

The Brief

May 2013

Russia - Monthly Tax Update

- **Double Tax Treaty between Russia and Malta**

The Double Tax Treaty between Russia and Malta was signed on 24 April 2013. It will come into force as of 1 January of the year following the year of ratification by Russia and Malta.

The most significant provisions introduced by the Double Tax Treaty include the following:

- dividends paid by a company which is a resident of Russia, to a resident of Malta who is the beneficial owner thereof, are taxed in Russia at a rate which should not exceed (1) 5% of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends and this holding amounts to at least 100,000 Euro; (2) 10% of the gross amount of dividends in all other cases;
- the maximum 5% withholding income tax rate on interest and royalties is established;
- capital gains of a resident of a Contracting State from the alienation of shares or other rights deriving more than 50% of their value directly or indirectly from immovable property situated in another Contracting State can be taxed in that other State, etc.

- **Letter of the Ministry of Finance of the Russian Federation No. 03-01-18/11726 dated 9 April 2013**

The Ministry of Finance of the RF clarified that income from share participation in a company should be taken into account for treating deals as controlled and recorded in notification about controlled deals. However, the Russian transfer prices rules established by the provisions of Article 105.15 and Article 105.17 of the Tax Code of the RF are not applied for such income.

- **Letter of the Ministry of Finance of the Russian Federation No. 03-03-10/7999 dated 15 March 2013**

The Ministry of Finance outlined that payments to employees for professional holidays and other significant dates are not connected with the results of employees' business and can not be treated as deductible expenses for profit tax purposes.



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- **Letter of the Ministry of Finance of the Russian Federation No. 03-07-15/6333 dated 4 March 2013 and Letter of the Federal Tax Service of the Russian Federation No. ED-4-3/5875@ dated 3 April 2013**

The Ministry of Finance of the RF and the Federal Tax Service of the RF clarified that the Decision of the High Arbitration Court No. 11144/07 dated 5 February 2008 should be taken into account regarding the application of VAT for penalties charged by suppliers of VATable goods (works, services) under agreements. If penalties for delays in fulfilling obligations under agreements are the responsibility of purchasers, such penalties are not subject to VAT.

- **Letter of the Ministry of Finance of the Russian Federation and the Federal Tax Service of the Russian Federation No. ED-4-3/5938 dated 3 April 2013**

The Ministry of Finance of the RF and the Federal Tax Service of the RF provided clarifications regarding inclusion of information into VAT declarations related to the adjustment by a taxpayer of prices under Russian transfer pricing rules and outlined that a record should be made in the additional page of sales books for the respective tax period, on the ground of documents which confirm the adjusted amount of the tax base and amount of VAT. Moreover, tax authorities recommend taxpayers to attach an explanatory note to respective VAT declarations, enclosing the above mentioned

information, in particular, information about controlled deals in respect of which the taxpayer has adjusted the amount of the tax base and amount of VAT (notably, a number and date of the agreement, the cost of the transaction under agreement, the sum of the adjustment, information about the parties to the contract (tax identification numbers of the parties) and other related information.

- **Letter of the Ministry of Finance of the Russian Federation No. 03-04-06/10402 dated 1 April 2013**

The Ministry of Finance of the RF outlined that insurance contributions (insurance premium) paid by a company for insurance of liability of directors and officers in charge are subject to the Russian personal income tax.

- **Resolution of the Federal Arbitration Court of the Ural Region No. F09-2009/13 dated 10 April 2013**

The Federal Arbitration Court stated that payment by a limited liability company (the "LLC") to a shareholder in the case that such shareholder withdraws from the LLC could not be treated as a sale-purchase agreement between the shareholder and the LLC. The income received by a shareholder in the event of withdrawing from the LLC is subject to personal income tax which should be withheld by the LLC, as tax agent, from the total amount of income without deduction of expenses related to such income.



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