



Taxes

1. Federal Law on the Ratification of the Protocol of Amendments to the Agreement between the Government of the Russian Federation and the Government of the Republic of Cyprus for the Avoidance of Double Taxation with Respect to Taxes on Income and on Capital of December 5, 1998, dated February 28, 2012, No. 9-FZ.

As mentioned in our October 2010 Newsletter, the Protocol amended the intergovernmental Agreement between Russia and Cyprus by introducing the following key changes:

- 1) Income derived by a resident of one of the Contracting States from the sale of shares in a company, more than 50% of whose assets are represented by real property located in the other Contracting State, may be liable to taxes in such other State. Such income does not include income on shares received in the course of reorganization of a company, income on shares listed on a registered stock exchange, or income received by a pension fund, provident fund or the Government of the State.
- 2) The definition of “dividends” has been modified to include any income liable to the same taxation as that applicable to income from shares under the laws of the State whose resident is the company paying dividends. (Such dividends have been excluded from the definition “interest”).
- 3) Income of real property unit trusts is taxable in the same manner as income from real property. Distributions on units of investment unit trusts or similar forms of collective investment are regarded as dividends.

The Agreement has been supplemented with provisions specifying the taxation of certain income from the provision of services.

The Protocol will come into force as of the date of the latest of notices of fulfillment by the Contracting States of internal procedures, except for certain provisions for which a different effective date in 2015 at earliest is envisaged.

2. Ruling of the RF Supreme Arbitration Court, dated January 27, 2012, No. 16291/11, supports the approach of the RF Ministry of Finance towards payment of the tax on income of property of organizations with respect to the value of inseparable improvements of rented property made by the tenants.

With reference to the Accounting Regulations (Fixed Assets) and the RF Tax Code, the Ministry of Finance maintains that capital investments made by a tenant in the form of inseparable improvements of the rented property and recorded as fixed assets attract the tax on property before their withdrawal under the lease agreement. The Ministry of Finance is of the opinion that “withdrawal” should be understood as reimbursement of the value of such improvements by the landlord. It is the tenant who is recognized as the maker of such profitable investments before the property with inseparable improvements is returned to the landlord or before the landlord reimburses the tenant for the corresponding expenses. Therefore, it is the tenant who is responsible for recording such expenses (investments) in his accounts as fixed assets and paying the property tax on them.

3. Decree of the RF Government on the Approval of the Rules on Qualification of Russian Organizations’ Shares Circulating in the Organized Securities Market as Shares of the High Technology (Innovation) Sector of Economy, dated February 22, 2012, No. 156.

The Decree contains a number of rules permitting to qualify shares as shares of the high-tech sector of economy and apply a 0% rate of the tax on profit of organizations.

For shares to be qualified as belonging to the high-tech sector of economy, they should meet two conditions. First, the shares should circulate in the organized securities market and be listed on a stock exchange as securities circulating in a specialized sector (intended for placement and circulation of innovation companies’ securities). Second, the capitalization of a Russian issuer of such shares should not exceed 10 billion rubles, provided that the issuer’s capitalization is determined in the manner established by the Federal Service for Financial Markets on agreement with the Ministry of Finance.

To have its securities recognized as shares of the high-tech (innovation) sector of economy, the issuer is to file a corresponding application with the stock exchange. Upon consideration of the application, the issuer is to be notified of a positive or a negative decision. It is specifically noted that an application may be filed by any interested person.

Securities

Informative Letter of the RF Federal Service for Financial Markets on Documents Confirming Writing Off of Securities from the Personal Account (Depo Account) of a Person Who Has Accepted a Voluntary (Obligatory) Proposal or Sent a Claim of Buy Out of Securities of a Public Company for Further Crediting to the Personal Account (Depo Account) of a Person Who Sent a Voluntary (Obligatory) Proposal or Notification of the Right to Claim a Buy Out of Securities of a Public Company, dated February 14, 2012, No. 12-DP-0315133.

The Federal Service for Financial Markets (the “FSFM”) explains what documents can be submitted together with the claim of payment for securities to the guarantor who issued the bank guarantee securing performance of the obligation to acquire, voluntarily or obligatorily, securities. In particular, the FSFM specifies that such documents include: a notification of the registrar regarding an operation in the register of securities owners (Notification) or the depositary’s report on the operation with securities (Report). If the Notification or the Report does not indicate that the securities were written off on the basis of a voluntary (obligatory) proposal to buy out the securities, it is possible to use the Notification or the Report with a

copy of the transfer instruction to the registrar/depositary to write off the securities from the owner's personal account.

The FSFM recommends to companies that keep registers of shareholders themselves or to registrars and depositaries to issue to the applicant, on request, a certified copy of the transfer instruction to write off the corresponding securities of the company.

Counteractions against Corruption

Federal Law on Joining by the Russian Federation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, dated February 1, 2012, No. 3-FZ.

Under the Convention, "each Party shall take such measures as may be necessary to establish that it is a criminal offence under its law for any person intentionally to offer, promise or give any undue pecuniary or other advantage" to a foreign public official with the aim of promoting or preventing the making of an international commercial transaction. Besides, criminal liability should be established for complicity in, including aiding and abetting, or authorization of an act of bribery of a foreign public official.

The "undue pecuniary or other advantage" is understood as money, securities, other property or services of pecuniary nature subject to payment but rendered free of charge, or other property rights (e.g., decrease of rental payments).

As one of the conditions of entering the Organization for Economic Co-operation and Development (OECD), Russia is to join the Convention. At present, the member parties of the Convention are all countries of the OECD, including Argentina, Bulgaria, Brazil and South African Republic that are not members of the OECD.

Insider Information

Order of the Federal Service for Financial Markets and the Bank of Russia on Approval of the Regulations on the Procedure for Joint Inspections by the Federal Service for Financial Markets and the Bank of Russia of Compliance with the Laws on Counteraction Against Improper Use of Insider Information and Market Manipulation, dated October 27, 2012, No. 11-55/pz-n/374-P, registered with the Ministry of Justice on January 31, 2012.

Inspections by the FSFM jointly with the Bank of Russia are organized and carried out by the employees of the FSFM with the help of the Bank of Russia employees who deal with the matters of foreign currency and contracts. The group of inspectors is headed by an employee of the FSFM. The Order sets forth qualification requirements to inspectors and limitations regarding the conflict of interests of inspectors. The Order also specifies joint actions in the course of field and office inspections, documentation of their results and receipt of objections from the organizations under inspection.

This newsletter is not intended to provide legal advice and/or any other form of legal assistance that may be rendered by attorney-at-law to client. The exclusive purpose of this review is to make aware its recipient of certain recent changes in Russian laws and regulations, and of the development of law application practice. Any use of the information contained herein for particular purposes may require more detailed case-specific explanations. Further information can be obtained via +7 (495) 933 75 67 or office@agp.ru



Znamenska 13, bldg. 3, 3rd floor, Moscow, 119019, Russia.
Tel.: +7 (495) 933-75-67, 691-98-13, 697-48-31, 697-63-94.
Mobile: +7 (495) 999-63-85. Fax: +7 (495) 697-92-26.
E-mails: darian@agp.ru, office@agp.ru.
Internet: <http://www.agp.ru>.