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International taxation of remuneration of service engineers and other mobile employees in energy industry

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Abstract

Recently, due to the processes of globalization and increased labor mobility of the population, states are increasingly becoming participants in relations related to international taxation, when the question of the legality of the state's collection of taxes on the income of foreign citizens (both residents with taxable objects abroad and non-residents with objects of taxation on the territory of the state). Every year, the percentage of labor resources that work and earn money not only inside the country, but also go to work in neighboring states for various reasons, is increasing. A rented worker who comes to a country must, as a rule, pay tax in that country on income received from his work in that country. The taxation of rented workers in the host country depends, in particular, on the length of stay of the employee and on the terms of the tax agreement concluded between the host country and the employee's country of residence. Tax treaties contain various guidelines for the taxation of rented workers. Mechanisms for countering international double taxation should be enshrined in tax treaties. It is tax agreements that contribute to the achievement of an agreed position of states on taxation issues. At the same time, such agreements should clearly define the rights of the state of residence and the state of the source of income to levy taxes, as well as the terms necessary to establish the rights of the state on taxation, the methods that states will use to eliminate double taxation.

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Keywords

Transnational company, taxation, energy industry, foreign workers, work.

Introduction

This article considers the taxation of wages of employees in international companies that occurs according to the scenarios: a transnational company attracts Russian workers to work for hire in Russia; a transnational company attracts Russian workers for employment abroad; a Russian company attracts foreign workers to work for hire in Russia.

Since the state of residence of the employee also taxes the income of its residents received in any countries in accordance with its own legislation, the possibility of double taxation is eliminated by concluding a tax agreement between the country of residence and the country of residence of the employee.

Tax treaties contain various guidelines for income from employment. Having studied treaties and conventions for the avoidance of double taxation in countries such as the United States, Germany, Norway, Austria, France and China, it may be noted that the provisions indicated in the article on income from employment, common to all these countries.

Main part

Income derived by a resident of a contracting state from employment may only be taxed in the other contracting state when the work is performed there, if all of these conditions are met: the recipient stays in the other state for no more than 183 days; the remuneration is paid by an employer who is not a resident of the other state; the costs of the payment of benefits are not borne by the permanent establishment or fixed base which the employer has in the other contracting state.

Consequently, an employee who comes to a country will pay tax only in that country (on the income he receives from working in this country).

Income tax rates in the reviewed countries are the following:

Austria – a progressive scale of taxation, income tax rate from 0% to 50% depending on the amount of annual income;

Germany – a progressive scale of taxation, the minimum rate is 19%, the maximum is 53%;

China – the tax rate is progressive depending on the size of the salary, the income tax rate is from 0% to 45%;

Norway – income tax is 24%, but Norway has a four-tiered scale for calculating additional interest on the income tax rate. Thus, in addition to the above-mentioned compulsory payment, you need to pay a social tax, the rate of which is set at 8.2%;

USA – progressive tax rates, from 15% to 39.6%;

France – a progressive scale of rates covers 5 groups of taxpayers ranging from 0% to 45% depending on the amount of annual income.

In Russia, a low-income tax – from 13% to 15% (from January 1, 2021), therefore, it may be beneficial for transnational companies to attract employees of residents of the Russian Federation, provided that their residence is retained while working for hire abroad.

But there is a condition under which there is a change of residence. If a person has been absent from the territory of the Russian Federation for 183 days or more, then he loses the status of a tax resident. What does this entail? Individuals who are not tax residents of the Russian Federation are required to pay tax of 30% on income received in its territory.

This is generally a worldwide practice, which leads to the fact that a person can be a tax resident in only one country, since it is impossible to live 183 days a year in one country and 183 days in another.

If an employee leaves Russia and his tax status changes, the company's accounting department needs to recalculate personal income tax at a rate of 30%, withhold tax from payments to the employee and transfer it to the budget. The duty of a tax agent to calculate and pay personal income tax for an employee is established by paragraph 2 of Article 226 of the Tax Code of the Russian Federation.

In practice, the accounting department of a company will most likely not know what tax status an employee has under a civil law contract, unless he himself reports it. The accountant does not have any tools for checking tax status (for example, data on border crossing). It is unreasonable to entrust the accounting department with control of the tax residence of employees. However, the tax authorities insist that companies clarify the tax status of the employee and recalculate tax liabilities based on the results of the calendar year.

On May 19, 2010, Federal Law No. 86-FZ "On Amendments to the Federal Law on the Legal Status of Foreign Citizens in the Russian Federation and Certain Legislative Acts of the Russian Federation" was adopted. A new category of labor migrants was introduced – highly qualified specialists. A highly qualified specialist is a foreign citizen who has work experience, skills or achievements in a specific field of activity.

A special procedure has been established for taxing highly qualified specialists. Personal income tax rate in accordance with paragraph 3 of Article 224 of the Tax Code of the Russian Federation in relation to wages from employment is 13% regardless of their tax status (resident or non-resident of the Russian Federation) [Tax Code of the Russian Federation, www]. It should be noted that all other types of income of highly qualified non-resident specialists are taxed at a rate of 30%.

In order to avoid double taxation, Article 7 of the Tax Code establishes that if an international treaty of the Russian Federation, which contains provisions concerning taxation and fees, establishes rules and norms other than those enshrined in the Code, the rules and norms of international treaties of the Russian Federation are applied.

However, today it has also become common practice for Russian companies to attract foreign workers to certain areas of work. The benefit is obvious: the labor of foreigners is much cheaper than the work of Russians in similar positions. But in order not to face the claims of regulatory authorities, organizations and foreign workers must comply with the requirements of not only migration, but also tax legislation.

A company can hire foreign citizens if it has a permit to attract foreign labor, and foreigners must have a work permit or a patent.

In November, Russian Prime Minister Mikhail Mishustin set the permissible percentage of foreign workers for organizations for 2021. In August, the deputy chairman of the Russian Security Council, Dmitry Medvedev, said that Russia would not be able to do without labor migrants, but the conditions for them should not be better than for the citizens of the country.

On December 25, 2020, Russian Deputy Prime Minister Yuri Trutnev proposed introducing a levy for companies hiring foreigners for new projects in the Arctic and the Far East. He noted that he was concerned about the large number of foreigners from all over the world who were participating in the construction of facilities in the Far East. "Everything is fine, but only the government exists in order to give work, first of all, to the citizens of our country", Trutnev said. He noted that Russian citizens should receive a decent salary [Trutnev proposed to introduce a fee for hiring foreign workers, 2020].

Where it leads? We will see it in 2021. If this measure is approved by the President and the Prime Minister, then it will not affect existing projects.

However, in our opinion, such a measure can only lead to an increase in the number of illegal migrants. The Ministry of Internal Affairs estimates the number of illegal migrants: at the end of 2018 there were about 2 million in Russia. If you look at the statistics on labor migrants, then the citizens of

Uzbekistan make up 42% of all foreigners who have come to Russia to work in the last six months. In second place is Tajikistan (21%), Ukraine is in third place (7%). China is only on the 10th place in this list: according to the statistics of the Ministry of Internal Affairs, most of the Chinese come to Russia as tourists. According to the Ministry of Internal Affairs, there are now about 4 million labor migrants in Russia.

However, the above data can hardly be attributed to service engineers and other employees in the energy industry. Approximately 80% of these labor migrants are engaged in low-skilled manual labor.

Conclusion

Summing up, it should be noted that a change of residence occurs if a person has been absent from the territory of the Russian Federation for 183 days or more for 12 consecutive months. Income received abroad by Russian citizens who are tax residents of Russia are subject to taxation in the manner specified in international treaties for the avoidance of double taxation.

Mechanisms for countering international double taxation should be enshrined in tax treaties. It is tax agreements that contribute to the achievement of an agreed position of states on taxation issues. At the same time, such agreements should clearly define the rights of the state of residence and the state of the source of income to levy taxes, as well as the terms necessary to establish the rights of the state on taxation, the methods that states will use to eliminate double taxation.

We consider it necessary to further improve the legal regulation of taxation of foreign citizens, to take measures aimed at stimulating the influx of highly qualified specialists, while the state should protect Russian citizens from competition in the field of employment from foreign labor.

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Международное налогообложение заработной платы сервисных инженеров и других мобильных сотрудников в энергетической отрасли

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Аннотация

В последнее время в связи с процессами глобализации и повышенной трудовой мобильности населения государства все чаще становятся участниками отношений, связанных с международным налогообложением, когда встает вопрос о законности взимания государством налогов на доходы иностранных граждан. Ежегодно процент работников, которые зарабатывают деньги не только внутри страны, но и уезжают работать в соседние государства по разным причинам, увеличивается. Наемный работник, который приезжает в страну, должен, как правило, платить налог в этой стране с доходов, полученных от работы в данной стране. Налогообложение нанятых работников в принимающей стране зависит, в частности, от продолжительности пребывания сотрудника на условиях соглашения о налогообложении, заключенного между страной пребывания и страной проживания сотрудника. Соглашения о налогообложении содержат различные руководящие принципы по налогообложению в отношении наемных работников.

Для цитирования в научных исследованиях

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Ключевые слова

Транснациональная компания, налогообложение, энергетика, иностранные рабочие, работа.

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