

Issue 32

Summary of selected documents published for the period from October 10-14, 2011



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TAX LEGISLATION

Application of International Treaties

1. Title: On the payment of profits tax by an OAO operating on the territory of the Republic of Tajikistan and the Russian Federation

Document: Ministry of Finance Letter
Signed: 22 September 2011
Number: 03-08-05

Abstract: A Russian entity recognised as a payer of profits tax in Tajikistan on the basis of Article 7 of the Russia-Tajikistan Double Tax Treaty may offset the profits tax paid by it in Tajikistan against its profits tax in Russia. A Russian entity not recognised as a payer of profits tax in Tajikistan pays profits tax in Russia only.

2. Document: Ministry of Finance Letter

Signed: 7 October 2011
Number: 03-08-05

Abstract: This explains the procedure for applying the regulations of the double tax convention between Russia and France on solidarity tax on wealth (l'impôt de solidarité sur la fortune) and inheritance tax (l'impôt des successions).

Part One of the RF Tax Code

3. Title: On the deadline for submitting substantiated objections regarding the results of additional tax control measures

Document: Ministry of Finance Letter
Signed: 26 September 2011
Number: 03-02-07/1-342

Abstract: Although the Tax Code does not set specific deadlines for the inspected entity to prepare objections to the results of additional tax control measures, or for consideration of them, the inspected entity's right to review the said material and prepare objections is guaranteed by a corresponding obligation of the head (or deputy head) of the tax authority. In addition, the deadline for reviewing the materials is set by the head (or deputy head) of the tax authority taking account of the actual circumstances, including the quantity of the said material and its volume. Furthermore, the absence of written objections from the inspected entity does not deprive the latter (or its representative) of the right to provide explanations at any stage of the examination of the tax records.

4. Title: On applying Point 1 of Article 122 of the Tax Code of the Russian Federation

Document: Ministry of Finance Letter
Signed: 26 September 2011
Number: 03-02-07/1-343

Abstract: Answering a query on imposing penalties for non-payment (or incomplete payment) of insurance contributions to state extra-budgetary funds, the Finance Ministry recommends that tax authorities take account of existing practice regarding similar tax violations (i.e., the practice of applying Article 122 of the Tax Code).

5. Title: On a query on the application of the regulations of Article 311, Point 3 of the Tax Code of the Russian Federation to the procedure for offsetting amounts of tax withheld from incomes of a Russian bank from sources outside the Russian Federation

Document: Ministry of Finance Letter
Signed: 28 September 2011
Number: 03-08-05

Abstract: For the purposes of offsetting tax withheld abroad against payment of profits tax in Russia, letters and SWIFT messages submitted by withholding agents may serve as documents confirming that a statutory payment has been withheld.

Corporate Profits Tax

6. Title: On the accounting treatment of expenses associated with factory construction preparations

Document: Ministry of Finance Letter
Signed: 20 September 2011
Number: 03-03-06/1/578

Abstract: If an entity incurs costs on preparing design documents, acquiring rights or processing approval documents, in relation to the creation of depreciable property, such costs make up the historical cost of the property in the manner established by Chapter 25 of the Tax Code, and are taken into account for profits tax purposes through the depreciation method. Other costs, including those on office maintenance, management salaries, business travel, entertainment expenses, etc., may be included in indirect expenses recognisable for tax purposes in the current reporting period even in the absence of income, provided that the criteria of Article 252, Point 1 of the Tax Code are met.

7. Document: Ministry of Finance Letter

Signed: 20 September 2011
Number: 03-03-06/1/561

Abstract: This answers a query on accounting for expenses on research and/or development work relating to the creation of new technologies, or the improvement of existing ones, that have produced a positive result, but are not aimed at creating of a new product/goods/work/services or at improving existing ones and do not constitute invention costs.

8. Document: Ministry of Finance Letter

Signed: 20 September 2011
Number: 03-03-06/1/560

Abstract: This clarifies the accounting treatment and recognition of 'under load' start-up costs when all the following conditions are met: the 'under load' start-up work produces a finished product: heat energy; the finished product is used both for internal needs and for subsequent delivery (supply) in return for payment to an entity engaged in 'under load' start-up work; the historical cost of the fixed assets has not been established; the facilities being constructed have not been accepted by a working commission and have not been put into operation. It also answers a query on whether property tax has to be paid from the moment the 'under load' start-up work is performed.

9. Title: On a query on the application of the provisions of Article 284.1 of the Tax Code of the Russian Federation by entities engaged in medical activities

Document: Ministry of Finance Letter
Signed: 21 September 2011
Number: 03-03-06/1/580

Abstract: This answers queries on the procedure for entities engaged in medical activities to apply a zero profits tax rate.

10. Title: On a query on the term 'retooling' for profits tax purposes

Document: Ministry of Finance Letter
Signed: 23 September 2011
Number: 03-03-06/1/584

Abstract: This explains that for tax accounting purposes taxpayers should follow the definition of the term 'retooling' in the Tax Code (Article 257, Point 2), under which 'retooling' refers to a set of measures to improve the technical and economic indicators of fixed assets or their individual components through implementing advanced techniques and technology, mechanising and automating production, and upgrading obsolete and worn out equipment or replacing it with newer, more efficient equipment.

VAT

11. Title: On the submission to tax authorities of customs declaration forms in order to provide documentary proof of the legitimacy of applying a zero value-added tax rate when performing export operations

Document: Ministry of Finance Letter
Signed: 5 October 2011
Number: 03-07-14/97

Abstract: The legislation does not list the information to be included in a customs declaration form submitted to the tax authorities to confirm a zero VAT rate on export operations. According to the Finance Ministry, the form should contain information on the goods actually exported that enables taxpayers to justify applying a zero rate to specific deliveries of the goods and tax authorities to exercise control over the operations and prevent a zero rate being applied unlawfully.

12. Document: Federal Tax Service Letter

Signed: 16 September 2011
Number: ED-4-3/15170@

Abstract: If in the processing of customer-supplied raw materials imported into Russia from Kazakhstan the customer is a foreign entity that is not a taxpayer in the Russia-Belarus-Kazakhstan Customs Union, and when goods (or customer-supplied raw materials) imported for processing are not placed under the customs procedure of processing, a VAT rate of 18% applies.

Court Practice

13. Document: Supreme Court of Arbitration Ruling

Signed: 27 September 2011
Number: VAS-11837/11

Abstract: If a field audit establishes evidence of an unjustified VAT refund, the inspectorate may adjust the tax amount regarding which the refund decision was made following the desk audit.

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