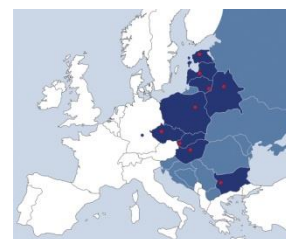


Taxation 2016: significant changes to Tax Code

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Minsk
Revolutsionnaya Str. 9 - 40
BY-220030 Minsk
Phone: +375 17 203 94 55
Fax: +375 17 203 92 73
E-mail: info.by@bnt.eu
www.bnt.eu

Partner in Belarus
Alexander Liessem

bnt offices
Bratislava
Budapest
Minsk
Nuremberg
Prague
Riga
Sofia
Tallinn
Vilnius
Warsaw

Brief contents:

- Mandatory electronic invoicing.
- Changes to profit taxation.
- Transfer pricing control.
- Changes to implementing simplified taxation system (STS) in 2016.

The law "On amending certain legal acts of the Republic of Belarus on entrepreneurship and taxation" of 30 December 2015 No. 343-3 introduces **changes to the Belarusian Tax Code** ('Tax Code'). Below you will find an overview of the most important ones.

ELECTRONIC INVOICING AND VAT

From 1 July 2016 VAT payers (except foreign companies **not registered** with the tax authorities in Belarus) must issue *electronic invoices*.

Sellers and buyers will exchange electronic documents through the *Web portal for electronic invoicing* ('Web portal'), which is a data resource of the Belarusian Ministry of Taxation.

The tax payer issues an electronic invoice through the Web portal to the buyer or sends the invoice to the Web portal without issuing it to the buyer upon every sale of goods (work, services) or transfer of proprietary rights.

An electronic invoice is created on the Web portal or is uploaded to the Web portal in XML format (if created in the accounting system of the tax payer).

Generally an electronic invoice has to be issued to the buyer not before the date of dispatch of goods (performance of work, provision of services), transfer of proprietary rights and not later than the 5th day of the month following the month of dispatch of goods (performance of work, provision of services).

Note: An electronic invoice serves as the basis for the buyer to offset VAT.

An electronic invoice is not issued by the tax payer:

- upon sale of goods (work, services) and transfer of proprietary rights not subject to VAT;
- upon sale of goods (work, services), transfer of proprietary rights exempt from VAT;
- upon sale of goods (work, services), transfer of proprietary rights in Belarus, which are not subject to VAT, by foreign entities not registered with the tax authorities in Belarus;
- upon import of goods on the basis of a contract of commission agency (or agency agreement) or other similar contracts.

An electronic invoice is sent to the Web portal without issuing it to the buyer:

- upon sale of goods (work, services), transfer of proprietary rights to non-payers of VAT;
- upon sale of goods (work, services), transfer of proprietary rights to foreign entities;
- upon sale of goods (work, services), transfer of proprietary rights exempt from VAT;
- upon sale of goods (work, services), transfer of proprietary rights in Belarus by foreign entities which do not carry out activities in Belarus through a permanent establishment;
- upon import of goods to Belarus.

CHANGES TO TAXATION OF PROFITS

The list of expenditure not accounted for taxation of profits is supplemented by the following:

- food expenditure, recreation expenses, including promotion action, conferences and other similar events;

- payment of additional leave for irregular working hours, length of service in one organization, incentive leave;
- lump sum payment for healthcare;
- remuneration for members of the board (supervisory council);
- remuneration and similar payments at year-end.

TRANSFER PRICING CONTROL

Since 1 January 2012 the tax authorities can control conformity of the profit tax base reflected by the payer in a tax declaration based on prices applied to the profit tax base calculated on the basis of market prices (**transfer pricing**).

In case of deviation from market prices by more than 20% the tax authorities may charge the tax payer with the unpaid amount of profit tax.

From 1 January 2016 the list of controlled transactions has been significantly amended and now includes the following:

- transactions on sale or acquisition of real estate (all or part);
- transactions on transfer of a construction unit to a shared construction participant;
- transactions on sale or acquisition of housing bonds;
- transactions on sale and (or) acquisition of goods (work, services), proprietary rights with a tax resident of Belarus with profit tax benefits if the total amount of transaction (-s) **exceeds 1 billion BYR (43 778 Euro)** without indirect taxes **per year**;
- transactions by major taxpayers and transactions with strategic goods implemented with one entity (person) if the total amount of transaction (-s) on sale and (or) acquisition of goods **exceeds 10 billion**

BYR (437 885 Euro) without indirect taxes per year;

- foreign trade transactions with one entity (person) if the total amount of a transaction (-s) per year exceeds without indirect taxes:

2012 г.	20 billion BYR
2013 – 2014 гг.	60 billion BYR
2015 г.	1 billion BYR
2016 г.	1 billion BYR (43 778 Euro)

Foreign trade transactions with one entity (person) include transactions on sale and (or) acquisition of goods (work, services) or proprietary rights implemented:

- with an affiliated person or an offshore resident;
- with an affiliated person or an offshore resident with the participation of an independent intermediary.

Affiliated persons include individuals and (or) legal entities, the relations between whom influence the conditions or economic results of their activities or the activities of the persons they represent. Such relations include the following:

- relations between founders (shareholders) of the same legal entity;
- when one person (entity) is a founder (shareholder) of another entity with a share of direct and (or) indirect participation of not less than 20%;
- relations between legal entities if one person (entity) directly and (or) indirectly participates

in each of the entities with a share of not less than 20%;

- subordination relations in terms of official status or when one person (entity) is directly or indirectly under the control of the other;
- when individuals are in marital or family relations, including relations between adoptive parents and children, guardians and persons in care;
- relations between a trustor, a trustee and a beneficiary, as well as between a trustee and entities whose property was placed in trust;
- relations between legal entities in which 50% of the members of a collective executive body or a body of directors (supervisory council) are the same persons, including their relatives.

Note: From 1 July 2016 tax payers must notify the tax authorities of controlled transactions by means of providing information in electronic invoices. We recommend developing and implementing an internal control mechanism to keep track of controlled transactions.

SIMPLIFIED TAXATION SYSTEM IN 2016 (STS)

Conditions for implementing STS

The conditions for implementing STS by legal entities remain the same in 2016.

The amount of gross profit:

- up to 9.4 billion BYR (411 612 Euro) for STS without VAT;
- up to 13.7 billion BYR (599 903 Euro) for STS with VAT.

The average amount of employees:

- up to 50 persons for STS without VAT;
- up to 100 persons for STS with VAT.

The limits of gross profit for implementing STS by individual entrepreneurs have been significantly decreased up to 1.5 billion BYR (**65 683 Euro**).

Note: Individual entrepreneurs with gross profit amounting up to 10.3 billion BYR (**451 022 Euro**) in 2015 retain the right to implement STS in 2016.

Ineligibility for implementing STS

The list of taxpayers ineligible to implement STS in 2016 has been supplemented as follows:

- **legal entities and individual entrepreneurs** providing online marketplace services by means of placing information on sale of goods and (or) vendors on a website with reference to the domain name of an online shop registered in the Belarus Trade Register.
- **legal entities and individual entrepreneurs** involved in online retailing;
- **unitary enterprises** owned by a legal entity or the state;

Recommendation: Unitary enterprises may consider changes in ownership or corporate restructuring, in order to apply STS.

- **commercial legal entities**, if more than 25% of stock (or shares in the share capital) belong to one or cumulatively to several legal entities;

Recommendation: Commercial legal entities may consider sale of stock (or shares in share capital) to individuals, in order to apply STS.

- **commercial legal entities**, if more than 25% of stock (or shares in the share capital) belong to the state.

Changes to real estate tax benefits

In 2016 legal entities and individual entrepreneurs applying STS will be exempt from real estate tax if the floor space of permanent structures (buildings, installations), their parts and parking spaces does not exceed 1 000 sq. m. (earlier the limit was 1 500 sq. m).

Introduction of a 16% tax rate for non-operational income

The cost of goods (work, services), proprietary rights, other assets or monetary funds received without consideration by legal entities and individual entrepreneurs applying STS will be taxed at the rate of 16%.

CONCLUSION AND RECOMMENDATIONS:

We recommend you to check compliance of your business with the recent amendments to tax legislation and to take the following steps:

- organize an electronic document flow with application of electronic invoices;
- check the conformity of prices in controlled transactions to market prices and prepare supporting documentation in case of deviation from the market price by more than 20%;
- choose the optimal tax system in the light of changes to STS implementation.

CONTACT IN BELARUS:



Oksana Belova, LL.M. (Stockholm)

oksana.belova@bnt.eu

Certified lawyer (BSU, Minsk)

+375 17 203 94 55

bnt legal & tax | Minsk



Egor Zelianouski, LL.M. (Münster)

egor.zelianouski@bnt.eu

Certified lawyer (BSU, Minsk)

+375 17 203 94 55

bnt legal & tax | Minsk