



LT in focus

Reviews of RF Supreme Court and RF Constitutional Court rulings regarding taxation for 2014 and H1 2015

Court practice

On 24 July 2015, reviews of RF Supreme Court and RF Constitutional Court rulings regarding taxation were published.

The reviews include conclusions of the supreme judicial authorities on controversial taxation issues reviewed by arbitral courts throughout 2014 and H1 2015 regarding:

- Personal income tax
- VAT
- Corporate profit tax
- Corporate property tax
- Transport tax
- Land tax
- Mineral extraction tax
- Stamp duty
- Excise
- Penalties
- Tax prosecution
- Gaining unsubstantiated tax benefits
- Tax audits
- Tax withholding by tax agents

This edition covers the most significant rulings of the RF Supreme Court and RF Constitutional Court included in the reviews and brought to the attention of the tax authorities.

General taxation issues

Court Ruling	Court Conclusions
RF Constitutional Court Ruling No. 822-O of 22 April 2015	Failure by a tax authority to issue the tax notice envisaged by item 1, Article 79 of the RF Tax Code within the stipulated timeframes shall not by default violate the subsequent tax collection procedure applicable to the relevant taxpayer.
RF Constitutional Court Ruling No. 262-O of 17 February 2015	With allowances to the priority of special provisions, overwithheld taxes shall not be refunded according to the standard procedure stipulated by Article 78 of the RF Tax Code (i.e. based on a taxpayer's application to the tax inspectorate), but according to another procedure, i.e. based on a tax agent's application to the tax inspectorate upon the taxpayer's application.
RF Supreme Court Ruling No. 305-KG14-2599 of 23 October 2014	Should the taxpayer file a revised tax return with a reduced amount of tax, penalties for the previous revised tax declaration with an increased amount of tax payable shall be refunded.
RF Constitutional Court Ruling No. 1822-O of 18 September 2014	Article 50 of the RF Tax Code grants tax authorities the right to verify price accuracy as an enforcement measure only, and does not provide for <u>the right to adjust prices</u> and fix them for the deal in violation of the decision of the parties.
RF Supreme Court Ruling No. 305-KG15-606 of 5 March 2015	Since the tax legislation envisages the possibility of filing a revised tax declaration within three years from the tax period, the possibility of conducting tax audits beyond this term shall not therefore violate anyone's interests.



Value added tax

Court Ruling	Court Conclusions
RF Supreme Court Ruling No. 63-O of 22 January 2014	Recovery of VAT beyond the 3-year period stipulated by item 2, Article 173 of the RF Tax Code shall only be possible whenever objective barriers to carrying out the recovery procedures within the stipulated timeframe existed.
RF Supreme Court Ruling No. 305-KG15-1055 of 24 March 2015	Amounts of VAT not refunded on the grounds of missing the three-year period stipulated for the refund shall not be written off as profit-generating operation costs.
RF Constitutional Court Ruling No. 2320-O of 23 October 2014	Amounts of bonuses granted to a taxpayer shall actually be deducted from the cost of goods supplied, which should to be accounted for when calculating the amount of VAT for recovery.
RF Supreme Court Ruling No. 310-KG14-1440 of 6 October 2014	The VAT base shall not include subsidies to the organization for the refund of revenue losses from the sale of new vehicles at a discount (under the Use of Old Automobiles programme)
RF Supreme Court Ruling No. 309-KG14-2300 of 9 October 2014	Should the taxpayer receive tax deductions for assets purchased prior to the deal being recognised as void, the court ruling regarding the return of the assets shall entail the responsibility to restore the amounts of VAT.
RF Supreme Court Ruling No. 309-KG14-2300 of 9 October 2014	The VAT rate, including the zero rate, shall be deemed a mandatory taxation element, and the taxpayer may not apply it in an arbitrary fashion, reduce or increase it, or refuse to apply it.

Corporate profit tax

Court Ruling	Court Conclusions
RF Supreme Court Ruling No. 305-KG14-1498 of 25 December 2015	Should an individual fail to present their gift card within its validity period, the prepayment received by the seller shall be deemed donated assets for the purposes of taxation and included in the taxable income in accordance with item 8, Article 250 of the RF Tax Code.
RF Supreme Court Ruling No. 306-KG14-1683 of 17 September 2014	Reconciliation statements proving the existence of liabilities between a taxpayer and its counteragents shall not only prove the existence of the liabilities, but also be deemed circumstances indicating a break in the limitation period.
RF Supreme Court Ruling No. 306-KF15-289 of 6 March 2015	The taxpayer shall have the right to deduct the cost of goods obtained during the application of a simplified tax regime for the goods as expenses, provided the goods were sold later during the application of the general tax regime.
RF Supreme Court Ruling No. 305-KG14-2599 of 23 October 2014	Should the taxpayer receive residence certificates after the actual income payment to a foreign person, the tax authorities shall not have the right to charge penalties for the period from the income payout to the receipt of the certificate.

Mineral extraction tax

Court Ruling	Court Conclusions
RF Supreme Court Ruling No. 302-KG15-1144 of 26 March 2015	As a tax base element, losses during extraction operations shall be calculated for each tax period in which the organization extracts natural resources.
RF Supreme Court Ruling No. 303-KG14-3525 of 15 December 2014	The calculation of in-situ extracted volumes shall not exclude the taxpayer's obligation to comply with the regulations of item 7, Article 339 of the RF Tax Code, which envisage the obligation to account for the entire range of manufacturing operations.

Unsubstantiated tax benefits

Court Ruling	Court Conclusions
RF Supreme Court Ruling No. 304-KG14-7139 of 23 January 2015	The purposeful, formal splitting of a business in order to lower the staff headcount by distributing the personnel across several organizations to become eligible for a specific tax regime shall be deemed the receipt of an unsubstantiated tax benefit.

RF Supreme Court Ruling No. 308-KG14-2792 of 29 October 2014	To prove the rendering of consultancy services, the taxpayer shall present primary accounting records confirming the volumes, costs and number of services rendered. However, the taxpayer failed to present any documents confirming the services performed by the consultant, service volumes, nature and outcomes, specific services paid for, and final calculations of the service rendered.
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We sincerely hope the information presented in this issue is useful and interesting. Should you have any questions on these topics, please feel free to contact our specialists.

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