SBER SOLUTIONS

Legislative Changes Review

November, 2020

Main events in November:

- There was adopted a federal law on amending the Tax Code of the RF
- There was approved a new form of 6-NDFL calculation, which will apply since 2021
- There was adopted a law on PIT progressive rate. The amendments in the RF Tax Code will be effective from 01.01.2021
- A part of regulatory acts in the scope of labor protection will be cancelled in 2021
- From 06.11.2020 the Federal Constitutional Law on the Government of the Russian Federation entered into force
- There was expanded a competence of the Constitutional Court of the RF on questions of execution decisions of inter-state bodies and foreign and international courts

Bookkeeping and Tax Accounting

1. The tax authorities have changed their opinion regarding the question of interim dividends payment

The Letter of the FTS of 19.10.2020 No.SD-4-3/17130@

Comments

The Federal Tax Service of Russia has sent a letter to the lower subdivisions with the opinion of the Ministry of Finance of the Russian Federation on the taxation of interim dividends (based on the results of a quarter, half a year or 9 months).

If, according to the results of annual financial statements, the net profit turned out to be less than dividends, there is no need to re-qualify the dividends when calculating taxes. The legislation does not require re-qualification of dividends in such cases.

This opinion differs from the position of the Ministry of Finance, expressed earlier in the letter of the Ministry of Finance of Russia of 13.04.2016 No.03-03-06/2/21011.

Previously, the Ministry of Finance explained as follows: if the amount of paid interim dividends turned out to be higher than the net profit received by the company at the end of the year, the resulting difference is recognized as income of the company participants, to which the tax rate of 20% is applied, specified in p.1 art.284 Tax Code of the RF.

2. Your creditor was excluded from the Unified State Register of Legal Entities – is it necessary to include the debt amount into incomes?

The Letter of the Ministry of Finance of Russia of 01.10.2020 No.03-03-06/1/85891

The Letter of the Ministry of Finance of Russia of 16.09.2020 No.03-03-07/81257

The Letter of the Ministry of Finance of Russia of 14.09.2020 No.03-03-13/80493

Comments

The Ministry of Finance has repeatedly provided explanations on the question of allocating accounts payable into incomes when your creditor is excluded from the Unified State Register of Legal Entities.

Whether or not to include the accounts payable into incomes depends on the reasons why your creditor was excluded from the USRLE.

They can be excluded from the USRLE due to the following reasons:

- if no reports on taxes and levies were submitted within 12 months, and there were no transactions on any account of the organization (in this case, the inoperative creditor company is equated to a liquidated one);
- if it is impossible to liquidate the organization, since there aren't funds for this, and the costs cannot be transferred to the founders;
- if there is a record of false information in the Unified State Register of Legal Entities, and more than 6 months have passed since its entry.

The Ministry of Finance commented that it is necessary to write off accounts payable to non-operating incomes only in the first case. There is no such a requirement in the second and third cases.

3. There was signed a protocol on amending the Agreement on avoidance of double taxation with Luxembourg, which will increase the income rates in kind of interests and dividends up to 15%

Information of the Ministry of Finance "Russia and Luxembourg have signed a protocol on amending the tax agreement between the countries" (published on the website https://minfin.gov.ru)

Comments

The protocol signed by Russia and Luxembourg on amending the Agreement between the Russian Federation and the Grand Duchy of Luxembourg on the avoidance of double taxation and prevention of tax evasion with respect to taxes on incomes and property of June 28, 1993 (hereinafter - the Agreement) contains the following provisions:

- as a general rule, incomes in the form of interests and dividends shall be taxed according to the legislation of the source of payment, but the rate should not exceed 15% (i.e. when a Russian company pays incomes to a Luxembourg company, the rate of 15%, effective in the RF, will apply);

- a preferential rate of 5% in respect of incomes in the form of dividends and interests will apply at the source of payment only for institutional investments, as well as for public companies, at least 15% of which shares are in free circulation and owning at least 15% of the company capital, paying the specified incomes during the year. In addition, the exceptions shall apply to the interest incomes of such companies, paid on bank loans, on circulating Eurobond loans, as well as on debt obligations to governments, central banks, pension funds and insurance companies of the countries, participating in the agreement.

The ratification of the protocol shall be performed before the end of this year, so that its provisions begin to apply from January 1, 2021.

It is also indicated in the message of the Ministry of Finance that negotiations are ongoing on amending the tax agreement with the Netherlands.

4. The government has extended tax holidays for small and medium-sized businesses

The Resolution of the RF Government of 07.11.2020 No.1791

Comments

The Government has decided to prolong deadlines for some taxes and insurance contributions payable by small and medium-sized businesses. It is specified in the Resolution No.1791 the organizations and individual entrepreneurs in which industries will receive an additional benefit, provided their inclusion into the Unified Register of SMEs.

New support measures apply to catering, hotel business, services for the organization of conferences and exhibitions, household services to the population, tourism, the sphere of culture, the organization of leisure and entertainment (except for the production of handicrafts), physical culture, recreation activities and sports.

For these organizations and individual entrepreneurs, the deadlines for paying taxes (except for VAT, tax on professional income, taxes paid by tax agents) and advance tax payments for March and I quarter of 2020, as well as insurance contributions for March, are extended for another 3 months (it was 6 months). In total (subject to changes) the terms are extended by 9 months.

The advance payment deadlines on transport, land and property taxes for 1 Q 2020 were extended until 30 December 2020 (previously – until 30 October 2020).

The deferred payments may be performed by installments, as before.

5. New obligatory payment details were added to VAT-invoices

The Federal Law of 9 November 2020 No.371-FZ

Comments

In 2019 the EAEU countries decided to create a goods traceability system. In this regard, an experiment is being carried out in Russia in 2020 - some imported goods are subject to traceability according to the approved list. So far, these goods include refrigerators, forklift trucks, washing machines, excavators, monitors, baby carriages and metal furniture.

Based on the results of the experiment the Law No.371-FZ was adopted, which introduces a mechanism for the traceability of goods in the Tax Code of the Russian Federation since 1 July 2021.

The new version of the RF Tax Code provides that when issuing a VAT-invoice for a traced product, taxpayers will be required to include into VAT-invoices as follows:

- A registration number of the consignment of goods subject to traceability (RNPT), units of measure and the number of traced goods;
- Quantitative unit of measurement of goods used for the purpose of traceability;
- The quantity of goods subject to traceability, in the quantitative unit of measurement of goods, used for the purpose of traceability.

Taxpayers carrying out transactions with traceable goods will be required to submit reports to the tax authorities on transactions with traceable goods and documents, containing traceability details, in cases and in the manner those will be established by the Government of the Russian Federation.

The Tax Code has provided the right to tax authorities to demand in the course of a cameral audit of documents in the event of discrepancies:

- Between data in a VAT tax return and data, contained in the taxpayer's report;
- Between data in a VAT tax return and data on the specified transactions, contained in the report, submitted to the tax body by another taxpayer who performs transactions with goods subject to traceability;
- Between data in the taxpayer's report and data on the specified transactions, contained in the report, submitted to the tax body by another taxpayer.

It shall be noted that the Government of the RF plans to gradually extend the list of import goods, subject to traceability.

6. Be careful: if you don't submit an application for the transition from UTII to STS before 31 December, the tax authorities will transfer you to OSNO

Information of the Federal Tax Service of 30 October 2020

Comments

Let's kindly remind you that Unified Tax on Imputed Income (hereinafter – the UTII) won't apply since 1 January 2021 (the ground – the Federal Law of 29.06.2012 No.97-FZ).

It is important to account that organizations and IEs those were UTII payers in 2020 will be automatically transferred to the general taxation regime (hereinafter – the OSNO) but only in that case, if before the end of 2020 they don't transfer to another taxation regime, for example, the Simplified Taxation System (hereinafter – the STS).

The FTS has informed taxpayers that for the transfer to the STS it's necessary to submit a notification to the inspection at the place of the organization location (or the place of an individual entrepreneur residence) according to the form No.26.2-1 (KND 115001). The form was approved by the decree of the FTS of Russia of 02.11.2012 No.MMB-7-3/829@. A notification can be submitted personally, by a representative or by registered post. It's possible to send a notification by telecommunication channels, and IEs may also submit a notification through the service "Personal Account of a Taxpayer – IE" in section "My Taxation System".

The tax authorities have clarified that it's necessary to indicate in the notification on transition to the STS on the line "Received incomes for nine months of the year of the notification submission" the amount of incomes for 9 months of 2020 per types of activity, subject to taxation in the scope of the OSNO.

By reference: the FTS offers assistance to organizations and IEs on its official website regarding selection of the taxation regime instead of the UTII in section:

Instead of the UTII: which tax regime you may choose?

7. There was adopted a federal law on amending the Tax Code of the RF

The Federal Law of 23.11.2020 No.374-FZ

Comments

Amendments were introduced to the first and second parts of the RF TC. The Law provides for a correction of norm of the Tax Code regarding VAT, excises, profit tax, PIT, insurance contributions, property tax, transport and land tax.

The most significant changes are specified below:

- The Law introduced additions to article 80 RF TC which set forth a list of cases when a tax return (calculation) will be considered as non-submitted (pp."b" p.16 art.1 the Law):

  - If the tax return was signed by a non-authorized or disqualified person, by a person, about whom there's data on the date of his death, by a person, with respect to whom there's inaccurate data in the USRLE;

  - If the tax return was submitted after the date of cease of the person's activity on whose behalf it was submitted.

Moreover, clause 174 RF TC was added by clause 5.3, according to which a VAT tax return will be recognized as non-submitted in the reveal of inconsistencies of the tax return indicators with the established controlling ratios. So far, the list of controlling ratios of a VAT tax return is set forth by the Letter of the FTS of Russia of 23.03.2015 No.GD-4- 3/4550@.

- In article 80 RF TC there were changed the requirements to the execution of a POA, confirming the authorities of a representative for signing a tax return (calculation) (pp. "c" p.16 art.1 the Law). The electronic format of a power of attorney and procedure for its sending by telecommunication channels will be approved by the FTS.
- An authorized representative of an individual entrepreneur or a natural person (not an IE) will be also able to represent interests of the taxpayer on the ground of a power of attorney in electronic form, signed by electronic signature (p.5 art.1 the Law).
- Clause 1 article 70 RF TC was added as follows: debt on penalties may be collected by tax authorities within a year since the day of arrears payment or since the day when the penalty amount exceeded 3 000 RUB (pp. "b" p.12 art.1 the Law).

- According to addition to clause 10 article 78 RF TC interests for untimely return of overpayment can be received without the taxpayer's application. In other cases it's necessary to submit an application (pp. "b" p.14 art.1 the Law).
- Article 102 RF TC has extended the regime of tax secret to data, submitted by the tax authorities to state bodies and local self-governed authorities for the assessment of tax expenses (pp. "b" p.23 art.1 the Law). The list of actions those are not considered as disclosure of tax secret was extended (pp. "a" p.23 art.1 the Law).
- Information on movable property (average annual cost according to accounting data) will be again introduced to the property tax return of organizations (pp. "d", p.16 art.1, pp. "a" p.48 art.2 the Law). It will be needed to show this information in reports for 2020 (p.13 art.9 the Law). Now movable property isn't subject to tax, but it is possible that changes will be made and tax from the cost of movable property will be again taken.
- Articles 170 and 171 RF TC were amended to allow applying VAT deduction on marketing and advertising services, if they're aimed for the realization of program product to export (pp. "a" p.4 and p.5 art.2 the Law). If program software is exempted from VAT payment (pursuant to pp.26 p.2 art.149 RF TC), and provided that the place of these rights realization isn't the territory of the RF, then according to article 148 RF TC it's possible to accept VAT for deduction when performing advertising and marketing expenses for software sale to foreign buyers.
- Interests within VAT and excises reimbursement will be calculated according to the rules of accrual of interests for untimely return of overpayment (pp. "c" p.7, pp. "b" p.8, pp. "b" p.11 art.2 the Law).
- The procedure for the reimbursement of VAT amounts and excises was adjusted: now they won't return taxes if there's a debt not only on federal taxes but also on regional and local taxes (pp. "a" p.7, pp. "b" p.10 art.2 the Law).
- An organization may not account in the scope of expenses the property rights, received gratuitously from an organization or a natural person with a share of participation more than 50% (pp. "a" p.20 art.2 the Law).
- There were established special intervals of values of interest rates on the controlled debt for 2020 and 2021 (p.25 art.2 the Law). In particular, on the debt obligation in rubles, if it arose from a deal, not recognized as controlled one, the interval is from 0% to 180% of the key rate (at present moment – 4,25%). These provisions may apply taking into account the peculiarities of determination of the amount of debt and own capital (p.3 art.8 the Law).
- The Law sets forth a procedure for a taxpayer's interaction with the FTS in case of death or damage of a transport vehicle, subject to transport tax (pp. "b" p.44 art.2 the Law). The taxpayer will have to submit an application with attached documents, confirming death or damage of vehicle. In the absence of documents the tax inspection will require data from relevant authorities. Thereafter the FTS will inform the taxpayer, if accrual of transport tax was terminated.
- The RF Tax Code has special provisions for foreign organizations, recognized as the RF residents, when they will be able to apply 0% rate on profit tax regarding dividends (p.30 art.2 and p.1, 2 art.8 the Law).

A part of amendments will come into force since 1 January 2021, and some provisions shall apply to the period from 1 January 2020.

8. The FTS obliged tax authorities to apply the position of the Constitutional Court of the RF when taking property tax on cadastral value

The Letter of the FTS of 16.11.2020 No.BS-4-21/18729@ "On Execution of the Resolution of the Constitutional Court of the RF of 12.11.2020 No.46-P on Case on Checking Constitutionality of pp.1 p.4 art.378.2 Tax Code of the RF"

Comments

As we indicated in the last review, the Constitutional Court obliged to take into account in taxation the actual use of the building, and not only the exclusively permitted use of the land plot, namely:

By the Decree of the Constitutional Court of the Russian Federation of 12.11.2020 No.46-P (hereinafter - the Resolution), it was recognized that pp.1 p.4 art. 378.2 the Tax Code of the RF, in its constitutional and legal meaning, does not imply the possibility of determining the tax base for property tax of organizations based on the cadastral value of a building (structure) solely due to the fact that one of the types of permitted use of the land plot leased by the taxpayer, on which the immovable property belonging to it is located, provides for the placement of shopping facilities, public catering and (or) consumer services, regardless of the purpose and actual use of the building (structure). Thus, the Constitutional Court obliged to take into account the purpose and actual use of the building (structure) in taxation.

The FTS explains in the Letter to the subordinated tax authorities that the constitutional and legal meaning of pp.1 p.4 art.378.2 the Tax Code, revealed in the Resolution of the Constitutional Court, is generally binding, which excludes any other interpretation of it in law enforcement practice.

In connection with the foregoing, the FTS obliges tax authorities to ensure in each case sending of a request to the authorized body on the validity of the inclusion of data into the list, determined in accordance with pp.1 p.7 art.378.2 the Tax Code, in the event of disputing by a taxpayer-organization on the basis of the legal position, set out in the Resolution, the appliance of the tax base on the ground of the cadastral value.

9. The Bank of Russia has introduced some amendments to the procedure of cash transactions performance

The Decree of the Bank of Russia of 05.10.2020 No.5587-U "On Amending the Decree of the Bank of Russia of 11 March 2014 No.3210-U "On the Procedure for Maintaining Cash Transactions by Legal Entities and the Simplified Procedure for Maintaining Cash Transactions by Individual Entrepreneurs and Subjects of Small Entrepreneurship" (registered in the Ministry of Justice on 11.11.2020 No.60850)

Comments

The Bank of Russia has cancelled some restrictions within settlements with accountable persons. The new procedure for maintaining cash transactions is effective from 30 November 2020.

The new Procedure doesn't contain a requirement on the need to submit expense reports within 3 days. Now a director of an organization or an IE may individually determine the deadline during which an accountable person shall obligatory submit an expense report (p.6.3 the Procedure).

In addition, it was specified in the new Procedure that it is allowed to execute one administrative document for several cash disbursements to one or several accountable persons, indicating the names and initials, the amount of cash and the terms for which they are issued (p.6.3 the Procedure). This was not specified, but it was allowed before.

Those separate subdivisions that do not store cash and, at the end of cash transactions, hand it over to the organization cash desk, were allowed not to maintain a cash register (p.4.1 the Procedure).

The cashier was not allowed to issue banknotes even with one defect and was ordered to hand them over to the bank (p.6.1 of the Procedure).

10. The Supreme Court has given court-binding clarifications on how a buyer can prove the right to apply VAT deductions if the supplier has not paid VAT to the budget

Clause 35 the Review of the Judicial Practice of the Supreme Court of the Russian Federation No.3 (2020) (approved by the Presidium of the Supreme Court of the Russian Federation on November 25, 2020)

Comments

The Supreme Court has specified (p.35 the Review) that when disputing the legality of the application of tax deductions on the grounds related to the absence of an economic source for deducting (refunding) of VAT by the taxpayer-buyer, the following is important:

- the reality of acquisition of goods (works, services) thereby to carry out its taxable activities;
- as well as whether the taxpayer-buyer pursued the goal of tax evasion as a result of actions agreed with other persons;
- or, in the absence of such a goal, he knew or should have known about the violations committed by these persons.

When assessing the exercise of due diligence by a taxpayer, it is necessary to proceed from behavior in the civil (economic) turnover, expected from its reasonable participant in comparable circumstances.

Background

The buyer accepted VAT for deduction on the ground of VAT-invoices, received from the supplier. The tax authorities made a conclusion that the documents, provided by the taxpayer, don’t confirm the reality of goods delivery by this contractor and it additionally accrued VAT, penalties and fines.

Position of the Supreme Court

A refusal in the right for a tax deduction may occur if the process of selling goods (works, services) is not accompanied by the compliance with the obligation corresponding to this right to pay VAT to the budget in a monetary form, which is pointed out in the decision of the Constitutional Court of the Russian Federation of November 4, 2004 No.324-O.

However, as has been repeatedly noted in the decisions of the Constitutional Court of the RF, the fulfillment of the obligation to pay taxes does not imply the imposition of responsibility on the taxpayer for the actions of all organizations, participating in the multi-stage process of paying and transferring taxes to the budget: the taxpayer's right for a tax deduction cannot be conditional on the fulfillment by direct counterparties (sellers, suppliers) and their predecessors regarding their obligation to pay VAT, as well as the financial and economic situation and behavior of third parties.

Deprivation of the right to deduct VAT from a taxpayer-buyer who did not pursue the goal of tax evasion as a result of actions agreed with other persons, and in the absence of such a goal, did not know and should not have known about the violations committed by these persons, acting in the framework of the behavior expected from a reasonable participant in economic turnover, in essence, would mean the application of a measure of property liability for non-payment of taxes committed by other persons, including when they distort the facts of their economic activities, to the taxpayer-

buyer who was unable to prevent these violations and (or) avoid the occurrence of their consequences.

Therefore, it is not only the circumstances proven by the tax authority which discredit the performance of tax obligations by the suppliers, but also whether these circumstances should be clear to the taxpayer-buyer in the specific situation of the transaction with the supplier, taking into account the nature and scope of the buyer's activities (whether is it a major transaction and what is the regularity of similar transactions), the specifics of the purchased goods, works and services (the presence of special requirements for the contractor, including licenses and permits to perform certain operations), the specifics of the commercial terms of the transaction (the presence of a significant price deviation from the market level, the supplier has a previous experience of execution of similar transactions), etc.

Distribution of the burden of proof between the tax authority and the taxpayer:

If the tax authority establishes that an economic source of deduction (refund) of VAT has not been created, and the supplier (contractor), during the period of interaction with the taxpayer-buyer, did not have the economic resources (material, financial, labor, etc.) necessary to fulfill the concluded with the buyer contract, in connection with which the transaction was actually executed by other persons to whom the supplier could not transfer the obligation to execute it due to its nominal value, these circumstances may indicate that the taxpayer did not exercise due diligence when choosing a contractor, until otherwise proved by the taxpayer.

On the contrary, entering into relationship with an economic entity which has economic resources sufficient to execute the transaction independently or with the involvement of third parties, the submission by such an entity of accounting and tax reporting reflecting the availability of these resources, gives to the reasonably acting taxpayer-buyer reasons to expect that the transaction will be properly executed by this contractor, and taxes upon its completion will be paid to the budget. In such a situation, it is assumed that the choice of the contractor met the conditions of the business turnover, unless otherwise proved by the tax authority.

We shall note that this position will be taken into account when considering tax disputes in arbitration courts, since according to par.7 p. 4 art.170 the Arbitration Procedure Code of the Russian Federation, the reasoning part of the decision may contain references to reviews of the judicial practice of the Supreme Court of the RF, approved by the Presidium of the Supreme Court of the RF.

Payroll processing

1. There was approved a new form of 6-NDFL calculation, which will apply since 2021

The Decree of the FTS of 15.10.2020 No.ED-7-11/753@

Comments

The previously announced combination of 2-NDFL and 6-NDFL has come true.

The following was approved by the FTS decree:

- New form of 6-NDFL calculation (Exhibit 1 the Decree);
- Procedure for its filling and submission (Exhibit 2 the Decree);
- Format for the submission of the calculation of PIT amounts, calculated and withheld by a tax agent (Exhibit 3 the Decree);

- Form of a certificate on incomes, received by a natural person, and withheld amounts of PIT "Certificate on Incomes and PIT Amounts" (Exhibit 4 the Decree).

Section 1 in the new form 6-NDFL is called "Data on Obligations of the Tax Agent" instead of "Summarized Indicators".

Paid and returned PIT amounts with indication of the period of payment/return are recorded in Section 1.

Section 2 is called "Calculation of Accrued, Withheld and Paid Amounts of PIT" instead of "Dates and Amounts of Actually Received Incomes and Withheld PIT". The amounts of incomes, accrued/actually paid to natural persons, the amounts of withheld, non-withheld and returned tax are shown in Section 2.

In the new form 6-NDFL a certificate on incomes and PIT amounts is specified in kind of an exhibit.

New form of 6-NDFL shall be used since reports for 1 Q 2021, a certificate on the new form shall be issued to employees starting from 2021.

It's necessary to inform on the impossibility to withhold tax, on the amounts of incomes from which tax hasn't been withheld, and on the amounts of non-withheld PIT for the reporting year according to the new form 6-NDFL.

The Decree will come into force from the submission of the calculation of PIT amounts, accrued and withheld by the tax agent (6-NDFL form) for 1 Q 2021, but no earlier than in two months after its official publication.

The Decree was officially published on 30.10.2020.

Please note: companies shall implement changes in the program software for payroll accounting and reports preparation for the submission of data for 1 Q 2021 according to the new form, as well as to provide employees from 2021 with certificates on received incomes and withheld amounts of tax pursuant to the new form.

2. RSV form has been amended

The Decree of the FTS of 15.10.2020 No.ED-7-11/751@

Comments

The changes affected the title page of the form, implementation of new codes for a payer's tariffs and a new application.

In the RSV report for 2020 data on the average staff quantity shall be indicated on the title page. There's no need to submit the form "Data on average staff quantity for the previous calendar year" for 2020, since information was included to the RSV.

In the new form barcodes and format for submitting the calculation in electronic form have been changed.

Changes to the title page (inclusion of the SSC), barcodes and the electronic format of the report apply to all companies.

The Decree has also set forth additional codes of the payer's tariff:

- 20 – payers of insurance contributions, recognized as subjects of SMEs;
- 21 – payers of insurance contributions, applying reduced tariffs of contributions (zero tariff of contributions for 2 Q 2020);
- 22 – payers of insurance contributions, carrying out activity on designing and developing of electronic component base products and electronic (radio-electronic) products (the code shall apply from reports for 1 Q 2021).

There will be used for the corresponding codes of the tariff the codes of the category of the insured person: respectively MS, KV, EKB. The Decree also introduced for foreign citizens and persons without citizenship the following codes: VZHMS, VZHKV, VZHEK, VPMS, VPKV, VPEC.

New exhibit 5.1 “Calculation of compliance with terms for applying a reduced tariff of insurance contributions by payers, specified in pp.3 p.1 art.427 Tax Code of the RF, to section 1” shall be filled for the categories of payers of insurance contributions with the right for reduced tariffs: developers of electronics, programs and databases, from the report for 1 Q 2021.

The exhibit 5 shall be filled by the organizations – developers of programs and databases from the report for 2020.

The decree will come into force since a calculation on insurance contributions submission for the reporting period of 2020.

Please note: companies shall implement changes in the program software for payroll accounting and reports preparation for the submission of RSV report for the reporting period of 2020 according to the new form. There’s no need to submit the report “Data on average staff quantity for the previous calendar year” for 2020.

3. The Ministry of Finance has once again clarified the question of expenses taxation on the performance of medical checkups for employees for the presence of the novel coronavirus infection

The Letters of the Ministry of Finance of 21.10.2020 No.03-15-06/91555, of 29.10.2020 No.03-15-06/94216, of 30.10.2020 No.03-04-06/94972

Comments

If employers individually organize performance of employees’ checkups for the presence of the coronavirus infection and immunity to it (antibodies) in connection with the fulfillment of the requirements of the current legislation of the Russian Federation, legislative acts of subjects of the RF, decisions of representative bodies of local government and requirements in decisions of the aforementioned officials (for example, the decree of the Mayor of Moscow of 05.03.2020 N 12-UM "On the introduction of a high alert regime" for Moscow) (hereinafter referred to as the Requirements) in terms of ensuring normal (safe) working conditions for employees, which is not related to payments in favor of employees, payment by the organization of the cost of this checkups under an agreement with a medical institution admitted to conduct such checkups in accordance with the legislation of the Russian Federation is not recognized as an object of insurance contributions.

If the employer reimburses to employees the costs of conducting research on whether they have a novel coronavirus infection and immunity to it in accordance with the aforementioned Requirements for ensuring normal (safe) working conditions for employees, then such amounts are also not subject to insurance contributions. In the absence in the Requirements of an opportunity for employers to reimburse their employees for the amount of their testing and research costs, these amounts of compensation will be subject to insurance contributions in accordance with the generally established procedure.

If research to determine whether employees have a coronavirus infection in organizations admitted to conducting such research in accordance with the legislation of the Russian Federation is due to the provision of normal (safe) working conditions for employees, then there will be no economic benefit (income) for such employees, as well as taxation with PIT.

Thus, if an employer transfers money directly to a medical organization or compensates employees for testing costs and has the right to do so under a legislative act (including a regional), then in this

situation there is no object of taxation. If there is no obligation to conduct testing or the ability to reimburse its payment under a legislative act (including regional), insurance contributions are imposed on the employee's compensation for testing costs.

Please note: ensure that your organization is eligible for reimbursement of costs associated with testing an employee for COVID-19. Check the official sources for the relevant regulations in your area.

4. There was adopted a law on PIT progressive rate. The amendments in the RF Tax Code will be effective from 01.01.2021

The Federal Law of 23.11.2020 No.372-FZ, Information of the FTS of 23 November 2020

Comments

From January 1, 2021, a Personal Income Tax rate of 15% is introduced with respect to incomes of individuals (tax residents, non-residents) in excess of 5 million rubles for the tax period (calendar year). PIT rate of 13% shall apply to incomes up to 5 million rubles. Thus, the changes for taxpayers and tax agents will be in effect from 01.01.2021, and they will not affect incomes of 2020.

The procedure for taxing incomes from which the amount of PIT is withheld by employing companies (tax agents) also remains the same.

The law introduces the concepts of a "main tax base", "set of tax bases", establishes the specifics of determining the size of the tax base for certain types of incomes, provides for a special procedure for applying the tax rate for PIT, depending on the amount of income.

The set of tax bases on PIT will be formed for the RF residents from the following incomes:

- from share participation (art.275 RF TC);
- in the form of winnings received by participants in lotteries and gambling (article 275 the Tax Code of the Russian Federation);
- on operations with securities and derivative financial instruments (articles 214.1, 219.1 RF TC);
- on REPO operations, the object of which is securities (article 214.3 RF TC);
- for operations of a loan with securities (subject to article 214.4 RF TC);
- on operations with securities and derivative financial instruments recorded on the IIA (articles 214.9, 219.1 RF TC);
- in the form of amounts of profits of a controlled foreign company;
- other incomes of residents, except for those taxed at other rates: 35% according to p.2 art.224 RF TC, 9% according to p.5 art.226 RF TC and 30% according to p.6 art.226 RF TC. These incomes were named as the main tax base, and they also include salary and remuneration for the performance of works/provision of services pursuant to a civil agreement.

Therefore, the main tax base is the tax base on other incomes, with respect to which the tax rate, specified by p.1 art.224 RF TC, shall apply.

When calculating the main tax base it’s necessary to account the standard (art.218 RF TC), social (art.219 RF TC), property (art.220 RF TC) and professional deductions (art.221 RF TC).

The rates will apply as follows:

PIT rate	Income amount (amount of tax bases)
13 %	<= 5 000 000 RUB
650 000 RUB + 15% amount of tax bases, exceeding 5 million rubles	> 5 000 000 RUB
13 %	from sales incomes, receipt of property as a gift, insurance payments on insurance agreements and pension coverage

Similar applying of 13% rate and 650 000 RUB + 15% amount of tax bases, exceeding 5 million rubles, will be introduced for tax non-residents by p.3.1 art.224 RF TC with respect to separate incomes in cases specified in p.3 art.224 RF TC.

Among tax non-residents falling under progressive taxation there are highly qualified foreign specialists working in the Russian Federation, foreigners who work in the RF under a patent, participants of the State Program for Resettlement to the Russian Federation, crew members of ships sailing under the state flag of the Russian Federation, foreign citizens or stateless persons recognized as refugees or who have received a temporary asylum on the territory of the Russian Federation.

For the non-residents listed above, incomes from labor activity performance fall under progressive taxation; in the form of interests on deposits (account balances) in banks located in the Russian Federation.

For the rest tax non-residents, which are not named above, the tax rate remains, as before, at the level of 30%.

In connection with change of PIT rate, the amount of tax will be calculated in the following order (amendments to art.225 RF TC):

- if the amount of tax bases for the tax period is less than 5 million rubles or equal to 5 million rubles - as corresponding to the tax rate of 13%, the percentage of the specified amount of tax bases;
- if the amount of tax bases for the tax period is more than 5 million rubles - as the amount of 650 000 rubles and a value equal to the ad valorem tax rate (ad valorem rate, calculated in %) 15%, as a percentage reduced by 5 million rubles of the amount of tax bases.

Thus, for example, when a natural person receives income in the amount of 6 000 000 RUB, PIT will be calculated as 650,000+ (6 000 000-5 000 000) RUB x15% = 800 000 RUB.

The changes will also affect the payment of PIT (article 226 TC RF) on the issue of paying tax in two parts:

1) if at the time of paying tax to the budget the amount of personal income tax calculated and withheld by the tax agent from the taxpayer, calculated on an accrual basis from the beginning of the tax period, is less than or equal to 650 000 RUB - the tax is paid at the place of registration (place of residence) of the tax agent in the tax authority, as well as at the location of each of its separate subdivisions;

2) if at the time of payment of tax to the budget the amount of personal income tax calculated and withheld by the tax agent from the taxpayer, calculated on an accrual basis from the beginning of the tax period, exceeded 650 000 RUB - payment of tax at the place of registration (place of residence) of the tax agent in the tax authority, as well as at the location of each of its separate subdivisions shall be performed by two parts:

- PIT amount in the part, up to 650 000 RUB, relating to the part of tax base up to 5 million rubles;

- a part of PIT amount, exceeding 650 000 RUB, relating to the part of tax base, exceeding 5 million rubles.

New KBK 182 1 01 02080 01 1000 110 was set forth for tax from that part of income which will be subject to 15% tax rate (Decree of the Ministry of Finance of 12.10.2020 No.236n).

If a taxpayer receives incomes from several tax agents, whereas each amount doesn't exceed 5 million rubles, the tax body upon the expiry of the year will individually calculate PIT from the total amount, exceeding 5 million rubles. On its basis a tax notification will be sent to the natural person.

If a citizen individually declares its incomes, he shall determine the amount of tax to be paid without amounts of incomes, received from tax agents but taking into account the threshold of excess of 5 million rubles. Then the tax authorities will summarize information, received from the taxpayer and tax agent, and will calculate PIT. If the total amount of income exceeds 5 million rubles, the tax, calculated with an increased coefficient will be shown in the tax notification.

Therefore, the organizations – tax agents shouldn't account incomes of the taxpayer from other tax agents.

No additional reports are specified due to introduction of the progressive scale.

Please note: the amendments will come into effect from 01.01.2021 and they don't relay to 2020. It's necessary to prepare program software for applying in calculations of the new rate from incomes above 5 000 000 RUB and PIT payments in the breakdown of 13% and 15%. There's a need to inform employees on changes in the part of PIT rate increase for incomes above 5 000 000 RUB. The appliance of the increased rate will affect the amounts of incomes of a natural person from different companies (tax agents).

HR records management

1. A part of regulatory acts in the scope of labor protection will be cancelled in 2021

The Decree of the Government of the Russian Federation of August 4, 2020 No.1181 "On recognizing as invalid some acts and certain provisions of some acts of the Government of the Russian Federation and on the cancellation of acts and individual provisions of acts of federal executive bodies containing mandatory requirements, compliance with which is assessed when carrying out measures to control in the implementation of federal state supervision over compliance with labor legislation and other regulatory legal acts containing labor law norms, and federal state control (supervision) in the field of social services"

Comments

From 2021 an extensive list of regulations in the scope of labor protection will be cancelled. This is the action of the so-called "regulatory guillotine". Since 2021 certain acts of the RF Government, which regulated the following, are recognized as invalid:

- measures to improve labor conditions and safety (Resolution of the Government of the Russian Federation of August 26, 1995 No.843 "On measures to improve labor conditions and safety");
- the procedure for calculating the average earnings of certain categories of creative employees (Resolution of the Government of the Russian Federation of February 22, 1993 No.153 "On the procedure for calculating the average earnings of certain categories of creative employees");
- a list of heavy, harmful and hazardous works prohibited for women (Decree of the Government of the Russian Federation of February 25, 2000 No.162 "On approval of the list of heavy works and

- works with harmful or hazardous working conditions, during which the use of women's labor is prohibited"). Instead of the previous list of harmful, dangerous and hard work for women, a new one will come into force from January 1, 2021 (Order of the Ministry of Labor of 18.07.2019 No.512n);
- the duration of a working week for the crew members of civil aviation aircraft (Resolution of the Ministry of Labor of the Russian Federation of 24.03.1992 No.3 "On establishing the duration of a working week for the crew members of civil aviation aircraft");
- rules on labor protection for publishing houses, in the dairy industry, during diving operations, etc.

Recommendations:

Most of the cancelled regulations relay to the field of labor protection.

We would recommend checking whether the provisions of the above acts have been used at work of your company and bring organizational documentation in the field of labor protection in compliance with the changes in legislation.

2. There were updated reporting forms on staff quantity and salary, submitted to the Federal State Statistic Service (Rosstat)

The Decree of Rosstat of 24.07.2020 No.412 "On approval the forms of federal statistical monitoring for the organization of federal statistical monitoring under quantity, conditions and payment of employees' labor, the need of organizations in the employees per professional groups"

Comments

Rosstat has approved new forms for federal statistical monitoring under staff quantity and labor payment, as well as the guidance for their filling, which organizations shall submit to the statistic authorities for 2020 and also during 2021.

The following forms were approved:

1. Annual (from report for 2020):
    - No.1-T (labor terms) "Data on labor terms and compensations at works with harmful and (or) dangerous labor terms";
    - No.1-T "Data on staff quantity and salary".
2. Periodic: once per 3 – 4 years (from report for 2020):
    - No.1 – staff "Data on training (professional education and training) and additional studying of employees of organizations".
3. Periodic: once per 2 years for even-numbered years (as of 31 October 2020):
    - No.1-T (prof) "Data on quantity and need of organizations in the employees per professional groups".
4. Monthly (from report for January 2021):
    - No.P-4 "Data on quantity and salary of employees";
    - No.1-Z "Questionnaire of sampling studying of working force";
    - No.1-PR "Data on suspension (strike) and resumption of work of labor collectives";
    - No.3-F "Data on overdue payroll debt".

5. Quarter (from report for 1 Q 2021):
    - No.ZP-healthcare “Data on quantity and payment of labor of employees in the field of healthcare per categories of personnel”;
    - No.ZP-culture “Data on quantity and payment of labor of employees in the field of culture per categories of personnel”;
    - No.ZP-education “Data on quantity and payment of labor of employees in the field of education per categories of personnel”;
    - No.ZP-science “Data on quantity and payment of labor of employees of organizations which perform research and development per categories of personnel”;
    - No.ZP-social “Data on quantity and payment of labor of employees in the field of social services per categories of personnel”;
    - No.P-4 (NZ) “Data on non-full employment and staff rotation”.

Since introduction of the updated forms the previous forms shall become invalid.

Recommendations:

Please update the aforesaid reporting forms in your accounting systems.

Please also note that quarter forms (except No.P-4 (NZ)) are specified for the organizations of state and municipal ownership.

If our specialists provide you with services on the abovementioned reports submission with the use of our company accounting systems, we’ll individually update the forms of the reports.

3. The Ministry of Labor has changed the approach to the deadline for an employment record book issuing

The Letter of the Ministry of Labor of 12.08.2020 No.14-2/OOG-12933 "When a paper employment record book shall be issued”

Comments

The authorities have specified in the letter that if an employee chooses to be provided with data on labor activity, the employee shall issue an employment record book on the day of an application submission by the employee. When issuing the book there shall be made a record therein on the submission by the employee of the application on his provision with data on labor activity according to article 66.1 Labor Code of the RF.

Previously the Ministry of Labor had another opinion. Thus, in the letter of 13 March 2020 No.14-2/V-260 the Ministry provided the following clarifications: since the deadline for an employment record book issuance in the event of the employee’s refusal from it isn’t regulated by any special norm of law, then in case of the employee’s choice in the provision of data on labor activity to him for the issuance of the book it is lawful to apply part 1 article 62 Labor Code of the RF, according to which the employer shall obligatory issue copies of documents, connected with work, on the ground of a written application of the employee no later than 3 working days since this application submission.

In the even earlier letter of the Ministry of Labor of 12 February 2020 No.14-2/-150 it was specified that in the event of choice by the employee of provision labor activity data to him the employer shall issue the book on the day of the employee’s application submission.

Therefore, the Ministry of Labor confirmed in the letter of 12.08.2020 No.14-2/OOG-12933 its initial approach on the employment record book issuing on the same day basis.

Recommendations:

Due to the absence of a single point of view of the Ministry of Labor with respect to the deadline for issuing an employment record book to an employee who made a choice in favor of provision labor activity data to him, we would recommend to adhere to the position of a book issuing to an employee on the day of submission of a corresponding application.

4. New online services for employers on the portal Onlineinspektsiya.rf

Comments

Rostrud has launched new free of charge services for employers.

The new services are available on the portal “Onlineinspektsiya.rf” (https://onlineinspektsiya.ru) in the employer’s personal account:

- "Electronic check". The service allows you to electronically send documents, requested by the labor inspector within an audit;
- "Risk category". The service helps to apply for a risk category reduction and track the inspection decision. For this purpose it’s necessary to fill out a form, indicate the current and desired risk category of the enterprise and attach documents on the basis of which the risk category should be changed. The application will automatically be sent for consideration to the state labor inspectorate in the corresponding region. The employer can also track the decision on the portal in its personal account.
- "Bank of Enterprises and Organizations". Through this service you can find out about the compliance with labor laws in the organization. It contains information about the company, collected in a single database based on the available data. In particular, information about the employer's compliance with labor laws, for example, cases of production traumatism at the enterprise and delays with salary payment. This will provide a broader view of a potential employer or a future business partner.

Civil law

1. The list of data contained in the Unified State Register of Legal Entities has been adjusted, the period for reporting change of data, contained in the Unified State Register of Legal Entities and Unified State Register of Individual Entrepreneurs has been extended

The Federal Law of 27.10.2020 No.350-FZ “On Amending Article 5 the Federal Law “On State Registration of Legal Entities and Individual Entrepreneurs”

Comments

There were introduced amendments to article 5 the Federal Law of 8 August 2001 No.129-FZ “On State Registration of Legal Entities and IEs” (hereinafter – the Law on Registration).

The period within which legal entities and individual entrepreneurs are obliged to inform the registering authority about changes in data, contained in the USRLE or the USRIE (p.5 art.5 the Law on Registration, as amended) has been extended to 7 working days.

The list of data, contained in the USRLE, has been corrected. In particular, instead of entering the name in a foreign language or the language of the peoples of the Russian Federation into the USRLE, the register will only contain an indication of the presence of such a name. The Unified State Register of Legal Entities will also include data that a joint-stock company consists of a single participant (shareholder), and data about such participant (pp. “a” and “d” p.1 art.5 the Law on Registration, as amended).

In addition, there were established cases in which the registering authority independently enters data into the USRLE or the USRIE. For example, in case of registration of a new name of a legal entity the registering authority will independently enter a new name to the following information about this legal entity to the USRLE no later than within 5 working days (p.4 art.5 the Law on Registration, as amended):

- As on the founder or an ordinary participant of another company;
- On the person who can take actions on behalf of another company without a power of attorney;
- On the administrator of shareholders’ register.

The changes will come into force since 26.04.2021.

2. Since 7 November 2020 the register of SMEs will be updated on a monthly basis

The Federal Law of 27.10.2020 No.349-FZ “On Amending Article 12 the Law of the RF “On Chambers of Commerce and Industry in the RF” and the Federal Law “On Development of Small and Medium-Sized Businesses in the RF”
Information of the Ministry of Economic Development of Russia of 29.10.2020 (published on the website https://www.economy.gov.ru)

Comments

There were introduced amendments to the Federal Law of 24.07.2007 No.209-FZ “On Development of SMEs in the RF” which came into force since 07.11.2020.

So far data on the economic subjects is entered to the register of SMEs an annual basis on 10 August of the current calendar year on the ground of data, available at the FTS of Russia as of 1 July the current calendar year.

The changes provide for the transition to a monthly update of data in the register of SMEs. In particular, the entry of data about legal entities and individual entrepreneurs in the register of SMEs will be carried out on the 10th day of each month based on the information available at the Federal Tax Service of Russia as of the 1st day of each month.

Organizations and individual entrepreneurs which have not provided data to the FTS, or have ceased to meet the criteria for classifying them as SMEs, will be excluded from the register annually, on 10 July. At the same time, it will be possible to restore the status of an SME entity, lost for formal reasons, within a year.

3. The Federal Tax Service has clarified the procedure for the submission of an application in order to receive status of a tax resident in 2020

The Letter of the FTS of 28.09.2020 No.VD-4-17/15732 "On Application for the Receipt of Status of a Russian Tax Resident"

Comments

From 31 July 2020 the amendments to article 207 RF TC came into force, according to which a natural person can be recognized as a Russian tax resident for the tax period of 2020 on the condition of staying in the RF from 90 to 182 calendar days inclusive during the period from 1 January to 31 December 2020.

In order to receive status of a Russian tax resident a natural person shall submit to the tax authority an application in free format within the deadline, specified by p.1 art.229 RF TC for the submission of a PIT tax return for the tax period of 2020.

The application shall contain the natural person's full name and INN. It's recommended to specify in the application the number of days of staying on the RF territory in 2020.

4. Russia ratified the European Convention on the Abolition of the Legalization of Documents Drawn up by Diplomatic Agents or Consular Officials of 7 June 1968

The Federal Law of 27.10.2020 No.344-FZ "On Ratification of the European Convention on the Abolition of the Legalization of Documents Drawn up by Diplomatic Agents or Consular Officials"

Comments

Participation in the Convention cancels for foreign documents, prepared by diplomatic agents and consular officials of the countries-participants of the Convention, the procedure for confirming the authenticity of the signature on the document, the powers on the basis of which the person who signed the document acted, and, where appropriate, the authenticity of the seal or stamp specified on the document.

5. From 06.11.2020 the Federal Constitutional Law on the Government of the Russian Federation entered into force

The Federal Constitutional Law of 06.11.2020 No.4-FKZ "On the Government of the Russian Federation"

Comments

The law was adopted in accordance with the recently adopted amendments to the Constitution of the Russian Federation.

The law defines the following requirements for persons who are members of the Government: a member of the Government of the Russian Federation can be a citizen of the Russian Federation who has reached the age of 30, who does not have the citizenship of a foreign state or a residence permit or other document confirming the right to permanently reside in a foreign state.

A member of the Government of the RF is prohibited from opening and having accounts (deposits), keeping cash and valuables in foreign banks located outside the territory of the RF, as well as owning and (or) using foreign financial instruments. This prohibition also applies to the spouse and minor children of a member of the RF Government.

The Chairman of the Government of the Russian Federation, his deputies, federal ministers, except for the power ministers, are appointed by the President of the RF after the approval of their candidatures by the State Duma.

Federal ministers in charge of defense, state security, internal affairs, justice, foreign affairs, prevention of emergencies and elimination of the consequences of natural disasters, public security are appointed by the President of the RF after consultation with the Federation Council.

It also establishes the procedure for dismissing members of the Government of the RF, the procedure for terminating the powers of the Government of the RF, including in connection with the expression of no confidence by the State Duma.

6. The FTS of Russia has issued two reviews of court practice regarding disputes, connected with registration of legal entities and IEs

The Letter of the FTS of 31.07.2020 No.KV-4-14/12315@ "On Issuance of Court Practice Review on Disputes with Participation of Registering Authorities No.2 (2020)"

The Letter of the FTS of 30.10.2020 No.KV-4-14/17869@ "On Issuance of Court Practice Review on Disputes with Participation of Registering Authorities No.3 (2020)"

Comments

In the reviews the tax department has sent to the subordinated authorities for guidance and application in their work, in particular, the following conclusions based on judicial practice:

- an LLC, created by reorganization shall meet all requirements for an LLC, while the Federal Law of 08.02.1998 No.14-FZ "On Limited Liability Companies" does not contain exceptions in terms of the amount of the authorized capital of an LLC created by reorganization;
- the argument given by the registering authority that other legal entities led by the applicant carried out activities in violation of tax legislation was declared insolvent by the court of appeal, since violations of tax legislation by the director and a member of the company are not grounds for refusing in state registration of changes to the address of a legal entity. Responsibility for violations of tax legislation is set forth for by special provisions of the Tax Code of the RF;
- by itself, the presence of a record of the invalidity of the address indicated in the USRLE does not verify on the violation of the procedure for notifying creditors when carrying out a voluntary liquidation of a legal entity;
- stating the illegality of the actions of the inspectorate to make records to the USRLE about the inaccuracy of data regarding a natural person as a founder and a head of a company, the courts noted that compliance with the procedure for making the relevant records does not by itself clearly indicate the unreliability of data about the head and the founder of the company; in any case, the inspection, based on the existing legal consequences of establishing the fact of unreliability of data in the USRLE, shall documentarily confirm that the natural person is not really the head and the founder of the company. The court of cassation also noted that the inspectorate judgments on the participation of the company in the tax minimization scheme have no relation to the present dispute, connected with determination of the circumstance of establishing and managing of the company by precisely this natural person;

- due to the fact that in violation of p.3 art.1473 the Civil Code of the RF, the company name of the defendant contains the abbreviation "LTD", reflecting the English-language abbreviation "Ltd." in the Russian transcription (from the English "Limited"), which is used in English to designate the organizational and legal form of a company - "limited liability", the courts of appeal and cassation have come to the conclusion about the validity of the requirements declared by the registering authority on the obligation of the company to bring the company name into line with the law and amend the foundation documents;
- the right to a share in the authorized capital of a limited liability company after death of its participant passes either to the heirs of the participant or to the RF, and the fact of the transfer to the heirs of the share and the right to participate in the management of the company affairs is not made dependent on such circumstances as the appeal of the heirs to a notary, opening an inheritance case, obtaining a certificate of the right to inheritance, addressing heirs with statements to society, etc.; the only barrier to the transfer of rights, certified by a share in the authorized capital of the company, to the heirs may be the right of the company (participants), specified in the charter of the Company, to refuse in such transfer of the rights of a participant to the heirs in view of the need to obtain the consent of the participants of the company;
- the issue of the possibility of concluding a marriage contract aimed at terminating the rights to a share in the authorized capital of a limited liability company of a spouse - member of the company and, as a result, changing the composition of the company participants, falls under the regulation of the provisions of art.21 the Federal Law of 08.02.1998 No.14-FZ "On LLC", establishing the rules for the transfer of a share in the authorized capital of a company to third parties.

7. There was expanded a competence of the Constitutional Court of the RF on questions of execution decisions of inter-state bodies and foreign and international courts

The Federal Constitutional Law of 09.11.2020 No.5-FKZ "On Amending the FKZ "On Constitutional Court of the RF"

Comments

In the scope of the recently adopted amendments to the Constitution of the Russian Federation (article 79), the powers of the Constitutional Court within the framework of the implementation of international treaties of the RF have been significantly expanded. The competence of the Constitutional Court now includes, among other things, the decision of the following issues:

- on the possibility of executing decisions of inter-state bodies adopted on the basis of the provisions of international treaties of the Russian Federation in their interpretation, contrary to the Constitution of the RF;
- on the possibility of executing a decision of a foreign or international (inter-state) court, a foreign or international arbitration court (arbitration), imposing obligations on the Russian Federation, if this decision contradicts with the foundations of public law enforcement of the RF.

8. Restrictive measures have been strengthened in Moscow: students are transferred to distance learning, night visits to restaurants, cafes, bars and clubs have been suspended and cultural and leisure activities have been limited

The Decree of the Mayor of Moscow of 10.11.2020 No.107-UM "On Amending the Decree of the Mayor of Moscow of 8 June 2020 No.68-UM"

Comments

From 13 November 2020 to 15 January 2021 inclusive, the following restrictions apply on the territory of Moscow:

- for students of city universities and colleges the implementation of educational programs using e-learning and distance learning technologies is introduced. Also, for this category of citizens, the possibility of using social cards for preferential and free travel is suspended;
- within the period from 23:00 to 6:00 the provision of public catering services to citizens is suspended (with the exception of the sale of goods, take-out services without visiting by citizens of the premises of enterprises, delivery of orders and provision of personal services), as well as performance of entertainment events, including in nightclubs, bars, discos, karaoke, bowling clubs, karting centers.

Visiting of the following was also suspended:

- cultural, exhibition, educational events (including museums, exhibition halls, libraries, lectures, trainings), with the exception of official events organized by executive authorities;
- leisure, entertainment activities (including game activities, master classes);
- promotional activities;
- children's playrooms, children's entertainment centers, children's day camps, other venues for similar events for minors in buildings, structures, facilities (premises therein), including in parks of culture and recreation, shopping and entertainment centers.

Citizens' visits to theaters, cinemas, concert halls are allowed provided that no more than 25% of the total capacity of the venue is present at the same time.

Organizations, carrying out activities related to the provision of service to citizens, are recommended to use the system of registration of telephone numbers (check-in) of visitors and employees.

9. Restrictive measures have been strengthened in the Moscow region: the self-isolation regime for senior citizens has been extended, distance learning has been introduced for college and university students

The Decree of the Governor of the Moscow region of 09.11.2020 N 502-PG "On Amending the Decree of the Governor of the Moscow region of 12.03.2020 N 108-PG" On the introduction in the Moscow region of a high alert regime for the management authorities and the Moscow region system for prevention and liquidation of emergency situations and some measures to prevent the spread of the novel coronavirus infection (COVID-2019) in the Moscow region"

Comments

The self-isolation regime for citizens over 65 years old, as well as citizens with certain diseases, has been extended until November 29, 2020 inclusive.

From 16 to 29 November 2020 (inclusive), students' visits to federal, non-state, municipal educational organizations, providing secondary vocational and higher education were suspended, with the ensuring of educational programs using e-learning and distance educational technologies.

From 11 to 29 November 2020 social cards of older residents and citizens with certain diseases will be blocked for travel, the sale of tickets at a preferential rate for students in professional educational organizations and educational institutions of higher education for travel on suburban railway transport (with the exception of students engaged in labor and volunteer (volunteer) activities in medical organizations) was also suspended.

The resolution came into force on November 11, 2020.

10. Restrictive measures in Moscow have been extended until 15 January 2021

The Decree of the Mayor of Moscow of 26.11.2020 No.114-UM "On Amending the Decree of the Mayor of Moscow of 8 June 2020 No.68-UM"

Comments

According to the introduced amendments the following shall be in effect until 15 January 2021 inclusive:

- there is still a need for citizens over the age of 65, as well as citizens with diseases, the list of which is determined by the Moscow City Health Department, not to leave their place of residence (staying), including residential and garden houses. Also, for these categories of citizens, restrictions on the use of social cards for preferential and free travel have been extended;
- there are requirements for employers operating in Moscow to transfer at least 30 percent of employees (contractors under civil agreements) to a remote regime of work;
- vacations are extended for students on additional educational programs in educational organizations, providing additional education, carrying out sports training, the functions and powers of the founder of which are carried out by the executive authorities of Moscow, with the exception of additional educational programs, following the completion of which certification is required, implementation which can be carried out using e-learning and distance learning technologies. Such educational programs can be carried out using e-learning and distance learning technologies.

- the ban on citizens visiting children's leisure organizations under the jurisdiction of Moscow executive authorities is being extended.

Arbitration

1. The Constitutional Court of the Russian Federation obliged to take into account within taxation the actual use of a building, and not exclusively the permitted use of the land plot

The Resolution of the Constitutional Court of the RF of 12.11.2020 No.46-P "On the case of checking the constitutionality of pp.1 p.4 art.378.2 378.2 the Tax Code of the Russian Federation in connection with a complaint of the open joint-stock company "Moscow Wool-Spinning Factory"

Comments

Background

The applicant (Moscow Wool-Spinning Factory OJSC) leases two land plots, one of which was provided to it for the operation of the buildings for commercial and industrial purposes, and the other for the operation of the building for office and educational purposes. In fact, according to the applicant, the buildings are used for industrial and educational purposes, and not for office or retail space. In accordance with the Decree of the Moscow Government of November 27, 2018 No.1425-PP, in relation to buildings which belong to the applicant on the right of ownership and are located on the indicated land plots, the tax base for property tax is determined as their cadastral value. The applicant disputed it at court.

The courts refused to satisfy the stated requirements, referring to the fact that, according to art.378.2 the Tax Code of the RF, in order to classify an immovable property as a commercial property and an office location, it is sufficient to meet one of the conditions listed in this article.

According to the literal wording of p.4 art.378.2 TC RF, a shopping center (complex) is a separate non-residential building (construction, structure), the premises in which belong to one or more owners and which meets at least one of the following conditions:

1) the building (construction, structure) is located on a land plot, one of the types of permitted use of which provides for the placement of trade facilities, public catering facilities and (or) consumer services;

2) the building (construction, structure) is intended for use or is actually used for the purpose of placing retail facilities, public catering facilities and (or) consumer services.

Position of the Constitutional Court

The interrelated provisions of the Urban Development Code of the RF and the Land Code of the RF allow the establishment of several (main and auxiliary) types of permitted use for one land plot, as well as the placement on it of both one and several real estate objects of the same or different purposes. Meanwhile, if, among other types of permitted use of the land plot, the placement of objects of trade, public catering, consumer services is allowed, then all buildings (constructions, structures) located on it obtain - within the meaning of the court decisions adopted in relation to the applicant in this case - the status of a shopping center (complex) as an object of property tax for organizations with a tax base calculated at the cadastral value.

Therefore, for a building (construction, structure) the likelihood of becoming a "shopping center" in the taxation of property of organizations depends primarily on the decisions of the authorized bodies in the field of urban planning zoning.

Determination of the tax base for the tax on the property of organizations based on the cadastral value of real estate usually entails an increase in the amount of tax compared to how it would be calculated according to general rules - based on the average annual value of the property.

Consequently, the collection of tax on the property of organizations based on the tax base, determined by the cadastral value of buildings (constructions, structures) solely from the fact that they are located on a land plot, one of the types of permitted use of which provides for the placement of shopping facilities, catering facilities and (or) consumer services, although the real estate object has a different purpose and (or) actual operation, is not justified in the constitutional and legal respect, since it allows the imposition of an increased tax burden on the taxpayer without economic grounds and does not allow - contrary to articles 19 (parts 1 and 2) and 57 of the Constitution of the Russian Federation, the principles of equality and fairness of taxation - to apply for calculating the tax base of a more favorable general rule for the taxpayer to determine it based on the average annual value of property recognized as an object of taxation.

Conclusion of the Constitutional Court

Sub-clause 1 clause 4 article 378.2 the Tax Code of the RF, in its constitutional and legal meaning, does not imply the possibility of determining the tax base for the property tax of organizations based on the cadastral value of a building (construction, structure) solely due to the fact that one of the types of permitted use of the land plot, leased by the taxpayer, on which the immovable property belonging to it is located, provides for the placement of retail facilities, public catering facilities and (or) consumer services, regardless of the purpose and actual use of the building (construction, structure).

At the same time, a building (construction, structure) is recognized as not intended and actually not used for the placement of retail facilities, public catering facilities and (or) consumer services, taking into account the twenty percent criteria, set forth by pp.2 p.4 art.378.2 the Tax Code of the RF.

2. The Presidium of the Supreme Court of the Russian Federation approved a new review of judicial practice for 2020

"Review of the judicial practice of the Supreme Court of the Russian Federation No.3 (2020)" (approved by the Presidium of the Supreme Court of the RF on November 25, 2020)

Comments

The Review contains, in particular, the following legal positions on economic disputes (on the position of the Supreme Court on tax deductions for VAT in case of non-payment of VAT to the budget by the supplier, see separate news):

- the rules for the alienation of a share in the authorized capital provided by the charter of an LLC cannot contradict with the essence of the legislative regulation of relations of participation in such a company, which includes, among other things, inadmissibility of a situation in which a participant is prohibited for an unreasonably long period from alienating his share or leaving the company with the possibility of returning his investments (p.15 the Review).

In the reviewed case the participant could not sell his share due to the restrictions established by the Charter, and applied to the Company with a demand for redemption. The Company refused to him.

The Supreme Court came to the conclusion that a participant who is subject to perpetual conditions prohibiting the alienation of a share or the need to obtain consent to alienate it and such consent has not been obtained, or the charter provides for a deliberately understated purchase price of a share under the preemptive right for an indefinite long term, has the right to demand from the

company by virtue of p.2 art.2 the Federal Law of February 8, 1998 No.14-FZ "On Limited Liability Companies" (hereinafter – the Law No.14-FZ) to acquire the share (part of the share) belonging to such a participant and pay its actual value (p.15 the Review);

- failure to comply with a court decision on the return to the bankruptcy estate of property transferred by the debtor under a preferential transaction is the basis for initiating bankruptcy proceedings against the debtor's contractor (p.16 the Review);
- the interpretation of the contract should be carried out, inter alia, on the basis of the principle of good faith, in particular, if there are doubts as to whether the contract is concluded in favor of a third party, such contract should be interpreted as granting rights to a third party, if a different approach would lead to deprivation of the third party compensation for the loss of ownership (p.23 the Review).

In the reviewed case in the investment contract for construction between a firm and a public law entity, it was established that in the final division of the constructed areas, the area belonging to the company (the owner of the demolished building) is excluded from the distributed areas. However, the division of the area of the unfinished construction object was carried out only between the company and the public law entity, without taking into account the rights of the Company.

The Supreme Court pointed out the need to take into account the rights of the Company on the basis of the provisions of art.430 the Civil Code of the Russian Federation (agreement in favor of a third party);

- in the absence in the contract of a clause on the return period of the leased item, the limitation period for the lessor's claim for the return of the item by the lessee in the event of the lessor's unilateral refusal from the lease agreement begins to flow not earlier than the lessee's refusal to comply with the lessor's request to return it (p.26 the Review);
- signing by the lessee of an act of acceptance and transfer of the leased item in case of impossibility to use the leased item due to circumstances for which the lessee is not responsible, does not give rise to the lessor's right to demand rent (p.27 the Review);
- if, after March 1, 2015, the lessee continues to use the state-owned or municipal agricultural land leased before the specified date, after the expiration of the contract, in the absence of an objection from the lessor, the contract is considered renewed under the same conditions for an indefinite term. The rule is set forth by p.1 art.396 the RF Land Code (p.28 the Review);
- the obligation to pay fees when concluding an agreement on the development of a built-up area corresponds to the obligation to provide a land plot and ensure the possibility of construction. If it is impossible to carry out construction due to the circumstances for which the public law entity is responsible, such fee is subject to return to the developer (p.29 the Review);
- since at the time of conclusion of the contract by the budgetary institution, the legislation established the subsidiary liability of the owner of the property of the budgetary institution in the event of insufficient funds of the institution and the provisions of the subsequently adopted law excluding such liability do not contain provisions on its extension to previously concluded agreements, the subsidiary liability of the owner under such an agreement remains (p.31 the Review);
- legislation on taxes and fees does not establish a mandatory pre-court procedure for resolving disputes for property claims for the return of excessively collected taxes (p.36 the Review);
- payers of insurance contributions for the obligatory pension insurance who apply a simplified taxation system and have chosen income reduced by the amount of expenses as an object of taxation, when determining the amount of income taken into account for determining the amount of insurance contributions, reduce the received incomes by the amount of actually incurred and documentarily confirmed expenses (p.52 the Review);

- the fact of establishing a type of permitted use in relation to a land plot that is not provided by the city planning regulations of the territorial zone to which it is currently assigned is not a reason for refusing to agree on the location of the boundaries of the land plot (p.59 the Review);
- the obligation, specified by p.4 art.12 the Federal Law of 25 December 2008 No.273-FZ "On anti-corruption", to inform on conclusion of an agreement with a citizen on the positions in the state or municipal service, the list of which is set forth by regulatory legal acts of the RF, to a representative of the employer of the state or municipal official at the last place of its work shall be fulfilled by legal entities regardless of their organizational and legal form, and therefore, the state budgetary institution was justifiably recognized as the subject of an administrative offense pursuant to art.19.29 CAO of the RF and it was brought to administrative liability (p.63 the Review);
- when bringing a legal entity to administrative liability for an offense, specified by p.11 art.19.5 CAO of the RF, the authorized body shall apply taking into account the provisions of p.1 art.23.31 CAO of the RF the general two-month period of limitation of bringing to administrative liability.

Migration rules

1. There was approved a list of 29 border crossing checkpoints, through which citizens of foreign states will be able to enter to the RF on the ground of a single e-visa from 1 January 2021

The Decree of the RF Government of 23.10.2020 No.2741-r "On approval the list of checkpoints through the state border of the RF, through which foreign citizens enter to the RF and leave the RF on the ground of a single e-visa"

Comments

The list includes road, rail, air, sea and pedestrian checkpoints from Kaliningrad to Vladivostok, through which foreign citizens will be able to enter to the Russian Federation with a single electronic visa.

Earlier, by the Decree of the Government of the Russian Federation of October 6, 2020 N 2571-r, a list of foreign countries was established, whose citizens can be provided with a single electronic visa.

2. There was updated the regulation for registration and issuing patents for the performance of labor activity by foreign citizens and persons without citizenship on the RF territory

The Decree of the Ministry of Internal Affairs of Russia of 05.10.2020 No.695 "On approval the Administrative Regulation of the Ministry of Internal Affairs of the Russian Federation for the provision of state services for the registration and issuance of patents for foreign citizens and stateless persons to carry out labor activities on the territory of the Russian Federation", registered in the Ministry of Justice of Russia on 09.11.2020 under No.60794

Comments

The new regulation came into force since 20.11.2020. The document defines the terms and sequence of administrative procedures (actions) of the territorial bodies of the Ministry of Internal Affairs of Russia, the procedure for submission by an applicant of an application and other documents necessary for the provision of state services.

Applicants can be foreign citizens and stateless persons legally staying on the territory of the Russian Federation, who arrived to the RF in a manner that does not require a visa, and have reached the age of 18.

The term for registration and issuance of a patent to a foreign citizen or a notice of refusal to issue it may not exceed 10 working days from the date of acceptance of a patent application from a foreign citizen.

There is no state duty for the provision of state services.

A similar Decree of the Ministry of Internal Affairs of Russia of 20.10.2017 No.800 was recognized as invalid.

3. The government has approved the regulation on the procedure for issuing single electronic visas for citizens of foreign states

The Resolution of the Government of the Russian Federation of 07.11.2020 No.1793 "On the procedure for issuing single electronic visas and invalidating some acts of the Government of the Russian Federation"

Comments

From January 1, 2021, foreign citizens will have the opportunity to apply for a single e-visa to enter on a guest or business visit, as a tourist, as well as to participate in scientific, cultural, socio-political, economic, sports events and to carry out relevant relations and contacts.

This right is granted to citizens of foreign states, the list of which is determined by the Government of the Russian Federation, arriving to the RF through checkpoints across the state border of the RF, the list of which is determined by the Government of the RF.

For the issuance of electronic visas, a specialized website of the Ministry of Foreign Affairs of the RF will be put into operation in the information and telecommunication network "Internet" and a specialized mobile application will be available for downloading on the specified specialized website for processing applications of foreign citizens.

To obtain a single e-visa, a foreign citizen, at least 4 calendar days before the expected date of entry into the Russian Federation, fills out and submits on a specialized website or using a specialized mobile application an application for a single e-visa, including digital photographs of the foreign citizen's face and pages with data of a machine-readable valid identity document of a foreign citizen and recognized by the Russian Federation in this capacity, as well as his consent to the processing, transfer and storage of data specified in the application for a single electronic visa, in order to issue a single electronic visa.

To fill out an application, a foreign citizen registers on a specialized website or in a mobile application, indicating as the account name his email address, which has previously passed the confirmation procedure, as well as a personal password that the foreign citizen enters and confirms independently.

Payment by a foreign citizen of the consular fee for issuing a single electronic visa is carried out on a specialized website or through a mobile application using Internet acquiring technology.

A decision by the Ministry of Foreign Affairs of the Russian Federation to issue a single electronic visa to a foreign citizen or return an application to a foreign citizen for editing is carried out within a period not exceeding 2 calendar days from the date of application.

The data of the issued single electronic visa is automatically transferred to checkpoints.

The extension of the validity period of a single electronic visa and (or) the permitted period of stay of a foreign citizen in the Russian Federation on the basis of a single e-visa is carried out by the Ministry of Internal Affairs of Russia or its territorial bodies at the place of registration of a foreign citizen at the place of residence, and in the absence of registration with migration authorities at the place of staying - at the place of his actual staying.

4. The government has established a quota for the issuance of permits for temporary residence in the Russian Federation to foreign citizens and stateless persons for 2021

The Decree of the Government of the Russian Federation of 06.11.2020 No.2883-r "On the establishment of a quota for the issuance of temporary residence permits in the Russian Federation to foreign citizens and stateless persons for 2021"

Comments

There has been established a quota for 2021 for the issuance to foreign citizens and stateless persons 39325 permits for temporary residence in the Russian Federation. For comparison, in the last year the quota was much higher and amounted to 60 270 permits.

The quota is distributed over the RF subjects; the number of permits for Moscow is 2000, for the Moscow region - 2500, for St. Petersburg - 1200.

5. The government of the RF has approved for 2021 the permissible share of foreign employees for various sectors of the economy

The Decree of the Government of the RF of 12.11.2020 No.1823 "On the establishment for 2021 of the permissible share of foreign employees, engaged by economic entities carrying out certain types of economic activity on the territory of the Russian Federation"

Comments

The government of the RF annually, taking into account the regional characteristics of the labor market and the need for priority employment of citizens of the RF, sets forth the permissible share of foreign employees, engaged in various sectors of the economy by economic entities (p.5 art.18.1 the Federal Law "On Legal Status of Foreign Citizens in the Russian Federation").

In most industries, the permissible share of foreign employees has remained the same. For example, up to 80% of foreigners can be involved in construction (this rule, as before, is valid not in all regions of the RF). When retailing pharmaceuticals in specialized stores (chemists), foreigners still cannot be engaged (0% share).

However, there are also changes. In 2021, for activities in real estate management on a fee or on a contractual basis and for the maintenance of buildings and territories, it is possible to involve foreigners, in the amount of no more than 70% of the total number of employees. In 2020, the employment of foreigners in these sectors of the economy was not limited.

Employers are required to bring the number of foreign employees in compliance with the new rules until the end of 2020.

6. The government has approved for 2021 the need to engage foreign employees, arriving to the RF on the basis of a visa

The Resolution of the Government of the Russian Federation of 23.11.2020 No.1902 "On determining the need to engage foreign employees, arriving to the RF on the basis of a visa, including for priority professional qualification groups, and approving quotas for 2021"

Comments

Invitations for entry to the RF for the purposes of labor activity performance shall be issued within the quota, annually approved by the RF Government (p.1 art.18 the Federal Law of 25.07.2002 No.115-FZ “On Legal Status of Foreign Citizens in the RF”).

The RF Government has determined for 2021 the need in the engagement of foreign employees, arriving to the RF on the ground of a visa, at the quantity of 101 871 persons. Therefore, the number of invitations will be reduced, as far as in the last year the quota was 104 993 invitations.

The quota is distributed per priority professional and qualification groups.

7. The Government has reduced two-fold the maximum quantity of foreign officers of civil aircrafts, assigned to the RF

The Resolution of the RF Government of 19.11.2020 No.1878 “On Amending the Resolution of the RF Government of 1 August 2014 No.762”

Comments

The Resolution of the RF Government of 01.08.2014 No.762 set forth the maximum quantity of 200 foreign citizens, who can be employed for holding a position of a civil aircraft officer.

According to the introduced amendments the maximum quantity of the specified employees is 100 persons.

The aforesaid maximum quantity shall be distributed between Russian legal entities and individual entrepreneurs, carrying out commercial air transportation and performing aviation works.

The amendments came into force since 01.12.2020.

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