

Issue 25

Summary of selected documents published for the period from August 16-21, 2011



In this issue:

Tax Legislation:

- Application of International Treaties
- Part One of the RF Tax Code
- Corporate Profits Tax
- VAT
- Personal Income Tax
- State Duty
- Mineral Extraction Tax
- Property Tax, Vehicle Tax

TAX LEGISLATION

Application of International Treaties

1. Document: Ministry of Finance Letter

Signed: July 20, 2011

Number: 03-08-13

Abstract: This clarifies the application of the provisions of Article 269 of the Tax Code, on calculating the maximum amount of interest on controlled debt that is subject to inclusion in expenses, as well as the application of the provisions of the Russia-Netherlands double tax treaty.

2. Document: Ministry of Finance Letter

Signed: August 4, 2011

Number: 03-08-05

Abstract: This answers queries on applying the regulations of the Russia-Kazakhstan double taxation convention to incomes from the lease by a company resident in Kazakhstan of geophysical equipment, vehicles, rail cars and other technical equipment to a Russian organization for the performance of seismic surveying in Russia.

3. Title: **On a query on offsetting tax withheld in foreign countries when dividends of a Russian organization are being paid out**

Document: Ministry of Finance Letter

Signed: August 5, 2011

Number: 03-03-06/1/451

Abstract: In clarifying the procedure for allowing amounts of tax on income in the form of dividends paid/withheld in a foreign country to be offset, the Finance Ministry reminds taxpayers that consolidation of the calculations of the maximum amount offset for all incomes received from sources in different foreign countries, and from different source parties, is not permitted.

Part One of the RF Tax Code

4. Title: **On the storage period for documents needed for the calculation and payment of taxes**

Document: Ministry of Finance Letter

Signed: August 2, 2011

Number: 03-02-07/1-272

Abstract: A taxpayer must keep data from bookkeeping and tax accounts and other documents needed for the calculation and payment of taxes, for 4 years. However, the Tax Code may establish other storage periods for individual documents. In particular, a taxpayer must keep materials confirming the amount of an incurred loss throughout the entire period in which it reduces its tax base for the current tax period by the amount of the previously incurred losses.

5. Title: **On the procedure for registering a Russian organization with the tax authorities at its place of business**

Document: Ministry of Finance Letter

Signed: August 5, 2011

Number: 03-02-07/1-279

Abstract: If an organization leases premises territorially separate from its location for storing advertising materials and advertising products, without thus creating permanent workplaces at the premises, but the persons authorized to deliver the advertising materials are employees of the organization from nearby separate divisions, such activity, according to the Finance Ministry, leads to the creation of a separate division of the organization, however long a specific employee spends at a workplace in the leased premises.

Corporate Profits Tax

6. Title: **On a query on the treatment for profits tax purposes of written-off accounts receivable relating to unpaid dividends**

Document: Ministry of Finance Letter

Signed: August 1, 2011

Number: 03-07-08/247

Abstract: Relations regarding the payout of dividends to a company member are not connected to the sale of goods, work or services, and, for profits tax purposes, cannot lead to doubtful or bad debt for the latter. Therefore, dividends not received by a company are not counted as expenses equivalent to losses for profits tax purposes.

7. Document: Ministry of Finance Letter

Signed: August 1, 2011

Number: 03-03-06/1/439

Abstract: This answers a query on offsetting mutual claims of founder members of an organization in an amount of borrowings and the interest accrued on them against the performance of an obligation to contribute to the authorized capital when it is being increased for profits tax purposes.

8. Document: Ministry of Finance Letter

Signed: August 5, 2011

Number: 03-03-06/1/456

Abstract: This clarifies the treatment of stocks of oil in a pipeline for corporate profits tax purposes.

VAT

9. Title: **On tax invoices in electronic form**

Document: Ministry of Finance Letter

Signed: August 1, 2011

Number: 03-07-09/26

Abstract: This explains that the wording "by mutual agreement of the parties to the transaction" used in the Tax Code implies that a tax invoice can be voluntarily compiled and issued electronically. The agreement may be formalized taking account of the rules of business behavior/customary business practice, including through an exchange of documents, without compiling a single individual document signed by the parties, by the performance of actions indicating consent for tax invoices to be issued electronically, etc.

10. Title: **On queries regarding the application of a zero value-added tax rate**

Document: Ministry of Finance Letter

Signed: August 2, 2011

Number: 03-07-15/72

Abstract: The Finance Ministry has set out its position on the following issues: the application of VAT to services with respect to the carriage of goods under export by several forms of transport, forwarding services, and the services of oil and oil product pipeline companies; documentary proof of the legitimacy of applying a zero VAT rate to services with respect to the provision of rolling stock and/or containers for the carriage by rail of goods, or derived products, under export if the goods are being carried by rail and by sea; the application of a zero VAT rate during the performance by Russian organizations of waterborne transportation of work/services in relation to goods under the customs procedure of exportation; supplies sold to commercial entities of Belarus or Kazakhstan; the definition of the term "other territories under the jurisdiction of the Russian Federation"; the application of VAT when selling goods exported from Russian territory to the city of Baikonur.

11. Title: **On the application of value-added tax to services provided by a Russian organization with respect to leasing out equipment imported into Russia and VAT-exempt on importation.**

Document: Ministry of Finance Letter

Signed: August 3, 2011

Number: 03-07-08/247

Abstract: There is no special VAT procedure for services with respect to leasing out equipment, including equipment imported into Russia. Therefore, such services are subject to VAT following the usual procedure under Article 164, Point 3 of the Tax Code at the 18% rate, even if the equipment being leased is VAT-exempt on importation.

12. Document: Ministry of Finance Letter

Signed: August 4, 2011

Number: 03-07-13/01-31

Abstract: This clarifies the VAT rate for services with respect to the carriage by air of passengers on the Moscow - Baikonur - Moscow route, performed by a Russian organization.

13. Title: **On the application of value-added tax when a Russian organization is exporting goods from the territory of the Russian Federation to the territory of the Republic of Kazakhstan through a Russian commission agent under a contract with a foreign organization that is not a commercial entity of the Republic of Kazakhstan and sells these goods to a Kazakhstan organization, in the event that the goods are shipped by the Russian organization directly to the address of the Kazakhstan organization.**

Document: Ministry of Finance Letter

Signed: August 5, 2011

Number: 03-07-13/01-32

Abstract: This explains that a Russian organization selling goods in Kazakhstan through a Russian commission agent under

a contract with a foreign organization that is not a commercial entity of Kazakhstan, and which, in turn, sells these goods to a Kazakhstan organization, including if the goods are shipped by the Russian organization directly to the Kazakhstan organization's address, must, in order to confirm the grounds for applying a zero VAT rate, provide the tax authority, as part of a package of supporting documents, with a declaration completed by the Kazakhstan organization, including Section 3 and the Appendix thereto. Here, line 8 of Section 3 should specify the Russian consignor applying a zero VAT rate to the goods under export, line 9 the Russian commission agent, and line 12 the details of the commission agreement between these Russian organizations, while the Appendix should specify the Russian commission agent, the foreign organization that is not a commercial entity of Kazakhstan, and the details of the agreement between those organizations.

14. Title: **On the application of value-added tax with regard to services provided by a Russian organization that is not a rail carrier with respect to the provision of rolling stock for the performance of international carriage by rail**

Document: Ministry of Finance Letter

Signed: August 11, 2011

Number: 03-07-08/258

Abstract: The services of a Russian organization that is not a rail carrier with respect to the provision of rolling stock (owned, leased or subleased by it) for the performance of international carriage by rail is subject to VAT at the zero rate, provided that the relevant documents (in particular, the lease agreement) have been submitted.

15. Title: **On a query on documentary proof of the legitimacy of applying of a zero value-added tax rate to the exportation by a Russian organization in the 1st quarter of 2011 of goods to the territory of the Republic of Belarus, the settlements for which are performed by offsetting mutual claims.**

Document: Ministry of Finance Letter

Signed: August 12, 2011

Number: 03-07-13/01-35

Abstract: Until October 1, 2011, a bank statement is required to confirm the right to a zero VAT rate. If settlements on exported goods are performed through offsetting mutual claims, there is no bank statement. Therefore, the zero rate does not apply. Under Federal Law 245-FZ, of July 19, 2011, the documents required to confirm the export will no longer include a bank statement from October 1, 2011.

16. Title: **On a query on the application of Article 170, Point 3, Subpoint 3 of the Tax Code of the Russian Federation**

Document: Federal Tax Service Letter

Signed: July 20, 2011

Number: ED-4-3/11684

Abstract: If, in return for an initial partial payment from a customer, a seller ships a good, performs work or provides a service, the cost of which is less than the amount of the

prepayment received, the customer shall restore the "advance" VAT in an amount corresponding to the tax specified in the tax invoices issued by the seller at the time of shipping.

17. Title: **On the list of documents confirming the manufacture of pharmaceutical ingredients by pharmacy organizations, and the application of a value-added tax rate of 10% to their sale on the territory of the Russian Federation**

Document: Federal Tax Service Letter

Signed: August 10, 2011

Number: AS-4-3/13016@

Abstract: The basis for applying a 10% tax rate to the sale of pharmaceutical ingredients by pharmacy organizations, including pharmaceutical substances, is the existence of a duly issued registration certificate for the specific pharmaceutical ingredients. Where pharmaceutical ingredients manufactured at a pharmacy are being sold in Russia, the 10% VAT rate should be applied on the basis of a prescription for the pharmaceutical drugs or a request from a healthcare organization.

Court Practice

18. Document: **Supreme Court of Arbitration Ruling**

Signed: August 4, 2011

Number: VAS-9678/11

Abstract: The SCA agrees with lower court arbitrators that a taxpayer legitimately deducted amounts of VAT paid when acquiring catering services for employees. The judges note that the company's expenses on food for its employees, included in its accounts in labor expenses, fall under operating expenses, and are connected with its main activity of performing construction work, the sale of which is recognized as subject to VAT. Therefore, the VAT is deductible.

Personal Income Tax

19. Title: **On a query on assessing and paying personal income tax when redeeming shares in mutual funds**

Document: Ministry of Finance Letter

Signed: August 5, 2011

Number: 03-04-05/3-548

Abstract: A taxpayer selling (redeeming) in 2010 investment shares received by it as a result of an exchange/conversion of investment shares in one mutual fund with/into investment shares of another mutual fund, performed by the taxpayer with a Russian management company managing the said funds at the time of the exchange/conversion, may deduct from the income received its documented expenses on acquiring the investment shares that it owned prior to their exchange/conversion.

State Duty

20. Title: **On a query on the payment of state duty when a petition is filed for recognition of title to several items of immovable property**

Document: Ministry of Finance Letter

Signed: August 5, 2011

Number: 03-05-04-03/51

Abstract: According to the Finance Ministry, those considering the issue of the payment of state duty when a petition is filed for recognition of title to several items of immovable property, should be guided by the following clarifications issued in Point 16 of Information Memorandum 117 from the Presidium of the Supreme Court of Arbitration of March 13, 2007: if a petition filed with a court of arbitration combines several interconnected non-property related requests, state duty should be paid for each independent request.

Mineral Extraction Tax

21. Title: **On the data required for calculating the mineral extraction tax on oil for July 2011**

Document: Federal Tax Service Letter

Signed: August 17, 2011

Number: AS-4-3/13454@

Abstract: The Cp coefficient for calculating mineral extraction tax on oil for July 2011 is 10.7402.

Property Tax, Vehicle Tax

22. Title: **On a query on the payment of corporate property tax and vehicle tax with regard to an aircraft registered in a foreign aircraft register**

Document: Ministry of Finance Letter

Signed: August 2, 2011

Number: 03-05-05-01/59

Abstract: This sets out the Finance Ministry's position regarding the obligation of a Russian organization that has bought an aircraft to pay property tax and vehicle tax. (When the contract is signed, the aircraft is in a foreign country and is not expected to be imported into Russia. The operator remains the foreign legal entity, and the aircraft is registered in a foreign register of aircraft. At the same time, the aircraft is expected to be used by the owner for international flights, including from Russia.)

TAX LEGISLATION

Application of International Treaties

1. Document: Ministry of Finance Letter

Signed: July 27, 2011

Number: 03-08-05

Abstract: This clarifies queries on the application of the USSR-Italy Double Tax Treaty on shipping income, of November 20, 1975, and the USSR-Italy Double Tax Treaty on air transport income, of September 16, 1971.

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