

## Super task



From January 1, 2025, the income tax rate will increase from 20 to 25 percent. Individuals will also have to pay more. These and other changes in the tax burden were discussed **Lyudmila Kruglova**, Head of Structuring and Corporate Tax, together with a colleague. Expert advice will help you adapt to the changes. In the article, they also looked at alternative transaction options that will help optimize taxation.

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## Tax Rules—2025. Recommendations that will help to optimize business structure

**T**he authorities have updated the taxation rules. The main innovation is related to the rates of profit tax and personal income tax. The rules for the five-year exemption on the sale of shares and stocks have also changed. Now, if individuals have owned shares for more than five years, they can sell them without taxation. However, from 2025, this will only be available to tax residents of the Russian Federation and provided that the income from the sale does not exceed 50 million rubles per year. An unexpected change was the expansion of the concept of material benefit. Now individuals must pay tax not only on profits from the acquisition of securities, but also on transactions with shares in LLCs.

Amendments to tax legislation will change the efficiency of existing or planned corporate structures. The President approved them in the Federal Law of 08.08.2024 No. 295-FZ "On Amendments to Parts One and Two of the Tax Code of the Russian Federation and Certain Legislative Acts of the Russian Federation on Taxes and Fees."

Let's look at the main changes in tax legislation that companies and their owners must take into account. We'll analyze how to structure a business using alternative methods. We'll find out whether it's possible to use closed-end mutual investment funds and personal funds under the new conditions. We'll tell you,



what restructuring measures should the company carry out before the end of 2024 in order to take advantage of the current tax regime.

### **Increase your share of assets with tax breaks**

Study the income categories for which the legislator has set the maximum personal income tax rate at 15 percent. If necessary, reconfigure investment strategies to improve the efficiency of asset management and minimize tax risks. For example, you can increase the share of assets and operations, the income from which can be used to take advantage of tax benefits or lower tax rates.

The maximum personal income tax rate for income from the sale of property and its donation, except for securities, is 15 percent. Dividends from both Russian and foreign companies are also subject to this rate. In addition, income from the sale of shares in Russian LLCs, stocks, bonds, investment units, from transactions with digital financial assets and derivatives, as well as repo transactions, the object of which are securities, is taxed at a rate of 15 percent.

The Ministry of Finance proposed not to increase the personal income tax rate for income in the form of dividends and from operations with securities. This should encourage private investors to invest more actively in business, and therefore,

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### Don't try to artificially structure deals to minimize taxation - this may lead to inspections and fines

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contribute to the development of the economy. At the same time, the income of shareholders from closed-end mutual investment funds does not fall into the category of income taxed at a rate of 15 percent. The situation may lead to a change in the structure of asset ownership in business. Investors will begin to withdraw funds from closed-end mutual investment funds to avoid tax, which will change the dynamics of the market. Although since 2016, the number of closed-end mutual investment funds has increased from 1,000 to 2,200 by 2024, which indicates interest in this instrument.

On the other hand, many investors, on the contrary, began to invest more in mutual funds in order to take advantage of tax-free reinvestment at the fund level, since there is no need to pay income tax. In this case, income can be obtained not in the form of interim income payments, taxed on a progressive scale of up to 22 percent personal income tax, but by redeeming shares in the future. This will allow you to pay personal income tax in the amount of up to 15 percent.

#### Maintain your Russian tax resident status

Make sure that you maintain your Russian tax resident status at the time of asset sale to be eligible for benefits. Previously, in M&A transactions and internal restructuring, owners enjoyed a tax break based on the period of ownership. It was possible to sell shares and stakes in Russian and foreign legal entities without paying tax if the taxpayer owned the assets for more than five years (clause 17.2, Article 217 of the Tax Code). From 2025, the benefit is available only to those individuals who are taxable

resident of the Russian Federation at the time of receiving income. In addition, the benefit applies to income up to 50 million rubles per year. If the income exceeds this threshold, personal income tax will have to be paid on the remaining amount. The limit is considered as the total tax base of an individual from the sale of shares and shares for the tax period. If during the year a citizen sold shares in two companies and received 80 million rubles, then 30 million will be subject to personal income tax, and the rest will not, regardless of the income from each transaction.

Please note that for the purposes of determining the limit, taxable income from the sale of shares and LLC shares is calculated differently. Income from the sale of shares is the amount of income minus the confirmed expenses for the acquisition of these shares. Income from the sale of LLC shares is taken into account when calculating the limit without taking into account expenses. For example: during the year you received income of 30 million rubles from the sale of shares that you previously purchased for 20 million, as well as 25 million rubles from the sale of shares in an LLC that you previously purchased for 10 million. In this case, to calculate the limit, we take into account the following amounts:  $(30 \text{ million} - 20 \text{ million}) + 25 \text{ million} = 35 \text{ million rubles}$ . That is, in the example considered, the limit will not be exceeded.

It is important to remember that the tax base is calculated from the amount of income actually received: funds to an account, cash, offset, etc. If the seller of the share has not yet received the money, then there is no income and the tax will arise only when the actual payment occurs. For example, in 2025, a taxpayer sold shares for 60 million rubles, of which he immediately received 30 million, and the remaining money in 2026. In this case, the tax base will not exceed 50 million rubles each year, and there will be no tax to pay. However, it is unsafe to specially structure transactions in order to reduce the size of the tax base. The Federal Tax Service identifies such artificial models and fights them.

Document all costs associated with the purchase of shares and stocks in order to correctly determine the tax base and take advantage of the property deduction. Taxpayer

Taxpayers can still take into account expenses when selling shares or stakes. If during the year there was income from the sale of shares in the amount of more than 50 million rubles, then the amount of the difference can be reduced by the corresponding share of expenses. For example: a taxpayer sold a share in an LLC, which he owned for more than five years, for 150 million rubles. The costs of its acquisition amounted to 60 million rubles. Since 50 million rubles are non-taxable, the remaining 100 million can be reduced by the amount of the deduction, but not in full, but in the corresponding share: by 40 million rubles. A similar benefit for income tax remained unchanged. Income from the sale of shares and stakes in companies where the share of real estate in assets is less than 50 percent, is subject to income tax at a rate of 0 percent if they were owned by the seller for more than five years.

### Assess the value of assets

Before entering into transactions, evaluate the value of assets. Make sure they are valued correctly to understand whether there will be a risk.

the buyer has a taxable material benefit.

The legislator also expanded the concept of material benefit subject to personal income tax (Article 212 of the Tax Code). Previously, only the material benefit that a person received when acquiring securities, including shares, was taxed. Now, according to the new version of Article 212 of the Tax Code, material benefit from the acquisition of shares in an LLC will also be taxed. That is, if an individual buys a share in an LLC at par or at a reduced price, he will pay income tax. The general personal income tax rate of up to 22 percent will be applied to such income.

The legislator indicated that "the market value of a share in the authorized capital of a company is determined in the corresponding share of the value of the company's net assets on the last reporting date." The amount of net assets is often lower than the real market value of the company. Therefore, this approach to calculating the taxable amount is rather beneficial to taxpayers. Transactions with shares in LLCs can be made at cost

## Carry out share transactions in 2024 while the old rules apply

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The changes to the Tax Code that were approved during the last tax reform will come into effect in 2025. Therefore, if you are planning an intra-group restructuring, please note that the old rules will apply to transactions in 2024. We will tell you what transactions can be carried out in the remaining time in order to take advantage of the favorable conditions.

Until 2025, individuals who purchase shares at par value will not have any taxable material benefit.

If you are preparing for an internal restructuring and plan to alienate shares, have time to

conduct these transactions in 2024. This will avoid tax consequences and reduce the cost of the entire restructuring. Income from the sale of shares and stocks, for which a five-year tax break applies, is not taxed until 2025. If you were planning to receive income from such transactions in the near future, it is better not to postpone it until 2025.

Please note that all the above transactions must have an independent business purpose. If you conduct such transactions only to reduce the tax burden, the Federal Tax Service may challenge the transactions and charge additional tax.



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below the market and at the same time bear less significant tax costs or do not bear them at all. On the other hand, it will be easier for tax authorities to control the emergence of material benefits calculated on the basis of the value of net assets. It is possible that such control will be automated - just as the control of income of individuals from real estate transactions was automated.

An amount that exceeds the dividends corresponding to the participant's share is not considered dividends for tax purposes (clause 1, Article 43 of the Tax Code). It is taxed at the rates for ordinary income. Therefore, with a disproportionate distribution of dividends, tax costs increase significantly. But no profit tax is paid on the income of a closed-end mutual fund. Consequently, if you receive disproportionate dividends in a closed-end mutual fund, then additional costs will also not arise.

Pay attention to the costs that a business may face if it structures transactions using a closed-end mutual fund. This may offset the benefits of the fund. It should be taken into account that if an individual shareholder invests property in a closed-end mutual fund, for the acquisition of which he incurred minor expenses, he will receive a material benefit. The Ministry of Finance expressed this position, in particular, in its letter dated 27.12.2023 No. 03-04-05/126768.

A personal income tax rate of up to 15 percent is applied to income in the form of dividends and from transactions with securities. An investment unit is a security, just like a share (clause 1 of Article 14 of the Federal Law of November 29, 2001, No. 156-FZ "On Investment Funds"). However, interim income from a closed-end mutual fund is not dividends, although their nature is similar. It remains unclear whether the "tax base for income from transactions with securities" will apply to payments on units of a closed-end mutual fund or whether the preferential rate will only apply to income from their sale or redemption.

Income from operations with securities includes various types of income, such as interest, coupons and income from trust management (clause 7, Article 214.1 of the Tax Code). It makes sense to classify income from units of closed-end mutual funds as income from operations with securities, applying the maximum personal income tax rate of 15 percent to them. However, the Federal Tax Service and the Ministry of Finance have not yet provided such clarifications. We have to adhere to a conservative position and proceed from the fact that the income of individuals from closed-end mutual funds will be taxed using the

### Material benefit from increasing the authorized capital

At least one uncertainty remains in the new version of the Tax Code. It concerns the situation of increasing the authorized capital with property. A participant may transfer property to increase the authorized capital. The costs of acquiring this property by the participant may be lower than the estimated value upon contribution and the amount by which the authorized capital is increased. If the size of the participant's share in the authorized capital does not increase, but only the nominal value of the share changes, the question arises: does a taxable material benefit arise for an individual in this case?

### Use alternative tools

To avoid increased tax burden on traditional intra-group restructuring schemes, structure your business using alternative instruments – mutual funds and personal funds.

**Closed-end mutual investment fund, or CMIF.** Income received the fund, are not subject to income tax until they are distributed to shareholders. This makes it possible to manage capital more effectively and reinvest funds without paying taxes. In addition, with the help of a closed-end mutual fund, it is possible to implement disproportionate dividend payments and not pay additional taxes. This is possible if you transfer shares or stocks to the closed-end mutual fund.

using the standard progressive scale to 22 percent.

**Personal fund.** This company has a profit tax organization is 15 percent. To do this, it is only necessary to comply with the rules on the composition of the income received by the fund. Thanks to the preferential rate, as well as the tax-free transfer of property to the founder and beneficiaries, a personal fund can be a financially effective tool for structuring assets. In addition, from January 1, 2025, the legislator expanded the revenue limit when using a simplified taxation system.

The income limit for companies and individual entrepreneurs on the simplified tax system will increase to 450 million rubles. The President approved the amendments in the Federal Law of 12.07.2024 No. 176-FZ "On Amendments to Parts One and Two of the Tax Code of the Russian Federation, Certain Legislative Acts of the Russian Federation and Recognizing Certain Provisions of Legislative Acts of the Russian Federation as Invalid." Personal funds also

have the right to use this regime. However, the tax authorities may assess special tax regimes as illegal fragmentation of business. Therefore, it is necessary to adequately assess possible tax risks.

It is important to note several changes regarding personal funds, although they are not directly related to taxation. Firstly, information about founders is no longer published in the Unified State Register of Legal Entities, as it was before 2024. This significantly increases the level of confidentiality. Secondly, the legislator allowed the transfer of currency values in any volume both to and from a personal fund. This allows for more active use of personal funds for foreign investment. Finally, the attractiveness of personal funds as investment structures has increased significantly. Now such organizations with an asset value of 100 million rubles will be recognized as qualified investors. This opens access to a wider range of investment instruments and increases their investment potential.

## We assume that the Federal Tax Service will adhere to the position previously formulated regarding payment of capital of a joint-stock company with property

We believe that in order to decide whether there was a material benefit, the tax authority will adhere to the same approach as in the situation of increasing the authorized capital in a JSC. In these cases, the difference between the amount of the increase in the value of shares and the costs of contributing property to the authorized capital is taxed. This position was expressed by the Ministry of Finance in its letter dated 21.05.2014 No. 03-04-05/24175. The agency drew attention to the fact that when JSC shares are converted into new shares with a higher par value and thus increase the authorized capital, the taxpayer becomes the owner of property of greater value than before the conversion. The difference between the original and new value of the property of a company participant is subject to personal income tax.

Perhaps the tax authorities will apply a different analogy and act in the same way as when increasing

increasing the value of shares at the expense of the company's undistributed profit. The Ministry of Finance explained how tax authorities should proceed if a company increases the nominal value of participants' shares at the expense of undistributed profits from previous years, and not as a result of revaluation of fixed assets or funds. In such a case, income in the form of the difference between the initial and new nominal value of the company's participants' shares is subject to personal income tax on a general basis (letter of the Ministry of Finance dated September 22, 2017 No. 03-04-06/61614).

Thus, when contributing property to the authorized capital of an LLC, a material benefit subject to personal income tax may arise. However, the principles of taxation may change, since shares and stocks have different natures.