

LT in focus

Appealing Federal Tax Service explanatory letters not registered by the RF Government and not published according to the established procedure



On 31 March 2015, a Resolution of the RF Constitutional Court was published on the question of the possibility of appealing Federal Tax Service explanatory letters, which have not been registered by the government and have not been published according to the established procedure.

The question was discussed for a long period of time and the RF Supreme Arbitration Court changed its approach towards it. In a number of cases, the RF Supreme Arbitration Court has considered essentially similar disputes, not restricting itself to the formal definition of a regulatory act.

However in this case, the RF Supreme Arbitration Court did not find a basis for its consideration, having stated that a Federal Tax Service letter may not be appealed in the manner prescribed for the appellation of regulatory acts since it is not a regulatory act, judging by its formal technicalities.

Having considered the dispute, the RF Constitutional Court came to the conclusion that legislative recognition of the judicial process for the appellations of the letters is necessary, but subject to certain conditions, namely:

1. The letters should practically establish, amend or appeal rules required by the general public;
2. The letters should be designed for repeated use and thus have a generally regulative effect on tax relationships.

In addition, the RF Constitutional Court noted that in instances when clarifications contained in a letter do not go beyond the scope of an adequate interpretation of the regulations of tax legislation and do not entail amendments to the legal regulation of the tax relationship at hand, the interested parties may be refused a judicial review of the act according to the prescribed manner for challenging regulatory acts.

Regardless of the fact that the criteria developed by the RF Constitutional Court can bring about disputes during the consideration of a particular case, in general, we believe this is good for taxpayers.

In this way, the position on the inadmissibility of any restrictions on the right to judicial protection as enshrined in Article 46 of the RF Constitution is affirmed.

During the speeches of the representatives of the Federal Tax Service and the RF Ministry of Finance, all authorized representatives of the RF State Duma and Procuratorate made the argument that there is no need to establish a judicial process for the appellations of letters of government bodies, in as far as it is possible to appeal concrete actions by the tax authorities on the basis of such letters and therefore no infringement on the law on judicial appeal exist.

However, the RF Constitutional Court did not agree with this and stated that the RF Constitution guarantees the ability to defend rights by all possible means. Therefore, the removal of the taxpayer's right to appeal letters as regulatory acts is an infringement on the right to judicial appeal, even when the ability to appeal concrete actions, taken on the basis of such letters, is retained.

In addition, the considered Resolution presents the possibility for a "choice of forum" in a number of instances, meaning a choice of courts that will consider the dispute with the government body.

For example, if the tax authorities refer to a letter of the RF Ministry of Finance or Federal Tax Service Letter in a decision on a dispute, it is possible to appeal to the RF Supreme Court immediately and not need to appeal to the regional arbitration court.

In this situation, appealing to the RF Supreme Court allows the immediate reception of a final ruling on a dispute, which takes less time than passing through all the procedures of inferior arbitration courts.

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