

Issue 21

Summary of selected documents published for the period from July 9 to 15, 2011



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GENERAL LEGISLATION

1. Title: On amendments to certain legislative acts of the Russian Federation pursuant to the adoption of the Federal Law On Information, Information Technologies and Information Protection

Document: Federal Law
Signed: July 11, 2011
Number: 200-FZ

Abstract: Terms that do not have a set legal definition have been replaced with ones that do. In particular, "informatization", "confidential information" and "public network" have been replaced with "information technologies", "information regarding which a requirement to ensure its confidentiality is established", and "networks, access to which is not limited to a certain group of persons"). In addition, new terms have been defined: "electronic communication", "information technologies", "holder of information", "access to information", "confidentiality of information", "information system operator", and "data telecommunications network". The trade secret protection requirements have been modified: dismissed employees must hand over to their employer the physical media in their possession that contains such information, or destroy it, or delete the information from the physical media, under the control of the employer. Exchange control bodies and agents now have to keep not just trade, banking and tax secrets, but all secrets protected by law. The provision and delivery of documents and information

relating to the performance by residents and non-residents of foreign-currency transactions, and the opening and administration of bank accounts, by one exchange control body to another, by an exchange control body to an exchange control agent, or by exchange control agents to exchange control bodies does not constitute a violation of any trade, banking, tax or other legally protected form of secret, or a violation of the requirement to ensure the confidentiality of information of which they become aware while exercising their authority.

2. Title: On amendments to the Federal Law On the Privatization of State and Municipal Property

Document: Federal Law
Signed: July 11, 2011
Number: 201-FZ

Abstract: This permits the privatization of unitary enterprises with authorized capital exceeding 100,000 RUB. It introduces an additional form of privatization for such enterprises: conversion to a limited liability company (OOO). The decision on the terms of such a privatization specifies the number, class and par value of the OAO's shares or the interests of the participant of the OOO (the Russian Federation, one of its constituent entities, or a municipality) separately. The list of documents to be submitted by buyers of state and municipal property has been changed. If it is established after the purchase of state or municipal property that the buyer did not have the legal right to do so, the transaction shall be voided. The law also states that companies created via privatization may engage in activities on the basis of licenses and other approval documents issued to the relevant unitary enterprise.

TAX LEGISLATION

Application of International Treaties

3. Title: **On the application of profits tax to dividends paid by a Russian entity to a Belarusian founder member**

Document: Ministry of Finance Letter
Signed: June 20, 2011
Number: 03-08-05

Abstract: This clarifies queries on applying the double tax treaty between Russia and Belarus with regard to the taxation of dividends received by foreign entities from Russian entities.

4. Document: **Ministry of Finance Letter**

Signed: June 20, 2011
Number: 03-03-06/1/364

Abstract: This clarifies the application of profits tax to dividends paid by a Russian entity to a foreign entity tax-resident in Sweden that meets the condition of strategic interest in the entity paying the dividends, but not all the conditions for applying a zero profits tax rate.

Corporate Profits Tax

5. Title: **On applying Articles 126 and 310 of the Tax Code of the Russian Federation**

Document: Ministry of Finance Letter
Signed: June 14, 2011
Number: 03-02-07/1-191

Abstract: If incomes paid to foreign entities (not operating in Russia through permanent establishments) in return for services for a Russian entity outside Russia are, under Chapter 25 of the Tax Code, not subject to profits tax in Russia, the Russian entity paying such incomes is not recognized as a withholding agent for them, and so does not have to complete and file a tax computation for them. In this case, the Russian entity should not be prosecuted under Article 126 of the Tax Code for failing to provide a tax authority with information required for tax control.

6. Title: **On applying Articles 126 and 310 of the Tax Code of the Russian Federation**

Document: Ministry of Finance Letter
Signed: June 16, 2011
Number: 03-03-06/1/351

Abstract: The cancellation of a sale and purchase agreement should be seen as an independent business operation, and the seller's income and expenses related to the cancellation should be included in the tax accounts for the period in which the agreement is considered terminated. To this end, the taxpayer includes the amount of payment refunded to the buyer following the provision of the defective good in non-operating expenses of the reporting/tax period in which the buyer unilaterally withdrew from the agreement, as losses from previous tax periods identified in the current reporting/tax period. At the same time, the taxpayer includes the cost of the defective good returned by the buyer, by which the income from the sale of the good was reduced in income deductible for profits tax purposes, as profits from previous years identified in the reporting/tax period. The good returned by the buyer is entered into the seller's accounts at the price at which it was accounted for on the date of sale.

7. Title: **On the treatment for corporate profits tax purposes of income in the form of interest**

Document: Ministry of Finance Letter
Signed: June 16, 2011
Number: 03-03-06/2/98

Abstract: When taking legal action to recover a loan amount together with accrued interest, it should be remembered that under Article 250, Point 3 of the Tax Code the taxpayer should, on the date the legal decision takes effect, include the amounts of interest under the loan agreement, amounts of compensation for loss or damage, and penalties for violation of the debt obligation terms in non-operating income. Once the legal decision on the early repayment the outstanding loan amount together with the agreed interest is effective, income in the form of interest under the loan agreement is, in our view, not included in the tax accounts.

8. Title: **On accounting for the cost of a good in the event of the cancellation of a sale and purchase agreement**

Document: Ministry of Finance Letter
Signed: June 16, 2011
Number: 03-03-06/1/351

Abstract: If a buyer withdraws from a sale and purchase agreement and demands a refund of funds paid for the good, the agreement is considered cancelled. In this case, the agreement is considered terminated as soon as the buyer withdraws from it and demands the refund. The seller's income and expenses related to the cancellation should be included in the tax accounts for the period in which the agreement is considered terminated. The good returned by the buyer is entered into the seller's accounts at the price at which it was accounted for on the date of sale.

9. Title: **On a query on the taxation of a bonus paid to a foreign entity under an option contract as a result of the performance of transactions with non-publicly traded forward financial instruments**

Document: Ministry of Finance Letter
Signed: June 23, 2011
Number: 03-08-05

Abstract: If the performance of a forward financial instrument does not stipulate delivery of the underlying asset, Article 309, Point 2 of the Tax Code, in our view, does not apply to income received by a foreign entity from transactions with such a forward financial instrument, and the income falls under "other similar incomes" from sources in the Russian Federation. Therefore, bonuses paid to a foreign entity under an option contract that does not stipulate delivery of the underlying asset are taxable in the Russian Federation at the source of income payment.

VAT

10. Document: **Ministry of Finance Letter**

Signed: July 4, 2011
Number: 03-03-06/1/387

Abstract: The cost of out-of-date perfumes and cosmetics, and the costs of their disposal or destruction, may be counted as expenses. VAT amounts previously legitimately deducted for goods written off for being out of date, or for deficiencies uncovered in stocktaking, are subject to recapture.

Mineral Extraction Tax

11. Title: On a query on applying the regulations of Chapter 26 of the Tax Code of the Russian Federation regarding the taxation of coal mining in the absence of the relevant legal regulations envisaged by Articles 337, 342 and 343.1 of the Tax Code of the Russian Federation

Document: Ministry of Finance Letter

Signed: June 20, 2011

Number: 03-06-05-01/59

Abstract: From April 1, 2011, the procedure for calculating Mineral Extraction Tax on coal mining will change. However, the Russian government has yet to publish the regulations on the classification of types of coal, the discount factors, the list of expenses on ensuring safe working conditions and occupational health for coal mining, and the Cp coefficient, that are need for this procedure. In view of this, the Finance Ministry states that until such regulations have been adopted, taxpayers calculating Mineral Extraction Tax on coal mining may use the new procedure, taking account of the present procedure for determining the classes/types of coal for registering them in the National Register of Mineral Reserves, and, when determining the methane level of the subsoil plot in question and the coal seam's susceptibility to spontaneous combustion, the regulations applicable to planning and performing measures to ensure safe coal mining conditions. With regard to the list of expenses on ensuring safe working conditions and occupational health for coal mining that are deductible for Mineral Extraction Tax purposes, taxpayers may independently include documented costs of this nature in such expenses.

Vehicle Tax

12. Title: On a query on calculating vehicle tax taking account of the number of years since the vehicles' year of manufacture

Document: Ministry of Finance Letter

Signed: May 27, 2011

Number: 03-05-05-01/36

Abstract: When determining the number of years since a vehicle's year of manufacture, all the vehicle tax periods starting from January 1 of the year after the vehicle's year of manufacture, including the tax period for which the tax is being paid, are included. Hence, when calculating vehicle tax for 2010 for a vehicle manufactured in 2004, the number of years since the vehicle's year of manufacture, taking account of Article 361, Point 3 of the Tax Code, is 6 (i.e., 2005 through 2010).

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