



Legislative Tracking

Be in the know

Contents

[Russian Supreme Court position on deducting severance payments for tax purposes](#)

[Outlook on government support for non-energy exports](#)

Court practice

[Russian Supreme Court position on deducting severance payments for tax purposes](#)

Russian Supreme Court Ruling No. 305-KG16-5939 of 23 September 2016 on case No. A40-94960/2015 has been published. The subject of the dispute was the recovery of expenses on severance payments for profit tax purposes.

The court of the first instance and the appeal court ruled in favour of the tax authorities, holding that, as agreed by the parties, the severance payments were not related to the employees' fulfilment of their employment duties and did not act as an incentive for the employees to continue their employment duties. On the contrary, they were aimed at terminating the employment duties.

The cassation court supported the position of the taxpayer, indicating that the new version of item 9, Article 255 of the Russian Tax Code, in accordance with which severance payments may be deducted for tax purposes, does not introduce a new rule, rather it is aimed at eliminating ambiguity in the application of Article 255 of the Russian Tax Code.

The Russian Supreme Court remitted the case to the court of the first instance, having made several important conclusions:

- The fact that severance payments are based on addenda to labour agreements and employment termination agreements, and the fact that the payments are made to the employee in relation to the termination of employment (termination of employment duties), does not preclude the recognition of these expenses for tax purposes pursuant to Article 255 of the Russian Tax Code.

As regards past court practice, the courts ruled in favour of the tax authorities by applying precisely these arguments (for example, cases No. [A40-188948/2015](#), [A40-148068/2015](#), [A40-213762/2014](#), [A40-74105/2015](#) and [A40-194080/2014](#)).

- The burden of proof lies on the taxpayer as regards the nature of the disputed payments and their economic justification, and this obligation stands in relation to the new version of item 9, Article 255 of the Russian Tax Code insofar as the changes to its literal meaning merely constitute an attempt to reduce ambiguity in the permissibility of deducting severance payments paid in accordance with an employment termination agreement, rather than consent to deduct any expenses.
- The following factors may indicate a lack of economic justification for severance payments in accordance with employment termination agreements: large payment amounts and their clear inconsistency with the usual payment amounts that may be counted on by the terminated employee in accordance with Article 178 of the Russian Labour Code, as well as their inconsistency with the length of the employee's service, the employee's labour input and other circumstances characterising the employee's labour activities.

Therefore, based on the Russian Supreme Court's Ruling:

- It is possible to recover expenses on severance payments (including in accordance with the previous version of item 9, Article 255 of the

Russian Tax Code) on the condition that the economic justification of the expenses can be supported;

- The new version of item 9, Article 255 of the Russian Tax Code does not imply that expenses on severance payments will “automatically” be accepted by the tax authorities and does not reduce the risk of disputes arising in relation to the economic justification of such expenses.

[Details](#)

Source: e-Justice: Catalogue of Commercial Cases

[Back to top](#)

Media review

Outlook on government support for non-energy exports

On 27 September 2016, a session of the Presidium of the Russian Presidential Committee on Strategic Development and Priority Projects took place at which certain issues related to support for non-energy exports were discussed.

The following areas of stimulation were discussed:

- Enhancement of the system of support for export and international cooperation;
- Simplification of export procedures;
- Access to foreign markets for Russian products;
- Establishment of pilot trade houses and industrial zones in key export markets;
- Establishment of a consultation centre at the Russian Export Center for exporters wishing to find out about market conditions and the development of international cooperation;
- Promotion of agricultural and industrial goods in the Asia-Pacific region, including through e-trade.

[Details](#)

Source: Kommersant

[Back to top](#)



deloitte.ru

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as "Deloitte Global") does not provide services to clients. Please see www.deloitte.com/about for a more detailed description of DTTL and its member firms.

Deloitte provides audit, consulting, financial advisory, risk management, tax and related services to public and private clients spanning multiple industries. Deloitte serves four out of five Fortune Global 500® companies through a globally connected network of member firms in more than 150 countries bringing world-class capabilities, insights, and high-quality service to address clients' most complex business challenges. To learn more about how Deloitte's approximately 225,000 professionals make an impact that matters, please connect with us on [Facebook](#), [LinkedIn](#), or [Twitter](#).

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively, the "Deloitte Network") is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser. No entity in the Deloitte Network shall be responsible for any loss whatsoever sustained by any person who relies on this communication.

5 Lesnaya Street
Moscow, 125047, Russia

© 2016 RO of the company "Deloitte & Touche RCS Ltd. All rights reserved.

To no longer receive emails about this topic please send a return email to the sender with the word "Unsubscribe" in the subject line.