

# *Payment of dividends - new rules*

Legal & Tax Flash Report  
Russia, Issue # 2 (53), January 2011



## What's changed?

On 31 December 2010, Federal Law No. 409-FZ (Law No. 409) took effect. Before this, there had been some uncertainty about the legal status of announced but unpaid dividends (part of distributed profits) as well as should such amounts be taxed. Moreover, the federal laws "On joint-stock companies" and "On limited liability companies" had not provided for any cut-off deadlines by which shareholders (partners) must claim payouts of announced dividends (distributed profit). As well, in practice, some shareholders (partners) were able to receive dividend payouts (distributed profit) earlier than others.

Now, Law No. 409 has clarified the relevant provisions of the federal laws "On joint-stock companies" and "On limited liability companies" that cover dividend (distributed profit) payouts. The new law has also amended the Russian Tax Code (RTC) to exclude unclaimed dividends from taxable income.

### What are the new payout timeframes?

Law No. 409 establishes standard requirements for determining the timeframes of announced dividend (distributed profit) payouts for both joint-stock and limited liability companies. The maximum timeframe for paying out announced dividends (distributed profit) is now **60 days** from the dividend announcement date.

A shareholder (partner) must claim payment of an announced dividend (part of distributed profit) within **three years**. Under the general rules, this deadline is final and may not be renewed, except in cases where the shareholder (partner) failed to claim due to threats of force or violence.

While a company's charter may provide for a longer dividend claim period, it may not exceed **five years**. Once the established claim period has expired, the shareholder is no longer entitled to collect announced but unpaid dividends (part of profit) and unclaimed amounts can then be restated as part of the company's retained earnings.

Finally, Law No. 409 stipulates that a company cannot offer preferential dividend payout terms to individual shareholders of the same category (type) of stock, and as well that payouts of announced dividends for each category of shares must be made simultaneously.

### What are the relevant tax changes?

A new paragraph has been added to RTC Article 251 "Nontaxable income". Now it is explicitly stated that the tax base does not include income in the form of property, property rights or non-property rights, in the amount of their assessed value, that were transferred to a company or partnership to increase net assets (including through the formation of additional paid-in capital and/or funds) by the relevant shareholders or partners. These rules also extend to increases in net assets of a business entity or partnership with a simultaneous decrease or cancellation of the business entity or partnership's liabilities

to the relevant shareholders or partners, if the increase in net assets was made in accordance with Russian law or the business entity or partnership's incorporation documents, or if the increase occurred at the discretion of a shareholder or partner of the business entity or partnership. These rules also extend to restatement of unclaimed dividends (or part of the distributed profit) in retained earnings.

So, there is now an explicit rule that exempts income in a form of unclaimed dividends from taxation. The rule applies to relationships occurring since 1 January 2007.

## ***What about a transition period?***

Law No. 409 also applies to payouts of announced dividends (part of distributed profit) for which the claim period was still valid as of 31 December 2010.

In addition, the new law allows shareholders (partners) who have not claimed announced but unpaid dividends (part of distributed profit) during the past three years (if the dividend claim period had already expired by 31 December 2010) to claim such payouts up until 30 June 2011.

## ***What you should do now***

- ❖ Amend your company's charter and dividend policy accordingly;
- ❖ Review your dividend payout practices, and related legal and tax risks, for the past three years;
- ❖ Assess the legal compliance of your current dividend payout practices;
- ❖ Develop a new company dividend payout policy; and
- ❖ Make sure to follow the new rules when filing your 2010 profits tax return.

# Contacts in Russia

**David John**

Partner, Russia Tax & Legal  
Leader  
david.c.john@ru.pwc.com

**Ekaterina Lazorina**

Partner, Financial Services  
ekaterina.lazorina@ru.pwc.com

**Denis Gorin**

Partner, Energy, Utilities  
and Mining  
denis.gorin@ru.pwc.com

**Irina Martakova**

Partner, Consumer Industrial  
Products  
irina.martakova@ru.pwc.com

**Natalia Milchakova**

Partner, Technology InfoCom  
Entertainment  
natalia.milchakova@ru.pwc.com

**Karina Khudenko**

Partner, International  
Assignments and HR Services  
karina.khudenko@ru.pwc.com

**Natalia Kuznetsova**

Partner  
International Tax Structuring  
natalia.kuznetsova@ru.pwc.com

**Evgenia Veter**

Director, Transfer Pricing  
evgenia.veter@ru.pwc.com

**Galina Naumenko**

Partner, Mergers and  
Acquisitions Tax Services  
galina.naumenko@ru.pwc.com

**Vladimir Konstantinov**

Partner, Indirect Tax Services  
and Customs  
vladimir.konstantinov@ru.pwc.com

**Kirill Nikitin**

Partner, Tax Management  
and Accounting Services  
kirill.nikitin@ru.pwc.com

**Yana Zoloeva**

Partner, Legal Practice Leader  
yana.zoloeva@ru.pwc.com

**Andrei Narutsky**

Partner  
andrei.narutsky@ru.pwc.com

**Gennady Odarich**

Director  
gennady.odarich@ru.pwc.com

**Maxim Kandyba**

Director  
maxim.kandyba@ru.pwc.com

**Alexey Shinkarenko**

Director  
alexey.shinkarenko@ru.pwc.com

**Yana Proskurina**

Director  
yana.proskurina@ru.pwc.com

The Tax Flash Report is issued in Russian and English to keep PricewaterhouseCoopers clients abreast of changes in Russian legislation which may be of special interest. The information presented does not constitute professional advice provided by our specialists solely on individual basis.

© 2011 PricewaterhouseCoopers Russia B.V. All rights reserved.

In this document "PwC" refers to PricewaterhouseCoopers Russia B.V., which is a member firm of PricewaterhouseCoopers International Limited, each member firm of which is a separate legal entity.