

## LT in focus



# Changes to the Russian Tax Code Relating to Payment of Personal Income Tax

### ***Information for individuals and legal entities***

On 8 June 2015, Russian President signed Federal Law No. 146-FZ "On amendments to Chapter 23 of part two of the Tax Code of the Russian Federation" (the "Law") which extends the list of property tax deductions available when performing transactions with shares in a company's share capital. Moreover, the Law introduces changes to Art. 232 of the Russian Tax Code, which deals with the elimination of double taxation.

The amendments are effective from 1 January 2016.

In this issue, we would like to draw your attention to some specific features of this Law as they relate to the extension of the list of property tax deductions and elimination of double taxation.

### **Extension of the list of property tax deductions**

In accordance with the current version of Chapter 23 of the Russian Tax Code, an individual taxpayer who is a shareholder/participant in a company may deduct the amount of actually incurred and documented expenses related to the acquisition of a share only upon its full or partial sale. The effective legislation does not specify a procedure for applying personal income tax to amounts received when the company's share capital is being decreased, the company is being liquidated or the individual otherwise leaves the company. For this reason, there is ambiguity in interpreting and applying the legal norms for the taxation of this kind of transaction resulting in the practice in two opposite positions supported both by the tax authorities and the courts. One position<sup>1</sup> is that such amounts are taxable in full without the right to offset expenses incurred earlier against them. The other one<sup>2</sup> is that taxable income does not arise unless the amount paid exceeds the contribution made by the taxpayer earlier.

The Law eliminates this ambiguity, extending rights for property tax deductions in the following cases:

- when exiting the company;
- when funds/property are transferred to the participant in the company in the case of liquidation;
- when decreasing the nominal value of a share in the company's share capital.

In the above situations, taxable income may be reduced by the amount of expenses actually incurred and documented, which relate to the acquisition of the share, including amounts or the value of other property contributed to the share capital upon the incorporation of the company or upon the increase of its share capital, and expenses on the acquisition of the share.

Where there are no documented expenses, the credit may be claimed in the amount of income received but not more than 250 thousand rubles per tax period.

Moreover, it is stipulated that upon the sale of part of a share or reduction of the company's share capital, expenses on the acquisition of the share are deducted from the income received in proportion to the reduction of the share of the taxpayer in the share capital.



<sup>1</sup> Based on the provisions of para. 2, sub-item 2, item 2 of Art. 220 p. 2 of the Russian Tax Code

<sup>2</sup> Based on the provisions of Art. 41 of the Russian Tax Code

The changes may be of interest to companies performing business restructuring, including in connection with legislative changes enacted within the framework of the "deoffshorisation" policy.

## **Elimination of double taxation**

The law sets out the procedure for claiming credit for amounts paid in a foreign country with which Russia has a tax treaty, and the procedure of tax exemption of individuals' income in Russia.

### ***Period for the claiming of the credit is extended***

An important change relates to the extension of the period for the declaration of the amount of tax paid in a foreign country to be offset in Russia. The tax credit may be claimed within three years after the tax period in which the respective income was received. The current version of the Tax Code stipulates that documents confirming the right to offset the tax shall be submitted to the tax authorities by 31 December of the year following the reporting tax period. Therefore, the tax authorities often disallow the tax credit for tax paid abroad if the required supporting documents are not submitted within this timeframe, which actually means that double taxation is unavoidable where the timing of tax return submission and tax payment in the foreign country are later than in Russia.

### ***List of documents which may be used to claim the credit is extended significantly***

Furthermore, the list of documents which confirm the right to the Russian tax credit for tax paid abroad has been extended significantly. It will be sufficient to submit a copy of the tax return filed by the taxpayer in the foreign country with a copy of the payment document confirming the payment of the tax. For withholding tax, it will be necessary to submit a copy of the document issued by the source of payment, which contains information on amounts of income paid monthly and tax withheld at source. All supporting documents prepared in a foreign language shall be accompanied by notarised Russian translation. These norms significantly ease the procedure for claiming tax credit for taxes paid abroad and allow taxpayers not to submit documents certified by the tax authorities of the foreign country to the Russian tax authorities, which is obligatory today.

### ***Procedure of tax residency confirmation is simplified***

The law also simplifies the procedure for confirming tax residency status in a foreign country for the purposes of exempting income from taxation in Russia. Thus, to confirm the status of tax residency in a foreign country, an individual may provide the tax agent with the foreign citizen's passport. If the tax resident status in a foreign country is confirmed before the payment of income, the tax agent does not withhold tax upon the payment of income to such a taxpayer. If the confirmation is provided to the tax agent after the payment of income exempted in Russia, the tax agent reimburses the tax withheld following the procedure stipulated by the Russian Tax Code. This procedure eliminates the need to provide documents confirming the payment of tax abroad and significantly simplifies the process of tax payment administration by tax agents.

If a passport or another similar document does not allow to identify the status of tax residency in a foreign country for an individual, the individual shall submit an official confirmation of the status of tax resident in the foreign country to the tax agent. The confirmation must be issued by a competent authority of the respective foreign country.

In the absence of a tax agent at the date of the individual's confirmation of tax resident status in a foreign country, the law provides for a procedure of tax reimbursement by tax authorities on the basis of a tax return.

Please [follow the link](#) to see the officially published text of the Law (Federal Law No. 146-FZ) in Russian.

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