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E-COMMERCE, M-COMMERCE, AND ONLINE BUSINESS IN RUSSIA: LEGAL UPDATE & RECENT TRENDS

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16 May 2017

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- VAT on electronic services and other developments in tax and customs
- Online payments in Russia

SECTION 01

ONLINE BUSINESS IN RUSSIA: KEY TRENDS

Online Business in Russia in 2016: Four Key Trends

Trend 1:
Consolidation

Deal of the Year
acquisition of M.Video and Eldorado by Technosila shareholders

Trend 2:
Increasing
control over
the Internet

Law of the Year
amendments to the Communications and Information Laws affecting telecom operators and messenger services (aka the "Yarovaya Law")

Trend 3: Local
players unite

Document of the Year
Internet and Commerce Roadmap
prepared by the Association of Internet Trade Companies (AITC)

Trend 4:
Global players
take roots in
Russia

Figure of the Year
more than **100** foreign companies registered in Russia to pay VAT on electronic services (aka the "Google tax")

SECTION 02

WHAT'S NEW IN 2017

Audiovisual Services Law

- Audiovisual Services Law adopted on 1 May 2017, in force from **1 July 2017**
- Audiovisual service means
 - a website, webpage, IT system or software
 - used to form, or organize distribution of, a collection of audiovisual works
 - access granted for a fee or supported by advertising directed at users in Russia
 - has more than 100,000 Internet users in Russia per day
- Exemptions
 - websites registered with Russian authorities as “mass media”
 - search engines
 - services that primarily distribute content posted by individual users

Foreign Ownership Restrictions

- Restriction 1: Only Russian legal entities and Russian citizens can be owners of audiovisual services
- Restriction 2: Foreign owners of global audiovisual services (i.e., with more than 50% of users located outside Russia) are not allowed to control more than 20% of an audiovisual service, directly or indirectly
- To continue operations in Russia, global video services with more than 100,000 Russian users must
 - create a Russian subsidiary; and
 - find an 80% Russian partner *or* obtain approval from a special Government commission

Key Obligations Imposed on Owners

- Ensure that the service is not used to commit crimes or disseminate restricted information
 - e.g., “extremist” and other prohibited content, TV channels not registered in Russia
- Include age marks in accordance with the Child Protection Law
 - however, not required for content uploaded by users
- Comply with Russian laws, including but not limited to
 - mass media laws
 - election laws
- Publish contact details on the website
- Install “recommended” software for calculation of users

E-Commerce Aggregators Bill

- Amendments to the Consumer Rights Protection Law (“**E-Commerce Aggregators Bill**”) introduced in State Duma on 17 March 2017
 - first hearing not scheduled yet
- Aggregator of goods and services
 - entity that allows the consumer to obtain information about goods and services, enter into contract with the supplier and pre-pay online
- Proposed rules for aggregators
 - obligation to disclose information about itself and manufacturers or sellers
 - liability for false information
 - obligation to return pre-payment within 10 days if goods or services not delivered on time

Strategy for the Development of the Information Society in the Russian Federation 2017-2030

- **9 May 2017:** Strategy for the Development of the Information Society in the Russian Federation 2017-2030 approved by the President
 - regulate further all online media incl. Internet TV, news aggregators, social networks, websites and messengers
 - gradually replace foreign devices, hardware and software with domestic; arrange for preferential treatment of Russian manufacturers and developers; regulate foreign technologies import
 - encourage foreign developers to transfer technology to Russia, to create Russian subsidiaries or create 50/50 JVs with Russian partners; create conditions to support foreign IT localization projects
 - require using Russian servers, networks and payment systems for Russian-consumer directed sales and services, payments and data storage
 - introduce measures to make foreign online businesses selling to Russia to comply with Russian laws and to block access to non-compliant platforms

Other Initiatives

- Regulation of Big Data
- VAT on goods and services purchased in foreign online stores
 - requirement for online stores to register, report and pay VAT in Russia
 - similar to “Google tax” for electronic services
- Blocking of websites of online stores that
 - sell counterfeited products
 - do not register for VAT purposes

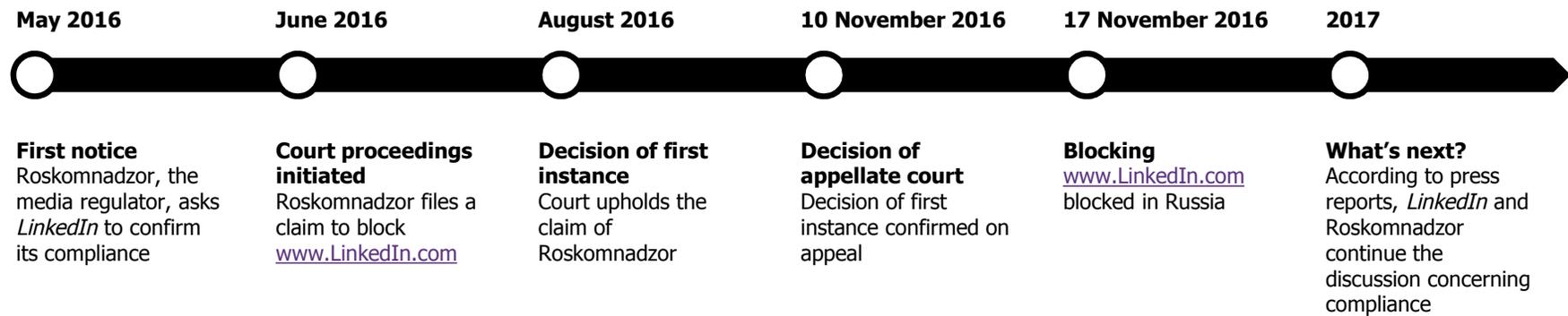


SECTION 03

**RETAILERS BEWARE:
TAKEAWAYS FROM
THE *LINKEDIN* CASE**

LinkedIn Case Development

In 2016 *LinkedIn* was blocked in Russia due to the alleged failure to comply with Russian personal data laws



LinkedIn Case: Key Takeaways (1/2)

- The court ruled that under Article 1212 of the Russian Civil Code, the personal data laws apply to foreign websites targeting the Russian market
 - **Article 1212:** an express choice of law clause in a consumer contract does not limit rights under the laws of the consumer's country of residence, if the seller directs business at that country
- The *LinkedIn* case may have implications beyond personal data laws: on the same basis, other Russian laws may apply to foreign websites with Russian users, including
 - Civil Code
 - Consumer Rights Protection Law
 - Advertising Law

LinkedIn Case: Key Takeaways (2/2)

- Signs that a website targets the Russian market
 - Russian language version
 - ads in Russian
- What if a website:
 - allows payments in Russian rubles?
 - offers delivery to Russian addresses?
- It is a domain name administrator (website owner) which must comply with Russian personal data laws
 - a non-Russian company is at risk even if website is used by its Russian subsidiary, agent or distributor



SECTION 04

DEVELOPMENTS IN RUSSIAN TAX AND CUSTOMS LAWS

VAT on Electronic Services (1/2)

- From 1 January 2017 foreign companies that supply electronic services to customers located in Russia must pay Russian VAT
- Examples of electronic services
 - entertainment: sale of online games, e-books, music, photos, video
 - Internet presence: domain name registration, hosting, cloud storage
 - other: providing access to online search systems, advertising services
- Exemptions
 - sale of goods and services if delivered/performed offline; sale of software on tangible media; consulting services performed by email; Internet access services
 - does VAT exemption for software and databases licenses still apply?

VAT on Electronic Services (2/2)

- An individual customer is deemed located in Russia if
 - individual resides in Russia
 - individual pays through a bank or electronic payment system located in Russia
 - customer's IP address is in Russia
 - telephone number used for the purchase has the Russian country code (+7)
- Suppliers of electronic services to Russian customers must register with the Russian tax authorities, report and pay VAT (18%)
 - if payments are processed by agents and platforms in Russia, they will withhold VAT as tax agent
 - different rules apply to B2B customers: Russian corporate clients and individual entrepreneurs pay VAT on purchased electronic services through "reverse charge"

Online Cash Registers

- Russian Law on Use of Cash Registers Equipment No. 54-FZ amended in **July 2016**
- By **1 July 2017** Russian retailers, including online retailers, must replace old cash registers with new equipment supporting online transfer of data to tax authorities
- Key issues
 - retailers will have to purchase new cash registers and change fiscal storage once every 12-15 months
 - more information required in invoices and accounting documents: retailers may need to upgrade existing software
 - new intermediary: data will be transferred to fiscal data operators; the latter will forward it to tax authorities

Customs Regime for Individual Purchases

- Currently, shipments for **less than 1,000 EUR or 31 kilo per month** are duty-free for receiving individuals
 - if this threshold is exceeded the shipment is subject to 30% customs duty (or at least 4 EUR per 1 kilo)
- Russian Government considers lowering the above thresholds
 - to 500 EUR per month in 2018
 - to 200 EUR per shipment in 2019

SECTION 05

**ONLINE PAYMENTS:
RECENT DEVELOPMENTS**

Online Payments by Individuals: Key Rules

- Bank payments (online banking, debit and credit cards)
 - require client identification; banks can set up their own limits
- Payments through online payment systems
 - limits depend on whether online payment system identifies the individual
 - full identification requires personal presence; simplified identification can be performed online (but available for Russian citizens only)

	Full Identification	Simplified Identification	No Identification
Maximum balance in e-wallet	600,000 RUR (appr. 10,000 USD)	60,000 RUR (appr. 1,000 USD)	15,000 RUR (appr. 250 USD)
Maximum monthly payments	No limit	200,000 RUR (appr. 3,000 USD)	40,000 RUR (appr. 600 USD)

Anti-Sanction: Cross-Border Transfer Restrictions

- **3 April 2017:** amendments introduced to the Federal Law on the National Payment System
- If a foreign state introduces restrictions on payments via Russian payments systems (e.g., sanctions, embargos), then only payment systems directly or indirectly controlled by Russian entities may be used for money transfers to such state without establishing a bank account
- Such restrictions may affect
 - receipt of payments from Russia
 - use of Russian payment operators
 - participation in payment systems



Restricted Payments: Online Casinos Bill

- **14 April 2017:** amendments to the Lotteries Law and Gambling Law approved in the first hearing
- Federal Tax Service will keep register of organizers or operators of illegal lotteries and online casinos
- Payment systems would be required to include special “red flag” identification number in payment details of lotteries and gambling organizations
- Banks would have to decline payments to “illegal” entities listed in the register or “red flagged” payments

QUESTIONS?

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Biography



Ksenia Andreeva

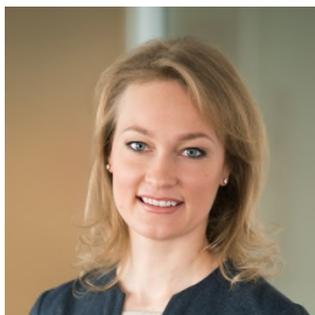
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Ksenia Andreeva specializes in intellectual property (IP) matters. She advises on a wide range of transactional, regulatory, and commercial IP matters as well as disputes and enforcement of IP rights. Ksenia is a registered trademark lawyer and is admitted to represent clients before the Russian Patent and Trademark Office (Rospatent). She also has experience with IP disputes in the Chamber for Patent and Disputes and Russian commercial courts. Her clients include companies in media, technology, telecommunications, and many other industries.

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Biography



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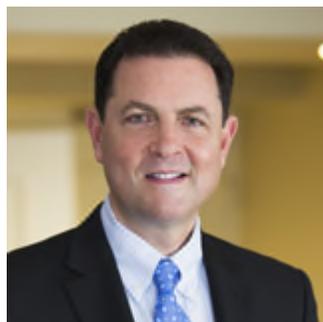
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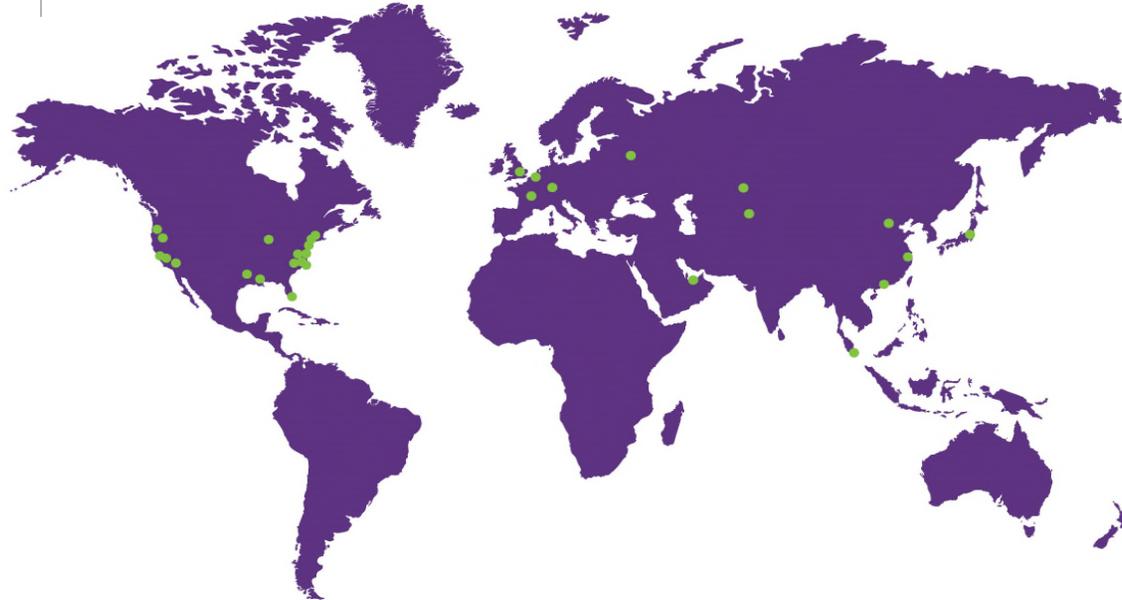
Brian L. Zimbler advises on cross-border investment and financial matters, primarily in emerging markets. He has more than 25 years of experience with transactions involving Russia, Kazakhstan, and other countries in the former Soviet Union. Brian serves as the Managing Partner of the Moscow office, and has advised on some of the largest foreign investments in the region. Brian represents clients in a wide range of industries, including energy, manufacturing, media, pharmaceuticals and life sciences, real property, retail, and technology.

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