

**Starting business in Russia.  
Legal and tax framework**

Moscow | 2016



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## LLC v Representation

	LLC	Representation
<b>Legal status</b>	An independent legal entity. LLC is allowed to settle transactions, to exercise property rights and duties to present its interests in court and authorities.	Legal entity's set — apart subdivision Acts in the name of its head office. All the rights and obligations arising from the contracts are acquired for the head company, not PE.
<b>Functions</b>	Carrying out all kinds of activities subject to its Articles of Association and applicable legislation.	Representation and protection of the interests of the head company or carrying out all or part of the functions of the head company.
<b>Managing bodies</b>	<ul style="list-style-type: none"> <li>Managing director(s) As a general rule is governed by 1 director though 2 directors may be appointed.</li> <li>General meeting of the founders Advisory body, empowered to decide directives of company management, assign managing director, amend statutory documents and etc.</li> <li>The board of directors (supervisory board) Supervises the day-to-day working process, regulated by the managing directors.</li> <li>Revision commission (voluntary) Has the right to make financial and economic enquires, concerning the company activities.</li> </ul>	Head of the Representation acting on a basis of the General Power of Attorney.
<b>Procedure of establishment</b>		
<b>Terms of registration/accreditation by state authorities</b>	3 working days	up to 5 weeks
<b>Registration/accreditation fee</b>	A registration fee of Russian Rubles ("RUB") 4,000 will be imposed. Within 4 months after the registration, the share capital (minimum RUB 10,000) has to be paid. Notarial and translation fees depend on the of volume of the company`s constituent documents.	A registration fee of RUB 125,000 rubles will be imposed. In addition, there is a fee of RUB 15,000 if at least one foreign employee is engaged. Notarial and translation fees depend on the of volume of the company`s constituent documents.

	LLC	Representation
<b>Registering/accrediting body</b>	Federal Tax Service	<ol style="list-style-type: none"> <li>1. Federal Tax Service;</li> <li>2. Industrial Business and Trade Association is doing the personal accreditation of the foreign stuff of the RO.</li> </ol>
<b>Extra-budgetary funds registration</b>	Registration with the following extra-budgetary funds is required: <ol style="list-style-type: none"> <li>1. Pension Fund;</li> <li>2. Social Insurance Fund</li> </ol>	
<b>Currency law requirements</b>	Special currency law requirements regarding the payments effected by the LLC and foreign legal entities and their representations, branches and other separate subdivisions. A LLC will have status as a "resident" for currency purposes.	<ol style="list-style-type: none"> <li>1. A PE must open bank accounts in a bank authorized by the RF Central Bank.</li> <li>2. Special currency law requirements applies for payments made by a PE and residents of the Russian Federation (i.e. legal entities set up in accordance with Russian legislation and their representations, branches and other separate subdivisions including those situated outside Russian territory).</li> <li>3. A PE will have status as a "non-resident" for currency purposes.</li> </ol>
<b>Legal status of foreign employees</b>		
<b>Documents, required for recruiting foreign employees (as a general rule)</b>	<ol style="list-style-type: none"> <li>1. A permit to engage and use foreign labour.</li> <li>2. An invitation for the foreigner for entering RF.</li> <li>3. Work permit for a foreigner.</li> <li>4. Tax authority notification.</li> </ol>	
<b>The number of foreign employees in the organization</b>	The proof of reasonability of each employment must be provided to the migration authorities.	
	Might be limited by the migration authorities.	The number of foreign stuff shall not generally exceed 5 persons and may be only increased under substantial grounds.
<b>Liability</b>	LLC is liable for its own transactions and debts. The founders are liable for the LLC's obligations within their participatory interest.	The head company is liable for the obligations of the representation.

As an independent legal entity LLC has a wide range of functions stated in the Articles of Association. LLC is vested with separate credentials and separate property. Generally LLC discretionally chooses the company's policy, hires personnel, settles transactions and represents interests in court and authorities.

On the contrary, the Representation is limited by the head company's will in sphere of negotiating and owning its own property.

LLC management structure is more complex than Representation's.

The LLC establishment costs less than the representation accreditation, takes less time, which appears to be more convenient in case you want to start the business sooner.

## Request for tax assistance for a prospect client (questions on taxation)

### Direct tax regime

#### 1. Tax regime related to the salesperson who put in place the intermediation of selling if he or she is not an employee of the Company

##### Personal income tax

For the purposes of tax control, when operating in Russia on commercial contract, a salesperson has an obligation to be registered with the tax authorities (article 83 of RTC). After registration an individual gets the status of private entrepreneur.

The income received by individuals from commercial contracts is an object of Personal income tax.

Personal income tax is levied on resident and non-resident individuals. Individuals are considered to be resident if they spend more than 183 days in Russia during 12 consecutive months. Residents are subject to income tax on their worldwide income and non-residents on their Russian sourced income only.

Personal income general tax rate is 13% but special rates are applied to some kinds of income, e.g. prizes, interest on certain bank deposits, deposits on foreign currency, income deemed to be received from low-interest loans (35%). A 30% rate applies to non-residents on all types of Russian-sourced income. Dividends paid by Russian companies to non-resident persons are taxed at a rate of 15%.

##### Social Security Contribution regime

As a rule, social contributions in the Russian Federation are the sole responsibility of the employer. No contributions are paid by employees. Employer contributions cover obligatory pension, medical and social insurance. On a voluntary basis, additional pension contributions may be paid by individuals or by their employers (for example, as a part of a social package).

Social contributions must be accrued on remuneration provided to individuals in the context of employment relations and civil or legal agreements for the performance of work or rendering of services (except for individual entrepreneurs), and copyright agreements.

In general, the tax base includes remuneration and most benefits provided to employees. In 2016, the following are the rates of social contributions for all categories of payers (except those who are entitled to the beneficial social security regime):

Individual cumulative year-to-date income subject to social contributions RUB	Social Insurance Fund (SIF) %	Pension Fund (PF) %	Medical Insurance Fund %	Total %
Up to 796 000 (PF) / 718 000 (SIF)	22	2.9	5.1	30
Over 796 000 (PF) / 718 000 (SIF)	10	0	0	10

Private entrepreneurs pay contributions by himself to the Pension Fund and Medical Insurance Fund for himself and for his workers.

## **2. Tax regime related to a company formed in Russia**

### Corporate income tax

The taxpayers are tax residents of the Russian Federation and foreign organizations which carry out their activities in the Russian Federation through permanent establishments and (or) receive income from sources in the Russian Federation. Tax residents are Russian organizations, foreign organizations which are deemed to be tax residents of the Russian Federation in accordance with an international taxation agreement and foreign organizations whose place of effective management is the Russian Federation.

The definition of “permanent establishment” is similar to the definition of the same term in the model treaty of the Organization for Economic Co-operation and Development. Russian tax residents are subject to tax on their worldwide income. Foreign legal entities are subject to tax on their profits earned through permanent establishment.

The standard flat tax rate is currently 20%. As a rule 2% of it is paid to the federal government and 18% to republican authorities. But the tax rate for the share transferred to regional authorities may be reduced up to 13.5%. As a result, the basic corporate profits tax rate varies from 15.5% to 20%, depending on the rate set by the regional government for certain cases.

Dividends received are subject to withholding tax and are excluded from taxable profits. Dividends received by a foreign entity from a Russian entity are taxable at a rate of 15 (if there is no DDT).

From 1 January 2015 controlled foreign company ("CFC") rules came into effect in Russia. Profit of a controlled foreign company should be included in the tax base of the controlling party in proportion corresponding to that person's participating interest in the controlled foreign company. Than such part of profit should be taxed in Russia at a rate of 13% (for individuals) or at a rate of 20% (for legal entities).

### Tax on Property of Organizations

Resident enterprises and foreign companies that own property (real and personal property) within the territory of the Russian Federation are liable to property tax. As a rule, the tax base is determined as average annual value of property. For the certain property it is cadastral value determining on the 1<sup>st</sup> day of the next successive tax period: business and trade center, commercial and industrial premises, non-movable assets of the foreign companies, which do not have permanent establishment in Russia. The rate is set by the regional authorities, but can not exceed 2.2% of the time average cost of the property (only fixed assets).

## **Indirect tax regime**

### **Vat**

In considering situation an object of VAT appears two times:

- 1) the sale of goods in the territory of the Russian Federation by company or private entrepreneur.

- 2) the importation of goods into the territory of the Russian Federation which can be refunded from VAT paid from the sale of these goods.

The standard rate of VAT is 18%. In some special situations it should be applied tax rates of 0%, 10% and computed VAT rates 10/110 and 18/118.

In case of import of goods the import customs duty also must be paid. The base for the calculation of the customs duties depending on the type of goods and applied types of rates are the customs cost of the goods and/or their physical characteristic in kind (quantity, weight taking into account its primary package which is an integral part of the goods before consumption and the one in which the goods are presented for retail trade, volume and another characteristic).

### **Simplified tax system**

Local authorities may determine an alternative income tax for certain small business activities for companies and individuals. The tax is paid instead of profit tax (for companies), personal income tax for private entrepreneurs, VAT (except on the import of the goods into the Russian Federation), tax on property of organizations and tax on property of physical persons in the case of using the property in doing business. In this case, taxpayers calculate «common tax» at the rate of 15% or 6%, based on standard income and determined by the local legislative body.

The taxpayer can choose the taxable base for this tax – either gross income for the 6% rate or income minus expenses for the 15% tax rate.

### **The possibility to obtain a ruling with the local tax authority**

From the 1<sup>st</sup> January, 2015 the new institute of tax control in Russia – Tax monitoring began to operate.

The introduction of Tax Monitoring is an important milestone in the development of tax administration in Russia involving the adoption of advanced international practice. The Tax Monitoring regime is designed to minimize tax disputes and claims and reduce the expenses and labor costs involved in audits for both sides

Taxpayers are allowed to be subject to Tax Monitoring if they meet the following criteria:

- 1) total annual amount of VAT, excise taxes, profits tax and mineral extraction tax payable to the federal budget – not less than 300 mln rubles;
- 2) total annual income per statutory financial statements – not less than 3 bln rubles;
- 3) total value of assets per statutory financial statements – not less than 3 bln rubles.

### **Other questions on request**

As for tax incentives/holidays/free zone that may be granted to the business, and the conditions / requirements needed to be fulfilled in Russia there are no any special provisions in this respect. The same is with the provisions on impacts from an indirect tax perspective regarding the importation and the goods.

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