

The Brief

March - April 2013

Russia - Monthly Tax Update

- **Order of the Ministry of Finance of the Russian Federation and the Federal Tax Service of the Russian Federation No. MMV-7-12/22@ dated 21 January 2013**

The Ministry of Finance of the RF and the Federal Tax Service of the RF adopted (i) a new form of the Certificate on the taxpayer's fulfillment of the duty related to payment of taxes, penalties and interest (the "**Certificate**"), (ii) a filing procedure of the Certificate and (iii) a recommended format of submitting of the Certificate.

- **Information Letter of the Central Bank of the Russian Federation (the "CBR") No. 42 dated 28 March 2013**

The CBR provided certain clarifications related to the application of the Instruction of the CBR No. 138-I dated 4 June 2012, in particular, the CBR clarified that the amount of penalties should not be taken into account for outlining the total amount of a contract in a passport of transaction.

- **Letter of the Ministry of Finance of the Russian Federation No. 03-02-07/1/2031 dated 1 February 2013**

The Ministry of Finance of the RF outlined that tax authorities could refuse to accept tax declarations in paper format on the ground of absence of company stamps in submitted tax declarations.

- **Letter of the Ministry of Finance of the Russian Federation No. 03-03-10/8 dated 23 January 2013 and the Federal Tax Service of the Russian Federation No. ED-4-3/859@ dated 24 January 2013**

The Ministry of Finance of the RF and the Federal Tax Service of the RF clarified that monthly advanced payments for the first quarter of the year 2013 should be paid by the responsible member of the consolidated group of taxpayers (the "**CG**") as a taxpayer, with the separate subdivisions according to Article 288 of the Tax Code of the RF (the "**TC RF**").

- **Letter of the Federal Tax Service of the Russian Federation No. ED-4-3/2113@ dated 11 February 2013**

The Federal Tax Service of the RF provided clarifications regarding inclusion of information into profit tax declaration related to adjustment of prices under Russian transfer prices rules. Moreover, tax authorities recommend taxpayers to attach an explanatory note to profit tax declarations, enclosing the above mentioned information, in particular, information about controlled deals in respect of which the taxpayer adjusted the amount of the tax base and amount of profit tax (notably, a number and date of the agreement, the cost of the transaction under agreement, the sum of the adjustment, information about the parties to the contract (individual taxpayer numbers of the parties) and other related information.



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- **Letter of the Ministry of Finance of the Russian Federation No. 03-03-06/1/7 dated 14 January 2013**

The Ministry of Finance of the RF outlined that a taxpayer couldn't create a bad debt reserve for the indebtedness secured by a pledge or warranty.

- **Letter of the Ministry of Finance of the Russian Federation No. 03-03-06/1/5798 dated 28 February 2013**

The Ministry of Finance of the RF clarified that fixed assets which are subject to state registration and which were put into operation before 1 January 2013 should be depreciated from the date of submitting of documents for state registration.

- **Letter of the Ministry of Finance of the Russian Federation No. 03-07-11/6175 dated 1 March 2013**

The Ministry of Finance of the RF outlined that if, according to Article 105.3.6 of the TC RF, a taxpayer on his own initiative, within Russian transfer pricing rules, corrected the tax base of certain taxes and the amounts of such taxes payable to the budget, in particular VAT, such taxpayer should not issue adjusted VAT invoices. Consequently the respective input VAT treated as offsettable by a buyer should not be corrected by the buyer.

- **Letter of the Ministry of Finance of the Russian Federation No. 03-07-14/02 dated 15 January 2013**

The Ministry of Finance of the RF clarified that a taxpayer can offset input VAT in a tax period when the taxpayer has a right to treat such input VAT as offsettable. In the case that the taxpayer offsets the input VAT in the consequent tax periods, an adjusted tax declaration should be submitted for the tax period in which the taxpayer had a right to treat such input VAT as offsettable.

- **Letter of the Ministry of Finance of the Russian Federation and Federal Tax Service of the Russian Federation No. ED-4-3/2254@ dated 12 February 2013**

The Ministry of Finance of the RF and the Federal Tax Service of the RF outlined that in a case where the amount of expenses on the purchase of a certain property exceeds the amount of income received from sale of such property by an individual, the negative difference should not be accounted for in determination of capital gain from sale of other property by the individual for personal income tax purposes, or in determination of taxable base for personal income purposes by the individual for the respective tax period.

- **Letter of the Ministry of Finance of the Russian Federation and the Federal Tax Service of the Russian Federation No. ED-3-3/743@ dated 5 March 2013**

The Ministry of Finance of the RF and the Federal Tax Service of the RF clarified that *final* resident status of individuals for personal income tax purposes should be determined at the end of a calendar year (i.e. an

individual can be treated as a Russian tax resident if he stays within the territory of the RF for not less than 183 days in aggregate during the calendar year).

- **Letter of the Ministry of Finance of the Russian Federation No. 03-04-05/4-1415 dated 19 December 2012**

The Ministry of Finance of the RF clarified that the date of obtaining of income in the form of material gain for personal income tax purposes related to the purchase of securities is the date of the transfer of ownership to those securities, according to the registrar statement from the shareholder register.

- **Letter of the Ministry of Finance of the Russian Federation No. 03-04-06/6472 dated 5 March 2013**

The Ministry of Finance outlined that, based on the Resolution of the Presidium of the High Arbitration Court of the RF No. 4357/12 dated 11 September 2012, monetary funds paid to an employee for a one-day business trip are not per diem expenses. However, such amounts, as well as per diems, can be exempted from personal income tax, even if the confirmation documents are not present, within the amount of 700 roubles for business trips within the territory of the RF and within the amount of 2500 roubles for business trips abroad.

- **Decision of the High Arbitration Court of the Russian Federation No. 153/13 dated 25 March 2013**

The High Arbitration Court of the RF stated that in the case that a seller enters into an agreement with a buyer through an agent, the agent should not be mentioned as a seller in the VAT invoices issued by the agent to a buyer, otherwise the outlining of the agent as a seller in the respective VAT invoice could make it impossible for the buyer to treat the respective input VAT as offsettable.

- **Resolution of the Federal Arbitration Court of the Moscow Region No. A40-72960/12-116-155 dated 23 January 2013**

The Federal Arbitration Court stated that if a taxpayer doesn't have controlled outstanding indebtedness at the end of the reporting period but such indebtedness existed during such reporting period, the "thin capitalization" rules should apply.

- **Resolution of the Federal Arbitration Court of the Moscow Region No. A40-54227/12-90-293 dated 15 March 2013**

The Federal Arbitration Court stated that expenses could be declared as deductible for profit tax purposes in a tax period when respective confirmation documents were received by a taxpayer, even if such expenses were incurred in previous tax periods, and that submission of a revised profit tax declaration for such previous period by a taxpayer is not required.



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