

TAXATION OF GUEST WORKERS' INCOMES IN RUSSIA

All guest workers working at Russian enterprisers or in Russian representative offices of foreign companies must pay personal income tax in Russian Federation. An exception to this rule, and also peculiarities of taxation may be stated with agreements of double taxation avoidance, concluded between Russia and those states which citizens are guest workers.

In accordance with article 7 of Russian Federation Tax Code provisions of international treaties are prior to regulations of Russian tax legislation. That is why to determine order of taxation of a particular guest employer, first of all it is necessary to refer to corresponding agreements of double taxation avoidance.

Such agreement may provide preferential taxation with reduced rate, exemption from tax, or offsetting tax amounts actually paid outside of Russian Federation in accordance with legislation of other states, while paying tax in Russian Federation.

To obtain tax benefits in accordance with international treaty, taxpayer must submit official confirmation into Russian tax authorities that he/she is a resident of a country which concluded with Russian Federation agreement of double taxation avoidance; also document of income earned and document of tax paid outside of Russian Federation certified by tax authority of corresponding state. Certificate may be submitted before tax or advance tax payment, as well as within one year after termination of that tax period under results of which taxpayer pretends to obtain exemption from discharge of tax, offsetting, tax benefits.

In accordance with Russian Federation Tax Code taxpayers of the personal income tax shall be defined as natural persons being tax residents of Russian Federation and also natural persons who are not tax residents of Russian Federation. As residents shall be deemed natural persons actually staying in Russian Federation for at least 183 calendar days within 12 months running (p.2, article 207 of Russian Federation Tax Code). The period of a natural person's staying in Russian Federation is not interrupted with the periods of his/her exit from Russian Federation for a short-term (less than six months) for treatment or training. When calculating 183 calendar days other periods of staying outside of Russian Federation are not taken into account regardless of purpose of departure (job performance or family circumstances). Calculation of periods of staying on the territory of Russian Federation is carried out under notes in passport of entry (exit) on the territory of Russian Federation.

For tax residents *object of taxation* is income received from sources in Russian Federation and (or) from sources outside of Russian Federation. For those who are not tax residents object of taxation is only income received from sources in Russian Federation.

The following shall be referred to as *incomes from sources* in Russian Federation:

1) dividends and interests received from Russian organization, as well as interest received from Russian entrepreneur and (or) from foreign organization in connection with the activity of its separate subdivision in Russian Federation;

2) insurance payments, given the onset of an insured accident, received from foreign organization except insurance payments in connection with activities of its representative office Russian Federation;

4) incomes received from lease or another use of property located outside Russian Federation;

5) *compensation for performance of labour and other duties, performed work, rendered service, performance of action in Russian Federation.*

At that, the remuneration to directors and other similar payments received by members of managerial body (board of directors or another similar body) of organization, located in Russian Federation shall be regarded as incomes received from sources in Russian Federation irrespective of the place where the managerial duties conferred to such persons were actually performed or whence the disbursements of said remunerations were effected. For example, citizen of Germany, being a General Director of Russian enterprise with foreign investments, registered in Moscow, will pay personal income tax in Russia, even if he appearing in Russia occasionally;

6) other incomes received by a taxpayer in connection with his/her activity in Russian Federation.

The following shall be referred to as *incomes received from sources outside* of Russian Federation:

1) dividends and interests received from foreign organization except interests in connection with the activity of Russian representative office of this organization;

2) insurance payments, given the onset of an insured accident, received from foreign organization, except insurance payments in connection with the activities of its representative office in Russian Federation;

3) incomes received from lease or another use of property located outside of Russian Federation;

5) incomes from sale of:

- real estate located outside of Russian Federation
- shares or other securities and also shares in authorized capitals of organizations outside of Russian Federation
- rights of claim to foreign organization except right of claim in connection with activity of its Russian representative office
- other property located outside of Russian Federation;

6) remuneration for the performance of labour or other duties, performed work, rendered services, performance of action in Russian Federation. In so doing, the compensation to directors and other similar payments received by members of managerial body (board of directors or another similar body) of foreign organization shall be regarded as incomes received from sources outside from Russian Federation irrespective of the place where the managerial duties conferred to such persons were actually performed;

7) other incomes received by a taxpayer in connection with his/her activity outside of Russian Federation.

If provisions of Tax Code do not enable to separate unambiguously incomes received from sources in Russian Federation and outside of Russian Federation, then Ministry of Finance of Russian Federation refers income to this or that source. Share of indicated incomes which may be referred to incomes from sources in Russian Federation and to incomes outside of Russian Federation is determined in the similar order.

Incomes of tax residents are taxed according to the following rates:

- 9% - in respect to the incomes from the share participation in the activity of organizations received in the form of dividends;
- 35% - in respect of:
 - value exceeding 4.000 rubles a year, at any winnings and prizes received in contests, games and other events for the purpose of advertising of goods, works and services
 - bank deposit interest incomes with regard to excess of refinancing rate of Central Bank of Russia on ruble deposits and nine per cent on currency deposits
 - interest savings of a taxpayer receiving borrowed (credit) funds with regard to $\frac{3}{4}$ of refinancing rate of Central Bank of Russia on ruble deposits and nine per cent on currency deposits;
- 13% - in respect of the rest incomes, including incomes on employment agreement.

Incomes of tax non- residents are taxed according to the following rates:

- 15% - in the form of dividends from the share participation in the activity of Russian organizations received in the form of dividends;
- 30% - in respect of all the rest incomes.

Tax period shall be defined as a calendar year (article 216 of Tax Code of Russian Federation).

Tax assessment reduces by *tax deductions* amount provided with articles 218 – 221 of Tax Code (standard, professional, property and social) for incomes of those tax residents, in whose respect 13% tax rate is provided. Tax deductions are not granted to incomes of tax non-residents.

Standard tax deductions are defined as the following ones:

- *400 rubles* for each month of a tax period. Such tax deduction shall be effective till the month in which the income calculated as a progressive total from the beginning of the tax period exceeded 40K rubles;
- *1.000 rubles* for each month of a tax period for each child. Such tax deduction shall be effective till the month in which the income calculated as a progressive total from the beginning of the tax period exceeded 280K rubles. Tax deduction may be granted to one of the parents at their own choice on the grounds of declaration of another parent's renunciation of tax deduction. In this case foreign natural persons whose child is beyond the borders of Russian Federation shall be granted such deduction on the basis of documents attested by the competent bodies of a state in which a child resides.

Social tax deductions are defined as the following ones, particularly:

- amounts paid by a taxpayer over a tax period for his/her education at educational establishments;
- amounts transferred by a taxpayer to charities in the form of assistance in cash to organizations of science, culture, education, but no more that 25 per cent of the amount of income received over a tax period;
- amounts paid by a taxpayer - a parent for education of his/her children of up to 24 years of age, in the day time format of education in educational establishments, - but no more than 50K rubles per child in total for both parents;
- amounts paid by a taxpayer during a tax period for medicaments or services in treatment granted to him/her by medical establishments of Russian Federation, and also paid by taxpayer for medicaments or services in treatment of his/her spouse, parents and (or) children of up to 18 years of age in medical establishments of Russian Federation.

However, tax deduction aggregate amount of expenses on education of a taxpayer himself, medical treatment expenses, and also some kinds of insurance should not exceed 120K rubles a year.

Property tax deductions are granted:

- in amounts received by a taxpayer over a tax period from the sale of property which has been owned by a taxpayer for three and more years (i.e. tax is not paid). But if apartment houses, flats, rooms including privatized residential premises, summer cottages, garden houses or land plots, including shares in the said property have been owned by a taxpayer for less than three years, the deduction sum may not exceed 1.000K rubles, and also in the amount received in a tax period from the sale of other property owned by the taxpayer for less than three years, but not more than 125K rubles;

- in the amount spent by a taxpayer for a new construction or acquiring on the territory of Russian Federation an apartment house, flat, room or a share (shares) therein (but no more than 1.000K rubles), and also in the amount used to repay interest on the purposive loans (credits) received from credit and other organizations of Russian Federation and actually spent by him/her on these purposes. If within tax period this deduction can not be used fully, then its balance may be transferred to the following tax periods until its disbursement of 100%.

Professional tax deductions are granted to individual entrepreneurs, to persons receiving author's emoluments, and also working under civil contracts, in the amount of documented expenses connected with receiving of corresponding incomes.

If tax resident gains income from Russian organizations, individual entrepreneurs or Russian representatives of foreign organizations, then these legal persons function as *tax agents* (with the rare exception provided with Tax Code), i. e. they withhold tax from personal incomes and transfer it to budget not later of the day of income payment.

Upon expiration of 183 calendar days of stay on the territory of Russian Federation non-resident becomes tax resident and 13% personal income tax rate becomes effective for him. And this rate is applied for the whole tax period (year) during which the 183rd day of his/her stay in Russia came. In this case it is necessary to recalculate personal income tax amount which had been earlier calculated at 30% rate. Under recalculation standard deduction is also granted to a foreigner (if he has right to it) for the last month. Tax amounts excessively withheld by tax agent during the period of application 30% rate are returned to a guest worker.

Example of recalculation of tax amount. Foreign citizen arrived to Russia on the 1st of December, 2007 on the invitation of Russian organization and had been working there until the end of 2008. In 2007 the foreigner was not a tax resident and all his income in Russia for this year is taxed at 30% rate. 183rd day of the foreigner's stay in Russia came on 31st of May, 2008. Consequently, personal income tax withheld from his/her incomes from January, 2008 until May, 2008 at 30% rate should be recalculated at 13% rate after the said date.

In accordance with article 229 of Russian Federation Tax Code tax return must be submitted by:

- tax residents who received tax from sources outside of Russian Federation,
- all taxpayers (tax residents and non-residents) who received incomes from sources in Russia, if tax agents had nor withheld taxes from these incomes,
- all taxpayers pretending to return, tax offsetting or tax deduction.

Tax return is submitted not later than 30th of April in the year following the last tax period.

If within a calendar year a foreign natural person terminates his/her activity and departs Russian Federation, tax return of incomes actually gained by him/her during the period of his/her stay in the current tax period on the territory of Russian Federation should be submitted in the cases mentioned above, not later than one month before departure of the territory of Russian Federation. Payment of tax, assessed additionally in this case under tax returns, is carried out not later than in 15 calendar days from the moment of filing of return.

Income return is submitted to territorial tax inspection according to place of registration of a tax payer (place of residence or place of stay).

Declaration is submitted in rubles, in association with this incomes and expenditures of a taxpayer, denominated in foreign exchange, are converted into rubles at the rate of Central Bank of Russian Federation, determined at the date of effective gain of incomes or exercise of expenditures.

Taxpayer may submit return in hard copy personally to his/her tax inspection or through his/her representative, send it as postal communication with list of enclosure or transfer through telecommunication link channel.

International Consulting and Legal Center (ICLC) can render services on filling in of tax returns on the grounds of information given by a taxpayer, services on filing of returns and representation of a taxpayer interests in tax inspection.

In return all incomes gained by a taxpayer during the tax period, their sources, tax deductions, tax amounts withheld by tax agents, amounts of advanced payments actually paid during the tax period, amounts of tax payable (extra payable) or reimbursable according to the results of the tax period are pointed out.

Non-representing of tax return by a taxpayer within the fixed dates brings about exaction of a penalty:

- in the amount of 5% of tax amount payable (extra payable) on the basis of this return, for each full or not full month since the day fixed for its filing, but no more than 30% of the indicated sum and no less than 100 rubles (if exceeding of the time limit was not more than 180 days);
- in the amount of 30% of tax amount payable on the basis of this return, plus 10% of tax amount payable on the basis of this declaration for each full or not full month beginning from 181st day (if exceeding of the time limit is more than 180 days).

It is necessary to remember of *liability for tax non-payment*, provided with article 122 of Russian Federation Tax Code and is expressed in possibility of exaction of a penalty in the amount of 20% of not paid tax (duty) amount, and if nonpayment is intentional, then penalty will be 40% of not paid tax amount. Besides of exaction of a penalty and arrear, also penalty tax accrual is provided until the

moment of actual tax payment in the amount of 1/300 refinancing rate of Central Bank of Russian Federation for each day of the delay.

Special responsibility is provided for tax agent (enterprises paying in favor of a foreign citizen) for illegal non-transfer (incomplete transfer) of tax amounts to be deducted and transfer into budget in the form of penalty in the amount of 20% of amount transferable.

Besides, intentional declination from tax payment in the amount of more than 100K rubles by non-representing of tax return or other documents which submitting is obligatory in accordance with Russian Federation tax and duties legislation, or by entering into tax return of false facts may result in criminal liability.

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- Information was prepared by Representative offices Department of ICLC.

ICLC renders the following services:

- opening of ready to operate foreign representative offices in Moscow with registration in all state authorities
- calculation of salary of employees of a representative and all taxes and duties connected therewith, and also of other taxes and duties
- making out of tax returns / other reports, submitting of returns and returns into state authorities
- representation and protection of interests of foreign organizations and their employees in relationships with state authorities
- consultations on different questions connected with opening and activities of a representative office in Russia.