

Issue 29

Summary of selected documents published for the period from September 19–23, 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
- Land Tax

Customs Legislation

TAX LEGISLATION

Application of International Treaties

- 1. Title:** On the taxation of incomes of Cypriot and Estonian companies from the sale to a Russian organization of interests in Russian limited liability companies.

Document: Ministry of Finance Letter
Signed: August 15, 2011
Number: 03-08-05

Abstract: The incomes of Cypriot and Estonian companies from the sale to a Russian organization of interests in Russian limited liability companies are tax-exempt in Russia provided that the foreign firms do not have a permanent establishment in Russia. The assets of the Russian LLCs concerned do not include real estate in Russia. It should also be noted that Russia and Cyprus have a double tax treaty under which income from the disposal of interests is taxed only in the seller's country of residence. Thus, the Russian organization doing the buying here does not act as a withholding agent.

2. Document: Ministry of Finance Letter

Signed: September 9, 2011
Number: 03-08-05

Abstract: This clarifies the profits tax procedure for incomes from copyright and licenses, received by a Japanese organization in the form of royalties pursuant to the provisions of the USSR-Japan double tax convention.

Part One of the RF Tax Code

- 3. Title:** On amendments to the Requirements for the Compilation of a Tax Audit Report, confirmed by Federal Tax Service Order SAE-3-06/892@ of December 25, 2006

Document: Federal Tax Service Order
Signed: July 21, 2011 (registered by the Ministry of Justice on September 19, 2011 as No. 21818)
Number: MMV-7-2/457@

Abstract: Documents confirming the cases of tax violations uncovered must be attached to the tax audit report. Previously, the tax authorities refused to issue such documents to the taxpayer, but the Supreme Court of Arbitration, in Ruling VAS-16558/10, of January 24, 2011, states that such an attitude contravenes the Tax Code. As a result, the Requirements have been amended.

Corporate Profits Tax

- 4. Title:** On a query on the taxation of incomes of a foreign organization received by it under a deliverable foreign currency forward contract with a Russian bank

Document: Ministry of Finance Letter
Signed: August 16, 2011
Number: 03-03-06/2/129

Abstract: Incomes received by a foreign organization under a deliverable foreign currency forward contract, classed as a deferred transaction under Article 301 of the Tax Code, are not incomes specified in Article 309, Point 1, Subpoints 5 and 6 of the Tax Code, and so are exempt from withholding tax in Russia.

5. Title: On the accounting procedure for losses on forward financial instrument transactions

Document: Ministry of Finance Letter
 Signed: September 8, 2011
 Number: 03-03-06/1/545

Abstract: Losses on forward financial instrument transactions between a taxpayer and foreign organizations under foreign law and subject to court protection under the applicable legislation of foreign countries in order to hedge interest risks and currency risks on foreign currency loan agreements, are taken into account when determining the corporate profits tax base in accordance with Article 304 of the Tax Code.

6. Title: On a query on the taxation of dividends payable to a legal entity reorganized in the form of a transformation

Document: Ministry of Finance Letter
 Signed: September 12, 2011
 Number: 03-03-06/1/547

Abstract: If, in 2011, a Russian organization pays dividends based on its 2010 results to another Russian organization that is its legal successor as a result of a transformation (or a change in the form of incorporation), and the condition regarding continuous ownership for at least 365 calendar days of at least 50% of the contributions to/interests in the authorized/joint capital/fund of the organization paying the dividends on the day the decision is made to pay the dividends is met, the zero tax rate applies. The 365-day period includes the period of ownership of the said proportion of the interest by both the organization transformed and its legal successor.

VAT

Court Practice

7. Document: Ruling of the Presidium of the RF Supreme Court of Arbitration

Signed: July 5, 2011
 Number: 1407/11

Abstract: According to the court, a company may not apply for a deduction of VAT paid as part of general business expenses on transactions involving the production and sale of tax-exempt goods/work/services.

Personal Income Tax

8. Title: On a query on personal income tax on incomes of an employee of an organization who is a highly skilled professional

Document: Ministry of Finance Letter
 Signed: September 8, 2011
 Number: 03-04-06/6-212

Abstract: If the remuneration received by a foreign highly skilled professional in return for work performed in Russia exceeds RUB 2 million, it is subject to personal income tax at the 13% rate, whatever the source of payment. (If part of the remuneration is paid in Russia from abroad, it is also subject to personal income tax at the 13% rate.)

State Duty

9. Document: Ministry of Finance Letter

Signed: September 5, 2011
 Number: 03-05-05-03/28

Abstract: This answers a query on the payment of state duty in connection with the intervention of third parties presenting independent claims in relation to the subject-matter of a property-related dispute being heard by a court of arbitration.

Land Tax

10. Document: Ministry of Finance Letter

Signed: September 12, 2011
 Number: 03-05-05-02/46

Abstract: When an executive body of a constituent entity of the Russian Federation confirms the results of a state cadastral valuation of lands by a regulatory act applying to past tax periods, the newly confirmed valuation results are used to recalculate the land tax paid for the previous tax periods if they improve the taxpayer's position, or used starting from the next tax period if they worsen the taxpayer's position.

CUSTOMS LEGISLATION

11. Title: On confirmation of the Procedure for writing off arrears on customs payments (outstanding debt), late payment penalties or interest that are recognized as non-recoverable, and the List of documents confirming the circumstances in which arrears on customs payments (outstanding debt), late payment penalties or interest are recognized as non-recoverable

Document: Federal Customs Service Order
 Signed: July 21, 2011 (registered by the Ministry of Justice on September 19, 2011 as No. 21823)
 Number: 1071

Abstract: This establishes the procedure for deciding whether to recognize as non-recoverable and write off arrears on customs payments (outstanding debt), late payment penalties or interest payable in connection with the movement of goods across the customs border of the Russian Federation and the Russia-Belarus-Kazakhstan Customs Union.

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