies have also been granted beneficial rates. These include certain media organisations, for which insurance contributions in 2011 will be 26%, in 2012 – 27%, in 2013 – 28% and in 2014 – 30%. Organisations carrying out research and development work, as well as organisations whose business involves the use of computers and information technology, have also been given beneficial rates. These organisations will receive a beneficial rate for 2011–2012 only, provided that their core activities account for at least 70% of their revenues. The insurance contributions for these companies will be 26% in 2011–2012.



Salans awarded “European Law Firm of the Year” 2010, The Lawyer



Salans named among the finalists for “The Law Firm of the Year in Russia and CIS” 2010, The Lawyer



Salans awarded “Central and Eastern Europe Law Firm of the Year” 2009 (Award for Excellence), Chambers Europe

Federal Law №395-FZ of 28.12.2010 on Amendment of Part II of the Tax Code of the Russian Federation and Certain Legal Acts of the Russian Federation

The RF Tax Code has been amended with respect to the taxation of intangible assets. Profit tax payers have been given the right to choose the amortisation period of certain forms of intangible asset, in particular exclusive rights to an invention, computer program, database or selection.

Previously, the amortisation period of intangible assets was determined on the basis of contracts, in which the parties had to state the presumed service life. If no service life was stated, either a term of 10 years or the statutory term of protection of the respective rights was used.

This amendment has made it possible to amortise intangible assets over realistic and reasonable periods.

2. Electronic justice: all online!

Federal Law №228-FZ of 27.07.2010 on Amendment of the Arbitration Procedure Code of the Russian Federation

Since 1 November 2010 it has been possible to perform a whole range of procedural acts for arbitration proceedings in electronic format. In particular, the amendments to the APC RF provide that:

- arbitration courts must publish information on progress in cases on their official sites. The parties to the case bear the risk of adverse consequences as a result of failure to take steps to obtain information on progress of the case (provided such parties were initially notified of the start of proceedings by the court);
- audio recordings of court hearings must be made and entered in the court record;
- it is possible to participate in court hearings via videoconferencing;
- documents may be submitted to the arbitration court in electronic format; and
- procedural documents may be submitted to arbitration courts by filling out forms on the arbitration court website (<http://my.arbitr.ru>).

3. Skolkovo: a tax paradise

Federal Law №244-FZ of 28.09.2010 on the Skolkovo Innovation Centre, Federal Law №243-FZ of 28.09.2010 on Amendment of Certain Legal Acts of the Russian Centre with Respect to the Adoption of the Federal Law on



Salans named among the world's 50 leading law firms and within the top 2 law firms in Russia, PLC Which lawyer? 2010

Recommended law firm in IP practice, PLC Which Lawyer 2010



Ranked in Tier 1 in IP/ TMT, Chambers Europe 2008



Recommended law firm in IP practice, Legal 500, 2010

the Skolkovo Innovation Centre

The Skolkovo Innovation Centre is a specially designated territory in which special conditions apply for research and development in five fields:

- energy efficiency and energy conservation;
- nuclear technology;
- space technology;
- medical technology relating to the development of equipment and medicines; and
- strategic computer technology and software.

A Russian legal entity which meets the requirements specified in the law can obtain project participant status for up to 10 years. This status involves the granting of the following preferences and benefits:

- release from bookkeeping obligations, which are replaced by simplified accounting in accordance with the RF Tax Code;
- release from the obligation to pay VAT, profit tax, and property tax; and
- payment of social insurance contributions to the RF Pension Fund only, at the rate of 1%.

These benefits are valid until the project participant's annual sales revenue exceeds 1 billion roubles, or until total profit from the beginning of the year in which sales exceed 1 billion roubles exceeds 300 million roubles. If these thresholds are exceeded, or upon loss of project participant status, the taxes and insurance contributions will be reinstated for the period beginning on which the status was lost or the thresholds exceeded, and late payment interest charged.

In addition to tax benefits, a number of administrative restrictions have been lifted and in particular, no employment permit is required to hire and employ foreign employees.

4. Personal data: waiting for change

Federal Law №227-FZ of 27.07.2010 on Amendment of Certain Legal Acts of the Russian Federation upon Adoption of the Federal Law on the Organisation of the Provision of State and Municipal Services; Federal Law №359-FZ of 23.12.2010 on Amendments to Article 25 of the Federal Law on Personal Data

Amendments during the summer of 2010 eliminated the scope for broad interpretation of the rule on a person's written consent to process their



*Ranked **second of 66 law firms in Russia** by the Best Lawyers Guide, published in Vedomosti newspaper on 3 June 2010*

Коммерсантъ Секрет Фирмы

*Ranked **second of top 10 international law firms** by the number of partners and lawyers, net operating profit and citation index in Russia by Kommersant Secret Firmy Magazine, 13 September 2010*

personal data. The law now expressly provides that such written consent must contain a personal signature. Only an electronic document signed with an electronic signature or another equivalent to a personal signature is to be treated as equal to a written document. However, the law has yet to define what constitutes such equivalents.

The deadline for bringing personal data systems into compliance with the Federal Law on Personal Data was extended to 1 July 2011. This is not the first time the deadline has been put back given that it was previously extended to 1 January 2011.

5. Online media: not liable for readers

RF Supreme Court Plenum Ruling №16 of 15.06.2010 on Practice in the Application by Courts of the Law of the Russian Federation on the Mass Media

The RF Supreme Court Plenum has resolved the issue of whether online media can be held liable for readers' comments. It was resolved that the editorial boards of online media are not liable for readers' comments published without preliminary moderation (for example, on a site forum). However, if the competent authority (Roskomnadzor) establishes that the published comments are an abuse of the freedom of the press, the editorial boards of any online media have the right to edit or delete such comments. If such comments remain accessible to users after the input of Roskomnadzor, the editorial board may be held liable for an abuse of press freedom.

6. Free use becomes less free

Federal Law №259-FZ of 04.10.2010 on Amendments to Part IV of the Civil Code of the Russian Federation

Amendments to the RF Civil Code (art. 1273 CC RF) clarify the notion of the *free reproduction of authors' works for personal use without the consent of the author or payment of royalties*. The amended rule establishes that individual users may freely use authors' works, but only where *necessary*. This subjective criterion of "necessity" narrows the notion of the *free reproduction of authors' works for personal use*. Further, even a copy of a work lawfully produced for personal use cannot be given to another person for permanent or temporary use.

7. Reward finds its author

RF Government Resolution №829 of 14.10.2010 on Remuneration for Free Reproduction of Phonograms and Audiovisual Works for Personal Use

This RF Government Resolution establishes a list of equipment and media used for the free reproduction of phonograms and audiovisual works for personal use and establishes the duty payable by their producers and importers. The duty is 1% of the sale price per unit of such equipment and media for producers, and 1% of the customs value of such equipment and media for importers.

The duty is not levied on the producers of equipment and media for export, or on producers and exporters of professional equipment not intended for home use.

Producers and importers must conclude an agreement with an organisation accredited by Roskomnadzor in order to pay the duty. This resolution applies until the entry into force of an interstate treaty of the member states of the Eurasian Economic Community Customs Union which will govern similar issues.

8. Mind the children!

Federal Law №436-FZ of 29.12.2010 on the Protection of Children from Information Harmful to Health and Development

This law, which purports to regulate the distribution of information harmful to the health and development of children, was adopted at the end of 2010 and enters force on 1 September 2012. It describes the information prohibited for distribution to children, and information to be restricted by age categories, as follows:

- information suitable for under 6 years;
- information suitable for 6 to 12 years;
- information suitable for 12 to 16 years;
- information suitable for 16 to 18 years.

Producers and distributors of information products must classify their products before putting them into circulation. A symbol or warning that the product is restricted for distribution to children of a certain age must be placed on the product. "Information product" is defined as the media, print and audiovisual products, computer software, and online publications.

9. Customs Union: a register for three

Treaty on the Unified Customs Register of Intellectual Property of the Member States of the Customs Union of 21.05.2010; Federal Law №303-FZ of 15.11.2010 on Ratification of the Treaty on the Unified Customs Register of Intellectual Property of the Member States of the Customs Union; Federal Law №311-ФЗ of 27.11.2010 on Customs Regulation in the Russian Federation

The Customs Code of the Customs Union came into effect in July 2010, providing the framework for unified customs regulation throughout the customs areas of the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation. Correspondingly, most rules of the RF Customs Code ceased to be applicable from January 2011, and the RF Customs Code itself will be abrogated in its entirety from 1 October 2011.

The legal procedure for customs operations when importing or exporting goods in the Customs Union corresponds to the procedure previously used in the Russian Federation. In particular, the participants of the Customs Union signed a Treaty on the Unified Customs Register of Intellectual Property of the Member States of the Customs Union, which Russia ratified on 15 November 2010.

The treaty provides for the creation of a Unified Customs Register of Intellectual Property, in which rights holders can register copyright and neighbouring rights, trademarks and service marks protected in any member state of the Customs Union. If the import into the Customs Union of goods containing registered intellectual property without the rights holder's authorisation is detected, the customs authorities must suspend the customs clearance of such goods and inform the rights holder. The rights holder must hold an insurance policy with liability coverage of at least EUR 10,000 to ensure performance of its obligation to compensate harm caused to the declarer, owner, recipient of the goods or other persons with respect to the suspension of release of the goods. There is no charge for registering intellectual property in the unified register.

10. Encryption: notify and import

Resolution of the Interstate Council of EvrAZES №19 of 27.11.2009 on Unified Non-tariff Regulation of the Customs Union of the Republic of Belarus, Republic of Kazakhstan and the Russian Federation; Resolution of the Customs Union Commission №132 of 27.11.2009 on Unified Non-tariff Regulation of the Customs Union of Belarus, Kazakhstan and the Russian

Federation

New Customs Union regulations on non-tariff regulation of exports and imports of certain goods provide more liberal rules on encryption solutions. Rules previously applicable under RF law required a one-time license for each import or export of encryption solutions. The new rules, which entered into force on 1 January 2010, introduce an exception to the general license requirement for encryption solutions which meet certain criteria provided in the Regulations on Clause 2.19 on the Procedure for Import into the Customs Union and Export from the Customs Union of Encryption (Cryptographic) Solutions.

With respect to encryption solutions that meet these criteria, only the registration with the respective authority of a notification specifying the basic information on the encryption solution is required. Significantly, unlike the one-time licenses, the notification is valid for a certain encryption solution for an unlimited period and can be cited by importers and exporters. The authorities are required to register notifications in just 10 days. Information on registered notifications is published on the Customs Union website <http://tsouz.ru/db/entr/notif/Pages/default.aspx>.

Coming in the next TOP 10:

1. Amendments to Part IV of the RF Civil Code (draft law).
2. Reform of payment relations (draft law on the national payment system).
3. Internet companies added to “strategic” enterprises (draft law).
4. Regulation of the activities of Internet providers and of Internet usage (draft law).

The summary of previous TOP 10 Changes:

Top 10 Changes for 2009:

1. Requirements for Personal Data Protection Reduced.
2. Conditions Created to Attract Investment and Practical Application of Scientific Research.
3. Tax concessions for IT Companies End.
4. Singapore Treaty on the Law of Trademarks Ratified.
5. Judicial Acts to be Uploaded to the Internet.
6. E-Government Begins.
7. Self-Regulating Registration System for the “.PФ” Domain Created.
8. Practice Formed on the Problem of Limited Liability for Internet Providers.
9. Parallel Imports Regulated.
10. Payment Under License Agreement Clarified.

Top 10 Changes for 2008:

1. Part IV Of The RF Civil Code Enters Into Force.
2. Preferential Tax Treatment For IP Transactions (VAT).
3. Regulation Of Personal Data Security.
4. Development Of Judicial Practice On Parallel Import Of Goods.
5. Creation Of A Single Regulatory Body For Communications And Mass Communication.
6. Regulation Of Collective Rights Management.
7. Ratification Of The Procedure For Transfer Of Rights To Complex Technologies.
8. Intellectual Property Rights Export Control Regulation.
9. Joining World Intellectual Property Organization Treaties.
10. Increase In Patent Fees, Establishing Deadlines For Registration Of Agreements, And Changes To Patent Agent Activities.

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