

January 2013

New Law on Accounting

On December 6, 2011, the RF President signed Federal Law on Accounting, No. 402-FZ.

The Law is aimed at introducing a more effective regulation of accounting that would reflect modern market relations and at revocation of obsolete law rules.

The changes introduced by the Law in the accounting procedure would also be important for taxation purposes, in particular for production of documented proofs of deductible expenses with respect to the profit tax.

The Law has repealed the obligation of commercial organizations to use the unified forms of initial documents. Now, for a documented proof of deductible expenses, the forms of initial accounting documents are approved by the head of a commercial organization on the proposal of the chief accountant. Such forms must contain the necessary details listed in Article 9 of the Law. It should be noted that if a commercial organization continues to use the unified forms of initial documents, it should also approve them for compliance with the Law.

The Law came into force on January 1, 2013.

The date of real estate sale

On November 29, 2012, the RF President signed Federal Law No. 206-FZ amending the RF Tax Code ("**Law No. 206-FZ**").

Law No. 206-FZ establishes that the date of sale of real estate is the date on which the property is transferred to the purchaser under a transfer statement or any other document of real estate transfer. Thus, the uncertainty as to what date should be regarded as the date of real estate sale: (i) the date of a delivery-acceptance certificate; or (ii) the date of filing of documents for state registration of the transfer of title; or

(iii) the date of state registration of the transfer of title, has been removed.

Law No. 206-FZ also specifies that depreciation charges on depreciable property, including fixed assets the title to which is subject to state registration, begin to accrue from the first day of the month following the month in which the property was commissioned, irrespective of the date of its state registration.

Law No. 206-FZ came into force on January 1, 2013.

Coefficients used for calculation of a ceiling interest on loan

Law No. 206-FZ continues the effect of coefficients used for calculation of the ceiling rate of interest on loan to be deducted for the profit tax purposes.

Same as in 2012, the ceiling rate of interest to be deducted may not exceed the refinancing rate of the Central Bank (currently, 8.25%) multiplied by

1.8 if the loan is in rubles and the refinancing rate of the Central Bank multiplied by 0.8 if the loan is in a foreign currency.

Law No. 206-FZ came into force on January 1, 2013.

Residual value of a fixed asset for which a depreciation premium was used

Law No. 206-FZ establishes that the residual value of fixed assets with respect to which the depreciation premium was used is calculated as the difference between the initial value of fixed assets and the depreciation premium.

Such difference should be decreased by the depreciation amount calculated for the period of the fixed assets operation.

Law No. 206-FZ came into force on January 1, 2013.

Restoration of a depreciation premium

Law No. 206-FZ amends the procedure for restoration of depreciation premium. Now, a taxpayer is only obligated to restore the depreciation premium where it sells its fixed asset for which the depreciation premium was used to the taxpayer's affiliate, if the sale takes place before the expiration of 5 years from the time of commissioning of the fixed asset. The taxpayer restores the depreciation premium by way of reflecting it in (i) the extraordinary income of the reporting period in which the fixed asset was sold; and (ii) extraordinary charges increasing the residual value of the sold fixed asset by which the taxpayer decreases its taxable income from the fixed asset sale.

Thus, restoration of the depreciation premium by reflecting it in the extraordinary income does not actually lead to an increase of the profit tax, because the depreciation premium is also reflected in the extraordinary charges. Consequently, the changes in question do not lead to an increase of the profit tax for the taxpayer that sold its fixed assets. The Tax Code does not require restoration of the depreciation premium where fixed assets are sold to an independent person.

The changes are applied to the sale of fixed assets starting from January 1, 2013.

Bad debts

Law No. 206-FZ has expanded the term "bad debt". Now, the term includes debts claimed impossible to recover if the impossibility to recover is confirmed by a court bailiff's order on termination of the execution process where the writ of execution is returned to the plaintiff on the following grounds: (i) it is impossible to determine the place of location of the debtor or the debtor's property, or to get information about the debtor's money and other valuables

being on bank accounts, deposits or in safe keeping by banks or other credit organizations; (ii) the debtor has no property for levy of execution, and all lawful measures undertaken by the court bailiff to find the debtor's property gave no results.

Law No. 206-FZ came into force on January 1, 2013

The property tax

On November 29, 2012, the RF President signed Federal Law No. 202-FZ on Amendment of Part Two of the RF Tax Code ("**Law No. 202-FZ**"). Law No. 202-FZ has broadened the list of property which is not regarded as attracting the property tax. An important novel – movable property accepted for accounting as fixed assets from January 2013 is not subject to the property tax. The novel will have a positive effect for transactions with movable property (e.g., contracts for leasing of movable property),

because it decreases the total tax burden for the parties to such transactions. Law No. 202-FZ allows the constituents of the Russian Federation not to establish tax rates in laws which put in force the property tax. In such a case the marginal rates set forth in Article 380(1) and Article 380(3) of the Tax Code will apply. Under the general rule, the marginal rate is 2.2%.

Law No. 202-FZ came into force on January 1, 2013.

The transportation tax

Law No. 202-FZ allows the constituents of the Russian Federation not to establish tax rates in laws which put in force the transportation tax. In such a case the tax is imposed at the marginal rates set forth in Article 361(1) of the Tax Code.

Law No. 202-FZ came into force on January 1, 2013.

The land tax

Law No. 202-FZ allows municipal assemblies (Moscow and St. Petersburg) not to establish tax rates in laws and regulations which put in force the land tax. In such a case the tax is imposed at the marginal rates set forth in Article 394(1) of

the Tax Code. Under the general rule, the marginal rate is 1.5%.

Law No. 202-FZ came into force on January 1, 2013.

The Protocol amending the Double Tax Treaty between Russia and Luxembourg

On December 30, 2012, the RF President signed Federal Law No. 301-FZ which ratified the Protocol of November 21, 2011 (the "**Protocol**") significantly amending the Double Tax Treaty between Luxembourg and Russia, dated June 28, 1993 (the "**Treaty**"). The Protocol broadens the provisions concerning exchange of information between the tax authorities of Russia and Luxembourg. The amended Article 26 "Exchange of Information" of the Treaty stipulates that the state to which a corresponding request was sent should take measures for obtainment of the requested information even if it does not need such information itself. Provision of information may not be denied on the ground that it is in the possession of a private person (bank, trustee,

etc.). That measure allows Russian tax authorities to receive effectively not only information already being in the possession of Luxembourgian tax authorities, but also any additional information which can be found through the latter's active operations. The minimum tax rate applicable to dividends has been decreased from 10% to 5%. The term "dividends" has been revised to include, apart from income from shares, interest reclassified as dividends under national law (in respect of Russia such reclassification is done in accordance with Article 269(2)-(4) of the Tax Code), distributions on the shares of unit funds or similar collective forms of investment. After the effective date of the Protocol, income of a resident of one state from sale of shares over

50% of whose value is represented, directly or indirectly, by real estate located in the other state may be taxable in that other state. Consequently, income from sale of the shares of a company that owns real estate in Russia may be taxable in Russia. Taxation of "other income" has been changed. Now, such income is subject to taxation in the state of permanent residence of the income recipient. After the effective date of the Protocol, such income may also be taxable in the

state of the income origin. The Protocol does not stipulate any transition periods for its provisions to come into force, unlike, e.g., the Protocol of October 7, 2010 to the Double Tax Treaty between Cyprus and Russia. This means that taxpayers will have limited time to prepare for the new tax treatment of cross-border payments between Russia and Luxembourg.

As of December 30, 2012, the Protocol did not come into force.

Cyprus excluded from the list of offshore zones

On August 21, 2012, the RF Ministry of Finance issued Order No. 115n.

The list of foreign states recognized as offshore zones was determined by the Ministry of Finance in Order on Approval of the List of States and Territories Providing Preferential Tax Treatment and (or) Not Requiring Disclosure of Information on Financial Operations (Offshore Zones), dated November 13, 2007, No. 108n. Article 284(3) (1)

of the Tax Code does not permit applying the 0% rate to dividends received by Russian organizations from residents of the foreign jurisdictions being on the list. The Order excludes Cyprus from the list of offshore zones. This makes possible to impose the profit tax at 0% on dividends received by Russian organizations from Cypriot companies.

The Order came into force on January 1, 2013.

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