Determining the Statute of Limitations Period for Assessing Tax or a Penalty

According to a recent letter of the Russian Federal Tax Service (“FTS”) and consistent with case law, the statute of limitations period for assessing a tax underpayment penalty starts from the first day of the tax period (month, quarter or year, depending on the tax) following the tax period in which the relevant tax was due.

A taxpayer claimed that it was not liable for a tax underpayment penalty because the statute of limitations had expired. The taxpayer had failed to pay corporate income tax due for 2012 which was payable by 28 March 2013. According to the FTS, the failure to pay the tax was in 2013, not in 2012, which meant that the statute of limitations period for assessing an understatement penalty started to run on 1 January 2014, not on January 1, 2013.

Russian taxpayers often fail to understand the different statute of limitations periods for assessing a tax or penalty (such as an underpayment tax penalty):

• For a corporate income tax underpayment penalty, the period is three years from the first day of the year following the year of non-payment (e.g., a penalty for failure to pay 2016 taxes by March 28, 2017 can be assessed until December 31, 2020).

• For starting a tax audit, the period is three years from the end of the year to be audited (e.g., for 2016 a tax audit can be started up to and including December 31, 2019; any resulting tax could be assessed thereafter as late as 2020 or even 2021).

Note: The difference in these two statutes of limitations could result in a final assessment from a tax audit for which a late payment penalty could no longer be assessed.

Based on this, a taxpayer should:

• Make sure that any tax assessment from a field tax audit does not include an underpayment penalty for which the statute of limitations has expired and challenge any such penalty on that basis.

1 Letter of FTS N CA-4-7/16692 dated 22.08.2014
Take into account the proper statute of limitations for various tax risk assessment purposes - tax risk analysis for the purpose of preparation of financial statements, due diligence for an acquisition, etc.


Application of a reduced rate for RF Pension Fund contributions by IT companies after 2017

Currently, there is a preferential rate (8% of employee compensation versus 22% of employee compensation for other companies) for pension fund contributions by IT companies (e.g., companies that sell and develop, and provide services to adapt, implement and test, computer programs and data bases). Under new provisions of the RF Tax Code effective since 2017, the 8% preferential rate will continue to be effective until the end of 2023.

Prior to 2017, the rate for pension fund contributions by IT companies was set at 8% for 2012-2017 and gradually was to increase to 13% in 2018, 20% in 2019, and 26% in 2020.

Draft legislation has been introduced to conform the above mandatory pension insurance provisions for IT companies in the Insurance Law to the existing provisions in the Tax Code.

Based on this, a taxpayer should:

1. Confirm whether the taxpayer meets the RF Tax Code criteria for the reduced rate of pension fund contributions (i.e., the company obtained a certificate of state accreditation as an IT company; the share of revenue from the sale, development, adaptation, implementation and testing of computer programs and data bases is not less than 90% of the taxpayer’s total revenue; the average number of employees is not less than seven).

2. Check the possible impact (i.e., reduction) on the operating costs and profit margins in future budgets.


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Draft law No. 68586-7 entitled “On making amendments to Article 33 of the Federal Law on mandatory pension insurance in the Russian Federation”
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