

Russian Supreme Arbitration Court Practice in Cases Involving Tax Agents



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Although in theory there is no concept of court precedent in Russian law, in practice the resolutions of the Supreme Arbitration Court play a very important role in the development of Russian judicial practice. When courts consider specific cases, they are guided by the position of the Supreme Arbitration Court. The Supreme Arbitration Court issues opinions on the most significant and complex aspects of the law.

This article outlines some key resolutions of the Supreme Arbitration Court on cases involving tax agents. A legal position based on the opinions issued by the Supreme Arbitration Court helps to ensure the most effective protection of taxpayer rights in court.

SUPREME ARBITRATION COURT RESOLUTION NO. 13225/06 OF FEB. 6, 2007

The matter under consideration was the application of a penalty for failure to fulfill taxpayer obligations under Article 123 of the Tax Code. A company paid license fees and royalties to legal entities resident in Cyprus, Britain and Ukraine. The company believed that the above payments fell under the respective double tax treaties. At the date the income was paid, the company did not have certificates confirming the tax residency of income recipients in the countries party to the respective treaties. The company had, however, obtained these certificates by the date of the field tax audit.



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documents required for applying double tax treaty provisions, we now turn to:

SUPREME ARBITRATION COURT RESOLUTION NO. 990/06 OF JUNE 28, 2005

A tax agent did not withhold tax on income paid to foreign organizations. The tax agent referred to the applicable double tax treaties. However, the documents presented by the foreign entities to confirm their permanent residency did not comply with the convention of Oct. 5, 1961, which annulled the requirement for legalizing foreign official documents.

The Supreme Arbitration Court stated that in the above situation the tax agent was required to withhold and pay tax on income paid to foreign legal entities.

Thus, the somewhat liberal approach taken by the Supreme Arbitration Court in the first case we mentioned does not extend very far. To qualify for coverage under a double tax treaty, a tax agent must obtain legalized or duly apostilled documents confirming the permanent residency of a foreign legal entity.

SUPREME ARBITRATION COURT RESOLUTION NO. 16058/05 OF MAY 16, 2006, AND SUPREME ARBITRATION COURT RESOLUTION NO. 4047/06 OF SEPT. 26, 2006

These cases considered the matter of a company's failure to withhold and pay individual personal income tax.

In accordance with chapter 11 of the Tax Code, interest represents a way of ensuring fulfillment of tax obligations. Since, according to Article 226 of the Tax Code, it is the tax agent that is responsible for ensuring payment of individuals' personal income tax, interest is understood as a way of ensuring fulfillment of the tax agent's obligation to pay this tax. Therefore, interest for nonpayment of tax not withheld from the taxpayer can be charged to the tax agent.

The Supreme Arbitration Court took this position with respect to a tax agent's failure to fulfill its tax obligations when paying income to individuals. This position is supported by the general norms of the Tax Code, which regulate the status of a tax agent. This indicates that when considering cases on the collection of interest from a tax agent for failure to withhold and transfer other taxes, the Supreme Arbitration Court may adopt a similar approach.

In conclusion, it is important to note that the Supreme Arbitration Court's resolutions are very important in the development of judicial practice in Russia. Through careful examination and understanding of the contents of such resolutions, taxpayers can begin to forecast the outcome of their disputes with the tax authorities.

The information presented should not be used as a substitute for professional advice that our specialists provide solely on an individual basis.