

Taxes in the Russian Federation. Peculiarities of taxation of residents and non-residents of the Russian Federation.

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Sources and peculiarities of the tax legislation

The tax legislation in the Russian Federation is regulated by legal norms of the Tax Code of the Russian Federation (hereinafter “TCRF”) and provisions of some federal laws. TCRF consists of two parts. The first (general) came in force on 1st January, 1999. It determines general questions of taxation in Russia: who is a taxpayer, what bodies perform and control collection of taxes, how to appeal their decisions, what kinds of liability are established for violation of the tax legislation. The second (special) part of TCRF came in force on 1st January, 2001. It determines types and rates of the taxes, the order of their collection as well as types of tax regimes.

One should remember that the tax legislation in Russia changes constantly and sometimes very seriously. Particularly, since 1st January, 2010 the single social tax has been excluded from the Second part of TCRF. It was exchanged with insurance fees¹ regulated not by TCRF but by separate Federal law No. 212-Φ3 of 24.07.2009 «On insurance fees into the Russian Federation’s Pension fund, Fund of social insurance, Federal fund of obligatory medical insurance».

Taxes. Order of their payment. Tax declaration

Taxes in the Russian Federation are divided into three categories:

Federal:

1. tax on companies’ profit;
2. value added tax (VAT);
3. excise duties;
4. water tax;
5. state duty for using objects of animal world and of water biological resources;
6. tax on natural persons’ income;
7. tax on mining.

Regional:

1. transport tax;
2. tax on organizations’ property;
3. tax on gaming business.

Local:

1. land tax;
2. tax on natural persons’ property.

¹ Insurance fees are obligatory payments into the Pension fund of the Russian Federation, Fund social insurance of the Russian Federation, Federal fund of obligatory medical insurance for obligatory insurance.

Whether a tax is federal, regional or local influences to what budget a corresponding payment is effected: directly to the federal state treasury, to the budget of a subject of Russian Federation or a municipal formation.

When paying a tax, a taxpayer should pay attention to such elements of the tax as:

- object of taxation (incomes of a company, minerals, property of an enterprise etc.). It existing or forming, the company's obligation on paying a corresponding tax arises;
- tax base (cash, quantitative or some other value of a taxation object determined by a taxpayer himself);
- tax period (on its termination the tax base is calculated and the tax is paid);
- tax rates (determine the amount of taxes).

In practice difficulties arise especially often when determining the tax base for such taxes as value added tax (VAT) and tax on profit. The final amount of a tax is calculated using the tax rate. In Russia tax rates vary. They are divided into basic and reduced. For example, the basic rate of VAT is 18% and the basic rate of tax on companies' profit is 20%. Subjects of the Russian Federation may establish the reduced rate of tax on profit in the amount of 13,5%. For definite categories of taxpayers the special 0% rate of tax on profit is provided. There exist rates for incomes obtained from dividends and on operations with some kinds of debt obligations (0%, 9%, 15%).

The term of a tax period approaching, a taxpayer shall submit a tax return to an authorized tax body.

A tax return shall be submitted on every tax payable. However, a taxpayer may apply one of the so called special tax regimes and not submit tax returns on taxes from payment of which he is freed with the tax regime chosen by him.

Tax regimes

There are several tax regimes in Russia. They include the following: the general system of taxation, the system of taxation for agricultural manufacturers (the unified agricultural tax), the simplified taxation system, the system of taxation in the form of a single tax on imputed income for definite types of activity, the system of taxation for implementation of production sharing agreements, the patent system of taxation.

When applying the general system of taxation all taxes are payable on which an object of taxation exists or is forming. Taxpayers, satisfying definite requirements established legislatively, may choose a special tax regime facilitating tax burden and the order of tax payment.

The simplified taxation system is the most widespread in Russia. A taxpayer shall inform a tax body when he chooses to apply the simplified taxation system. He is empowered to apply it on the condition that his income for the preceding nine months does not exceed forty-five million rubles. Some types of organizations listed in TCRF are not entitled to choose the simplified taxation system, particularly, organizations with branches and representations, investment funds, banks, insurers etc. A taxpayer using the simplified taxation system does not pay tax on profit, tax on property, value added tax. In the simplified taxation system a taxpayer chooses himself a tax rate for paying taxes: it may be either 6% of all incomes of the taxpayer or 15% of incomes less the value of expenses (profit of the taxpayer).

Special aspects of taxation of the Russian Federation's residents and non-residents

Organizations and natural persons are payers of taxes and duties in Russia, as it is they who carry the obligation to pay this or that tax. However, the obligations on calculating, withholding and transferring taxes into the Russian Federation's budget system may be assigned to other persons – tax agents. For example, an employer plays this role calculating the amount of a tax payable on incomes of a natural person and transferring it to the budget on behalf of his employee.

A tax rate may be determined depending on that whether the taxpayer (a natural person) is a resident or non-resident of the Russian Federation and whether the taxpayer (a legal entity) is registered in the Russian Federation or abroad (otherwise, whether it is a foreign organization).

For acknowledging a taxpayer a resident of the Russian Federation a natural person should reside in the Russian Federation for not less than 183 calendar days within 12 months in a row. According to article 224 of TCRF a resident of the Russian Federation pays tax on natural persons' income on the basis of the tax rate of 13% while a non-resident – that of 30%.

For foreign organizations the following rates on tax on profit are established: 20%, 10%, as well as 0%, 9% and 15% – on income from dividends.

Besides determining a tax rate to be used when calculating this or that tax, the status of a resident is important also in the context of applying the double taxation agreements that according to item 1 of article 232 of TCRF allow a resident of the Russian Federation not to pay in Russia taxes on incomes, obtained beyond the Russian Federation's territory and paid abroad. Similar rules are valid in respect of a non-resident of the Russian Federation, provided Russia has concluded a double taxation agreement with the country of his citizenship. For applying such rules stipulated by the international agreement a taxpayer should confirm to Russia's tax authorities the status of a resident of the state with which Russia has concluded the double taxation agreement. The confirmation may be presented both before payment and within one year after the termination of the tax period on results of which the taxpayer claims for tax privileges.

Tax control in the Russian Federation

The Federal Tax Service controls observance of the tax legislation in Russia. Tax authorities effect off-site and on-site tax inspections of taxpayers, payers of duties and tax agents. A tax inspection may cover only three calendar years of activity of a taxpayer, payer of duties or a tax agent, directly preceding the year of the inspection.

When effecting an off-site tax inspection, a tax authority requests documents from a taxpayer inspected and on their basis declares a decision. When effecting an on-site inspection officers of a tax authority visit the office of a taxpayer and familiarize themselves with documents directly on his territory. Effecting off-site and on-site tax inspections on the base of article 93,2 of TCRF a tax authority is entitled to request necessary information of a taxpayer's activity connected with other persons.

It is necessary to pay as much attention as possible to tax inspection as it may result in calling to liability. On the termination of a tax inspection a report of tax inspection is delivered. In the event of revealing violations of the tax legislation, an examination in the tax authority of the inspection materials is performed, resulting in decision on either calling to liability or refusing to call to liability. For fulfilling a decision of calling to liability a tax authority may on its own behalf, without addressing to the court, take provisional measures, for example, write-off money from the bank account of the taxpayer or arrest his property. Decisions of tax authorities may be appealed in court.

In this article the authors have considered in brief the main provisions of taxation in Russia: tax legislation, types of taxes, elements of taxes (tax rates), the status of a resident and a non-resident or a foreign organization as well as peculiarities of tax control in the Russian Federation. As a rule, in practice difficulties in the tax sphere are caused by dynamic change of Russia's tax legislation. Clarifications of the legislation rendered by the tax service, court practice as well as assistance of professional tax lawyers in questions requiring timely solutions are the main means that help to avoid problems in the tax sphere when conducting business on the territory of the Russian Federation.