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Appeals considered by the Russian Federal Tax Service in Q1 2024: an overview

FAO CFOs, corporate tax managers, accountants and in-house lawyers

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Pepeliaev Group advises that the Federal Tax Service has issued a new Overview of legal positions based on the results of taxpayers' appeals considered in Q1 2024[1].

The Overview presents 30 points relating to different matters including VAT, administration, identifying actual tax obligations and tax liability, as well as certain matters connected with Part Two of the Russian Tax Code.

In the table below, we summarise the legal positions of the Tax Service which we see as the most interesting and important.

ID, outcome[2]	Episode description/ clause of the Overview / outcome	Position of the Tax Service	PG's comment
Issues relating to the Unified Tax Account			
1 –	**How a tax overpayment should be booked in the Unified Tax Account if the adjusted tax return was submitted after 3 years had expired (clause 1.2)**	For the purposes of booking an overpayment in the Unified Tax Account based on a submitted adjusted tax return, the timeframe is calculated starting from the due date established by the law for the payment of the tax and not from the date of the actual payment.	Tax authorities have always been sceptical about the timeframe for the return of an overpayment being calculated starting from the date of the court decision. In this case, the Tax Service decided that if an overpayment is returned on the basis of an adjusted tax return, the timeframe should be calculated starting from the statutory due date

[1] Letter No. Kch-4-9/7026@ of the Russian Federal Tax Service dated 21 June 2024.
[2] Outcome description: "-" - the taxpayer's appeal was set aside, "+" - the appeal was upheld, "+/-" - the appeal was upheld in part.

	After the date of the court decision which served as a basis for the return of an overpayment of property tax, the taxpayer submitted an adjusted tax return seeking to have the overpayment returned, because it believed that the 3-year term is calculated starting from the date of the court decision.		for the payment of the tax. In general, this is in line with the literal interpretation of the law (article 11.3(7)(1) of the Russian Tax Code). Nevertheless, in this case, the taxpayer still has other methods to have the tax returned, including through the court.
2 +	**How default interest should be booked in the Unified Tax Account when the court grants provisional remedies (clause 1.4)** When its decision to collect tax arrears was suspended, the tax inspectorate charged default interest under this decision.	When the court grants provisional remedies, this entails not only tax arrears and fines being removed from the Unified Tax Account, but also the removal of any default interest that was charged but remained unsettled as on the date of the court decision.	The tax service has rightfully corrected the local tax inspectorate. Indeed, the suspension of the enforcement of a tax authority's decision should entail the suspension of all charges.
Administration			
3 +/-	**Requesting documents outside a tax audit (clause 3.1)** The taxpayer believed that the request under article 93.1(2) of the Russian Tax Code was unlawful because it included documents under all transactions across several tax periods (agreements, consignment notes, tax registers, accounting policy, powers of attorney, certificates	For certain items of the request, the transactions were impossible to identify concerning which the claimant was obliged to provide the documents. The lower tax authority exceeded its powers when it requested the claimant to provide documents for three years. However, this request was lawful with respect to powers of attorney and accounting policies.	This is a part of an old dispute concerning the "depth" of requests for documents outside tax audits, in other words, is the tax authority able to request documents in an amount comparable with the one under a field tax audit? Can it request documents not in connection with a certain transaction, but relating to how operations are booked (accounting policies)? As a rule, such disputes are resolved on a case-by-case basis. In our experience, the chances are currently greater than in the past to prove that such requests are excessive.

	of work performed and cards of accounts).		However, this may require court action to be taken.
4 +	**Requesting documents being illegitimate if the tax authority has them (clause 3.4)**	During a field tax audit, the tax authority could independently obtain information about the revenue and source documents through the "Nalog-3" Automated Information System.	It may be added with respect to the point above that the tax authority should act reasonably when requesting documents from the taxpayer.
5 –	**Additional objections after the audit report has been analysed (clause 4)** Having analysed the audit report, the Company submitted additional objections. The tax authority wrote its conclusions about them in the text of the decision without notifying the taxpayer about the results of the consideration of them.	The taxpayer had not submitted any new documents with these additional objections; therefore, the tax inspectorate was not obliged to resume the consideration of the audit materials.	This is one more piece of evidence that formal violations of the procedure by the tax inspectorate, provided that they have not affected the essence of the decision and the conclusions of the tax inspectorate, have no value in themselves and may not constitute a ground for a decision to be set aside.
Actual tax obligations			
6 –	**Activities of an intermediary who delivers orders to a pick-up point (clause 5.1)** A company using the simplified taxation system was providing services of accepting and handing over deliveries at a pick-up point (Yandex Market). The tax inspectorate calculated, based on the data from the settlement account,	An intermediary's income is its fee and not the monetary funds received from buyers as payments for goods. The intermediary must transfer such monetary funds to the principal, the seller.	Transactions in which an intermediary is involved, especially when such intermediary uses the special tax regime, always attract the attention of tax authorities. However, in this case, the purpose was not to reclassify the payments but to audit the operations of the intermediary with respect to whether it was recording the revenue in full. For this purpose, auditors usually use the data from the settlement account.

	that the income was understated and assessed unified tax.		
7 –	**Agency activities connected with transportation (Yandex Taxi, clause 5.3)** A taxpayer using the simplified taxation system was providing as an agent fee-based services to individuals by granting access to the Yandex Taxi platform. It was also collecting and distributing payments. On its own, it was not performing transportation of passengers. The inspectorate concluded that all the monetary funds received (and not only the agency fee) were the taxpayer's revenue from transportation services.	The actual sense of the transactions was that the taxpayer subcontracted to third parties its obligation to perform the agreement to transport passengers. Therefore, the amount received on the claimant's settlement account was the payment for the taxi services provided, and unified tax should be paid on this amount.	This episode is an example of frequent disputes that arise when agency relationships are reclassified. The difference is sometimes very fine between the intermediary's activities with respect to a service and the provision of the service itself. This depends not so much on the wording of the agreement, as on the agent's actual role and the function it performs. The safest course of action to avoid risks in unclear situations like this one is to structure transactions as providing services (or performing work) without using agency constructions. This would help to avoid one more category of disputes: whether the expenses that are compensated to the agent are subject to VAT.
8 +/-	**Acquiring commodity and material valuables from technical companies (clause 5.4)** The company (the General Contractor) engaged controlled disputed contracting parties that showed signs of "technical companies" to perform construction and assembly works. The pricing of the works was formed taking into account	The disputed contracting parties acquired the commodity and material valuables from companies that were active (second-level contracting parties) and paid VAT in full. Therefore, the tax authority had access to documents that made it possible to calculate the amount of the actual tax obligations.	The appeal was upheld to the extent of acquiring commodity and material valuables. The tax service rightfully noted that not only the taxpayer, but the tax authority as well, bear the burden of proof and need to identify facts. This argument may be used in situations when the taxpayer is unable to independently acquire documents evidencing that the transaction has in fact been performed and which parties have actually performed it.

	the cost of commodity and material valuables.		
9 –	**The Chief Executive Officer becomes an individual entrepreneur using the simplified taxation system (clause 5.5)** An agreement was entered into with such a person who had previously worked under an employment agreement, to vest in them the powers of the single-member executive body. The amount of the individual entrepreneur's remuneration is many times higher than the level of their salary as an employee. The inspectorate classified the individual entrepreneur's remuneration as the salary of the Chief Executive Officer and assessed personal income tax, insurance contributions, default interest and fines.	The inspectorate's conclusion was treated as justified that the individual entrepreneur was in fact performing the functions of the company's CEO as an employee. The amount of the remuneration's excess over the previous salary should be removed from the expenses for profit tax purposes. The additional tax assessment was excessive because it did not take into account the amounts of tax under the simplified taxation system paid by the individual entrepreneur.	This point is particularly relevant as we approach the increase of personal income tax. Obviously, many taxpayers will start looking for ways to lawfully reduce their tax burden stating that they have a right to independently select the means to achieve the result of their business activity, which is what the taxpayer asserted in this case. If the structure and the system of work change, and this results in reduced taxes, it is necessary to demonstrate to the greatest extent possible that such changes have a business purpose which obviously has no connection with making tax savings. On the other hand, where is the borderline between lawful tax planning and an unjustified tax benefit? Why should a business plan its activities so that it has the maximum tax burden? By taking this approach, we can arrive at the conclusion that using special taxation regimes is in itself illegitimate. One way or another, it is likely that in this point, the tax purpose was the only one and it was so obvious that the company's attempts to prove the opposite were unsuccessful.
Certain matters connected with Part Two of the Russian Tax Code.			
10 –	**Income from debt to a contracting party that has been removed from the Unified State Register of Legal Entities (clause 8.1)**	A legal entity regarding which an entry is made in the Unified State Register of Legal Entities that information about its address is incorrect, is, for all practical	Grounds for accounts payable to be written off and for income to be acknowledged can appear before three years expire due to certain situations of which the taxpayer may

	The inspectorate included in non-sales income accounts payable to a contracting party which had the status of an inactive legal entity which the tax authority had removed from the Unified State Register of Legal Entities. The taxpayer stated that there was no bad debt because the contracting party had been removed from the register at the initiative of the tax authority and not at the initiative of the contracting party itself.	purposes, liquidated as an inactive legal entity. For this reason, liability to the contracting party discontinued and grounds emerged to include the accounts payable in non-sales income.	be unaware unless it takes special action. That is what happened in this case. The contracting party has not been filing tax accounts for over a year, that is, it demonstrated signs of an inactive party, as the inspectorate stated. Nevertheless, the company was unaware of this, because no messages had arrived from the contracting party. It is good practice to check accounts payable every once in a while, at least once a year before tax accounts are prepared, as well as information in the Unified State Register of Legal Entities with respect to the corresponding contracting parties.
11 –	**Booking the cost of a building which was liquidated for the construction of a new facility (clause 8.3)** The taxpayer had acquired a building and certain structures of a complex and afterwards demolished it, the purpose being to build a new office facility. The taxpayer included in its expenses the depreciated value of the liquidated facility.	It had been established that the only purpose of acquiring the fixed assets was to obtain the rights to the land plot in order to build a new facility on it. When a facility is demolished (liquidated) for the purposes of creating a new depreciable property, the depreciated value of the liquidated property is included in the initial value of the new facility.	Essentially, this is a consistent repetition of the position which the Ministry of Finance and the Federal Tax Service have been stating for several years: that if a real estate item, including a property under construction, is demolished for a new facility to be built in its place, all demolition expenses and the depreciated value can be included in the initial value of the new facility. Tax authorities believe that in this case, the liquidation of a facility is not an independent operation. We find this conclusion controversial. If this approach is used, the rule that the value of the liquidated fixed asset should be included in the expenses (article 265(1)(8) of the Russian Tax Code) becomes almost unworkable for real estate. Usually, an old item of immovable property is demolished to build a new one. However, at the time of demolition, the plans concerning the new construction may not yet be apparent. Besides, article 265(1)(8) of the Russian Tax Code contains no restrictions

			concerning the purposes for which the immovable property is demolished.

What to think about and what to do

It is always helpful to be on top of new trends and positions of the Russian Federal Tax Service on different matters. As can be seen from this Overview and our experience, appealing to the Central Administration of the Federal Tax Service is not always useless. Sometimes it becomes possible to "breach the wall" and convince them that the local tax authorities were wrong. In particular, this applies to matters connected with an unjustified tax benefit, when the local inspectorate incorrectly handles how it identifies the actual tax liabilities.

These positions should be taken into account in the future. For example, in view of the expected increase of personal income tax, it is better to exercise care in how you formalise relationships with your employees so that employment relationships and salaries are not substituted with remunerations paid to individual entrepreneurs.

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