

ISCKMC 2020**International Scientific Congress «KNOWLEDGE, MAN AND CIVILIZATION»****INTERNATIONAL EXPERIENCE OF LEGAL AND TAX
REGULATION IN OPERATION OF "CLOUD" SERVICES**

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Abstract

This article presents the results of a study of the current state of legal tax qualification for the provision of services in electronic form and their variety – “cloud” services, based on the scientific works of Russian and foreign scientists, as well as on a comparative legal analysis of Russian and foreign legislation (European Economic Union, Australian Union, People's Republic of China, etc.), expressed in current judicial and law enforcement practice. The sphere of services provided in electronic form, and especially the area of “cloud” technologies, arouses undoubted interest not only among representatives of high-tech industries, but also among the legislator, since this is one of the sections that allow forming a solid framework for the development of the digital economy. Possessing an arsenal of predictable and understandable tax rules for market participants, the Russian Federation will be able to enter the global cloud services market and compete as a comfortable jurisdiction for high-tech entrepreneurs. In this regard, the article proposes an analysis of international experience of regulatory and legal regulation in the activities of “cloud” services. The complexity of the studied topic of legal regulation and tax qualification of services in electronic form, a variety of which are “cloud” services, lies in the lack of certainty of legislative regulation, including in the aspect of the ratio of legal means-restraints and legal incentives, which are so necessary for a rapidly developing industry.

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1. Introduction

Modern states pay significant attention to the development and integration of services provided in electronic form, “cloud technologies” as an integral component of the digital economy. One of the most important goals of improving legal regulation in the new technological environment is to adjust tax imperatives to stimulate the development of the digital economy.

The priority, the need for an inventory and removal of all administrative, legal and any other barriers that prevent business from entering both existing and emerging high-tech markets, the tasks of developing the digital economy were emphasized by the President of the Russian Federation Vladimir Vladimirovich Putin in the framework of the Address to the Federal Assembly in 2016 and 2018 (Putin, 2016, 2018). In addition, the President emphasized that there is no future without the digital economy (Putin, 2017), and the future of Russian civilization depends on the success in the development of Russian high technologies, including taking into account the best world practices (Putin, 2020).

At the same time, legal measures introduced with the pyritization of the digital development of the Russian economy became the starting point for updating a number of new theoretical and practical issues: with the need to determine the actual location of the buyer and the place of provision of services in an electronic form; regarding the legal purity of the isolation of transactions subject to this tax, in the event that we are not talking about a simple implementation of a software product.

Scientists and lawyers of tax practice began to discuss more and more complex issues of the relationship between tax and accounting disciplines, especially taking into account the geographic and spatial disunity of sellers and consumers of electronic services, primarily in the segment of providing so-called cloud services.

The sphere of services provided in electronic form, and especially the field of “cloud” technologies, arouses undoubted interest not only of representatives of high-tech industries, but also of the legislator, because regulatory regulation is one of the sections that allow to form a solid framework for the development of the digital economy (Akimov, 2018).

In addition, the task of developing the digital economy of the Russian Federation is on the agenda at meetings of the highest Russian scientific community and political leadership.

In terms of technology, the provision of services in electronic form affects many general and specific issues of the development of all segments of the digital economy, software, gaming technologies, cloud services.

Thus, it is difficult to overestimate the dynamics and rates of development of the cloud technologies market, because in 2017 it reached 422.11 million US dollars, which is 20.1% higher than in the same period in 2016 (Bakhur, 2017), while at the end of 2018, the volume of ruble revenue of the CNewsSaaS rating participants increased by 38% and reached 32.3 billion rubles (Motovilov, 2019). We have yet to find out what impact the coronavirus (2019-nCoV) pandemic will have in 2020 and subsequent years on the development of the cloud technology market, since it is cloud services that are the fundamental foundation for deploying a remote work system for enterprises and customer service with maximum preservation of specificity and features of services.

As a consequence of all these technological, economic, and social changes, legal registration and tax qualifications of new objects are required, which should be as clear as possible so as not to create uncertainty and ambiguity for participants in civil turnover.

2. Problem Statement

The systematization of approaches on a relevant range of issues made it possible to conclude that there is no certainty, both in the legislation of the Russian Federation and in science, and among practicing specialists, regarding the legal, as well as the following tax, qualification of relations for the provision of services in electronic form, including in the segment “Cloud” services.

The current situation is that due to the uncertainty and lack of comprehensive work in this area, there are significant contradictions in approaches to the qualification of similar phenomena, as a result of which there are inevitable risks of inaccurate application of legislation and prosecution for violation of tax legislation when providing services in electronic form.

3. Research Questions

Comparative analysis of the criteria for the classification of legal relations arising from the provision of “cloud” services, revealed several approaches already established in civil law that affect the tax consequences of these private law relations. First of all, this is the qualification of such services as licensing legal relations. Secondly, these are lease relations, as well as the category of ordinary paid services. Our comprehensive analysis made it possible to identify that the most characteristic feature of “cloud” services in the digital environment as services is the parties' interest in providing and obtaining remote access to software via the Internet. The user is not so much interested in the direct use of the result of intellectual activity (for example, a specific computer program, etc.), as in the method of obtaining its functionality, which is remote access via the Internet, during which the user sends requests to the provider, and the provider automatically processes such user requests using information technologies, providing access to the implemented functionality of the result of intellectual activity, which is its useful effect, realized and consumed in the process of carrying out this activity. The beneficial effect of the functioning of the result of intellectual activity is a direct subject of Value Added Tax.

Comparative legal analysis of the current state of legal regulation and existing approaches to taxation of services in electronic form, including “cloud” services, in the national legislation of the states of the Eurasian Economic Union indicates the need to overcome the digital gap and uneven development of legal infrastructure for technological transformations within the framework of integration. The legislation of Russia in terms of detailing services in electronic form, tested during the implementation of Article 174.2 of the Tax Code of the Russian Federation, as well as Belarusian legislation, which is the most progressive in terms of the implementation of an integrated approach, which includes not only general digital legal terminology, “services in electronic form”, but also specific types of electronic services including “cloud” services, taken both from the Tax Code of the Russian Federation and from modern European legislation.

4. Purpose of the Study

The complexity of the studied topic of legal regulation and tax qualification of services in electronic form, a variety of which are “cloud” services, lies in the lack of certainty of legislative regulation, including the aspect of the ratio of legal means-restraints and legal incentives, which are so necessary for a rapidly developing industry. In addition, the article reviewed general conceptual legal issues of the developing industry of software products and gaming technologies.

The ascent in the analysis from the general principles of services to issues of taxation of services in electronic form predetermined the need to address the problem of “cloud” services, to delimit relations on the use of the results of intellectual activity from relations on the provision of paid services in the part applicable to “cloud” services. Determining the proper approach to the issue of legal and tax qualification of relations for the provision of “cloud” services is relevant in the context of the legal and tax certainty of the digital agenda, the organic and stable development of which is not possible in the Russian Federation without proper legal regulation.

Thus, the purpose of this article is to highlight a relevant, theoretical and applied issue to determine the features of international legal regulation of services’ taxation rendered in electronic form; on the analysis and synthesis of the legal and tax status of “cloud” services, their identification depending on the approaches already established in legal science in the unity of private and public law.

5. Research Methods

The methodological basis of this research was formed by general scientific and special research methods, including systemic and structural-functional methods. Due to the fact that the study is of a comparative legal nature, the authors also used the method of comparative legal research to analyze and assess the evolution of tax rules of the European Economic Union, the Australian Union, the People's Republic of China and the United States of America in a dynamic high-tech environment.

6. Findings

The article discusses various approaches to qualify “cloud” services as legal relations that generate tax consequences. The study shows that legal relations for the provision of “cloud” services are one of the most important types of services in electronic form due to their inherent economic and technological characteristics. In addition, when carrying out a comparative legal analysis of the current state of legal regulation and existing approaches to taxation of services in electronic form, including “cloud” services, in the national legislation of the member states of the Eurasian Economic Union indicates the need to overcome the digital divide and uneven development legal infrastructure for technological transformation through integration.

The legislation of the Australian Union is interesting in terms of a unique feature related to the way of tax interaction in connection with the provision of cloud services by a foreign company in Australia, which, according to the author, is positively business-oriented. This feature consists in the possibility of tax communication of foreign providers of “cloud” services through specialized operators

who, being experts in Australian law and knowledgeable in tax regulation, are operators-communicators with government bodies and independently fulfill a number of legislative requirements that are imposed on foreign companies-providers “cloud” services. Taking such approaches into account will allow developing an optimal model of interaction between foreign providers through special operators for the Russian tax law.

A study of the current legislation of the People's Republic of China revealed special attention to the legal and tax regulation of the activities of Chinese companies participating in the cloud services market. These companies, among other things, are provided with funding and grants, as well as a number of tax incentives that can significantly reduce the total tax burden. Even with gaps associated with the lack of clear criteria for qualifying services in electronic form as “cloud” services, the emphasis on incentives and government support for digital business is unprecedented and worthy of study for its application in the Russian system.

A comparative legal analysis of the doctrine and law of the United States of America revealed the concept of “click-through nexus”, which is non-standard for European or Asian legislation, which allows the American tax authorities to circumvent the generally accepted basis for taxing sales only if the taxpayer has a close relationship with the state in where the service was provided or the product was sold. It is this approach that makes it possible to effectively tax the sales of cloud services provided by Internet companies without actually being present in the state where the user of such a service is located.

7. Conclusion

Thus, the authors of this work come to the conclusion that “cloud” services are one of the key factors in the development of the information society and digitalization in the modern conditions of a dynamically developing sphere of services in electronic form not only in the Russian economy, but also in the economies of developed and developing countries of the world. At the same time, the world experience in the field of legal regulation of taxation of “cloud” services shows that, especially in turbulent periods for the world's economies, states increasingly prioritize the improvement of taxation mechanisms, pursuing both the budgetary interests of the state to optimize and increase the efficiency of tax collection in connection with the provision of “cloud” services, and the interests of entrepreneurs and other market participants in terms of creating transparent and comfortable conditions for high-tech business and reducing the administrative burden. The Russian Federation has also made significant steps in this area, overtaking many other foreign states in this matter. Due to the fact that the digitalization of the service sector leads to the “blurring of borders” between states, directly affecting the tax sovereignty of states, the task of legislators is to accumulate the best world practices in the field of legal regulation of taxation of services in electronic form and to develop appropriate predictable and fair tax rules.

Possessing an arsenal of predictable and understandable tax rules for market participants, the Russian Federation will be able to enter the global cloud services market and compete as a comfortable jurisdiction for high-tech entrepreneurs.

References

- Akimov, M. A. (2018). Analytical Department of the Federation Council of the Russian Federation. *Analytical Bulletin of the Federation Council of the Federal Assembly of the Russian Federation*, 1(690), 20-41.
- Bakhur, V. (2017). *The cloud services market in Russia rushed up*. Official site of the CNews edition. http://www.cnews.ru/news/top/2017-10-25_idc_rynok_oblachnyh_uslug_v_rossii_k_2021_godu
- Motovilov, O. (2019). *SaaS market has grown by more than a third*. Official site of CNews. https://www.cnews.ru/reviews/oblachnye_servisy_2019/articles/rynok_saas_vyros_bolee_chem_na_tret
- Putin, V. V. (2016). *Message of the President to the Federal Assembly of 01 December 2016*. Official website of the President of the Russian Federation. <http://www.kremlin.ru/events/president/news/53379>
- Putin, V. V. (2017). *There is no future without the digital economy*. Official website of the Ministry of Digital Development, Communications and Mass Media of the Russian Federation. <https://digital.gov.ru/ru/events/37031/>.
- Putin, V. V. (2018). *Message of the President to the Federal Assembly of 01 March 2018*. Official website of the President of the Russian Federation. <http://www.kremlin.ru/events/president/news/56957>.
- Putin, V. V. (2020). *The future of Russian civilization depends on the success in the development of high technologies*. Official site of the Information Telegraph Agency of Russia (ITAR-TASS). <https://nauka.tass.ru/nauka/8493647>