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Tax Newsletter

TAX CODE OF BELARUS: 2012 Principal Changes

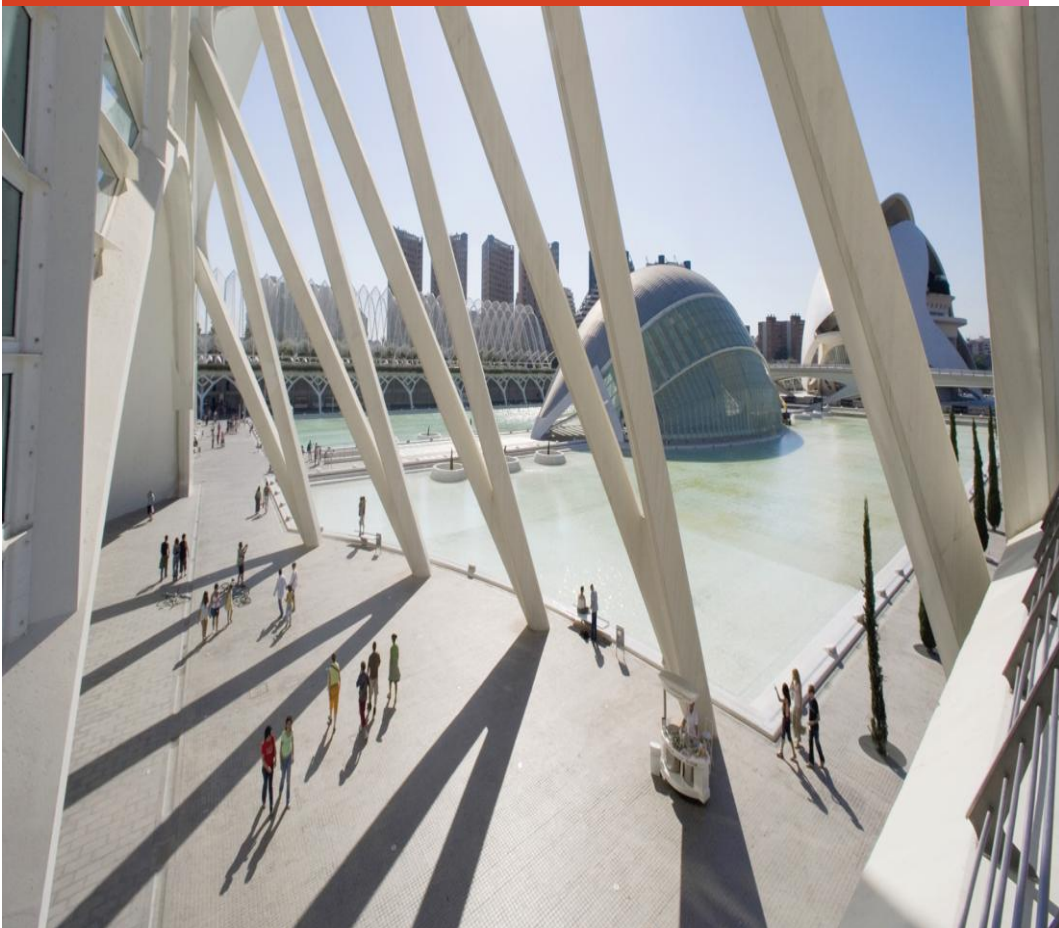
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As from 1 January 2012 a number of amendments to the Tax Code of the Republic of Belarus enter into force. These amendments are aimed at further simplification of Belarusian tax system as well as at easing of tax burden for taxpayers. The following newsletter summarizes principal changes offered by the legislator.

GENERAL PART

Basic Changes

➤ The banks are not allowed to open new bank accounts to those taxpayers who have their bank accounts blocked by reason of not fulfilling tax liabilities;

➤ Upon written request of a taxpayer tax authorities are obliged to issue a certificate stating the amount of taxes calculated and paid by this taxpayer (i.e. tax reconciliation certificate);

➤ digital interactions between Tax Authorities and taxpayers are facilitated, *inter alia*, by introduction of:

- the possibility to file notifications, applications or messages to Tax Authorities in the form of electronic document;

- tax filing obligation for the companies having more than 50 individuals employed;

➤ The status of the Best Taxpayer as a form of encouragement applicable to Belarusian entities and individual entrepreneurs is introduced;

➤ taxpayers are guaranteed administrative and judicial remedies if tax violations resulted from enforcement of written clarifications (tax rulings) given by the *Ministry of Taxes and Levies*;

➤ Definition of goods (works, services) place of supply rules for VAT purposes is adjusted in accordance with the Customs Union regulations;

➤ Penalty interest for delay in tax payments is calculated on the basis of refinancing rate effective during the period when the tax liability has to be fulfilled (*as opposed to application of the refinancing rate effective as of the date when tax liability is finally fulfilled as it was previously*);

➤ Tax authorities are granted additional rights in order to secure fulfillment of tax liabilities by taxpayers, including the following:

- to make requests to a licensee calling for elimination of revealed

violations and to establish terms for fulfilling such requests;

- to submit propositions to licensing authorities demanding suspension of licenses;

- to demand from banks to make identification of digital wallets' users and provide with information about all transactions such users have completed;

- to impose temporary restrictions on deregistration of cars by the taxpayers who are in arrears with payments to the state budget.

Transfer Pricing

Key provisions of the new transfer pricing rules are quite similar to the ones contained in Russian Tax Code and are as follows:

1. in the course of the tax audit Tax Authorities are entitled to check whether prices set by particular taxpayers are in line with the market prices;

2. Tax Authorities can apply market price of transaction for taxation purposes in the cases of:

- selling of immovable property/real estate when the transaction price is lower than a market price by 20%;

- entering into a foreign-trade transaction, including the one with related party, when the transaction price (*price of number of transactions with one person per year*) is simultaneously higher than BYR 20 billion and lower than a market price by 20%;

3. tax base for corporate income tax (further – CIT) purposes can be adjusted by the Tax Authorities on the basis of a market price only if the amount of CIT to be paid to the budget of Belarus goes up as a result of such adjustment;

4. to determine CIT base on the basis of a market price the Tax Authorities are entitled to apply the following methods:

- Comparable uncontrolled price method (CUP);

- Resale price method;

- Cost plus method.

5. The CUP method is a basic method and shall be applied first. In case it is not determinative the second method to apply is a resale price method. Cost plus method can be applied if both previous methods cannot be used for CIT base determination;

6. Before the tax audit has been carried out, a taxpayer who applied transaction prices not corresponding to market prices is entitled to independently adjust CIT base according to market prices and pay the remaining CIT.

SPECIAL PART

VALUE ADDED TAX

As from 1 January 2012, the following operations are excluded from VATable transactions:

- other disposal of goods, items of Property, Plant and Equipment and intangible assets, unassembled equipment and construction in progress;
- sale of securities.

Tax Exemption (without credit)

Transactions related to lending money /provision of loans by banks and commercial companies are exempt from VAT.

Tax Calculation

The rules regulating the order of the tax base recording in tax returns for VAT purposes by commissioners or agents during import of goods from the territory of Member States of the Customs Union are established.

Procedures of VAT base calculation by companies carrying out *contract manufacturing of tobacco* products as well as transfer of goods on trade loan are introduced.

In particular, tax base *for companies carrying out contract manufacturing of tobacco* products can be reflected as:

1. cost of production of tobacco products which includes cost of materials plus amounts of excises paid by manufacturer less amounts of VAT, or
2. cost of processing or other transformation of raw materials less amounts of VAT.

Export Confirmation

The period during which a taxpayer should confirm the fact that the goods were actually exported for purposes of application of 0% VAT preferential rate is extended from 60 to 180 days.

VAT offset

- The procedure of determination of tax deductions according to the method of proportion has been adjusted. Particularly, total amount of VATable turnover does not include

transactions related to supply of goods (works, services), property rights by companies (branches, representative offices of Belarusian companies) who are registered as taxpayers in foreign states. Moreover, total amount of turnover does not include transactions related to supply of goods if such goods are not supplied in the territory of Belarus and were acquired in foreign state given VAT was not calculated when such goods were supplied by a taxpayer.

- Taxpayer is entitled to deduct input VAT on the goods dispatched to a customer from a place of storing in a foreign country provided such goods were exported from Belarus under export customs procedure.

- Taxpayer has the right to deduct/offset the amount of VAT paid from the means that (i) were released in connection with taxpayer's exemption from taxes, and (ii) paid on disposal of the state property. A taxpayer can also deduct the amount of VAT charged on goods (work, services), property rights on which accounts payable are written off to the financial results.

- In case a taxpayer unreasonably refunded/offset input VAT, difference between the amount of input VAT refunded and output VAT charged on supply of goods (work, services), property rights shall be paid back to the budget by a taxpayer. Moreover, a taxpayer will be charged with a penalty interest in such case.

EXCISE TAXES

Tax Calculation

Special order of excise taxes calculation *for contract manufacturers of tobacco* products is introduced.

In particular, dispatch (transfer) to the customers and / or other persons of tobacco products produced by a manufacture in question is recognized as sale (transfer) of excisable goods for excise taxes purposes.

Taxpayers carrying out contract manufacturing of tobacco products are exempt from excise taxes if they export finished goods from Belarus.

There have also been established the list of documents that a taxpayer is obliged to submit to Tax Authorities in order to get an exemption from excise taxes on tobacco products exported to the Member States of the Customs Union.

For excise tax purposes, the moment of actual sale (transfer) of tobacco products produced by way of contract manufacturing is a day within a tax period

when tobacco products were dispatched (transferred) to the customers.

Taxation of filter cigarettes

The procedure of taxation of cigarettes in question is changed. In particular:

- excise tax rate for cigarettes is defined on the basis of (1) maximum retail price per pack of cigarettes of certain brand declared by a taxpayer and (2) reference of certain brand of cigarettes to one of three price groups defined in the Tax Code;

- taxpayers are obliged to notify Tax Authorities on maximum retail price per pack of cigarettes of the given brand that they are going to use and what price group cigarettes concerned shall be referred to.

Export Confirmation

The period during which a taxpayer should confirm the fact that the goods were actually exported in order to get excise tax exemption is extended from 60 to 180 days.

Tax Deductions

Taxpayers are entitled to deduct the amount of excise taxes paid for excisable raw materials used for production of excisable goods that are exported from Belarus.

CORPORATE INCOME TAX

Tax Rate

Tax Rate is reduced from 24 to **18 %**.

The rules for determination of a day of payment in case of non-monetary termination of commitments (factoring, transfer of a debt, cession, setoff, usage of electronic money) are established.

Costs

Taxpayers are entitled to classify /record part of the initial value of fixed assets (Property, Plant and Equipment) and intangible assets as costs of production and supply of goods (works, services) for CIT purposes as of the date when such assets were initially accounted for:

- with regard to buildings and constructions – up to 10% of the initial value;
- with regard to machines, equipment, vehicles, intangible assets – up to 20% of the initial value.

Subsequently, when assessing amount of depreciation charges for CIT purposes, price reduced by the part of the initial value of the assets concerned shall be considered.

The list of costs not deductible for CIT purposes is amended by inclusion, *inter alia*, of:

- costs for additional vacations provided to employees for irregular working hours, long work experience within one company and other incentive vacations;
- costs for entertainment activities organized during advertising actions, conferences, meetings, seminars, etc.;

Tax Losses Carry Forward

Belarusian companies are given the possibility to recognize in the current tax period tax losses incurred in the previous tax periods. However, certain restrictions are imposed:

1. tax loss carry forward is not applied to losses:
 - incurred as result of the activities outside Belarus if a company is registered as a taxpayer in a foreign state with regard to such activities;
 - incurred in a tax period when a company was entitled to apply CIT relief (tax exemption) established for several tax periods;
2. taxpayer can carry forward losses incurred in 2011 and subsequent tax periods;
3. tax loss carry forward can be used within 10 years after the tax period when losses have occurred;
4. losses incurred by a company from transactions with derivatives and securities as well as from transactions on disposal of Property, Plant and Equipment are carried forward against income derived from the same groups of transactions;
5. losses incurred in several tax periods are carried forward in the order of their occurrence.

Thin Capitalization Rule

The amount of interest accrued on loan granted to a taxpayer by a foreign company that can be deducted for CIT purposes is now limited if in aggregate:

- a foreign company holds over 20% of shares in a statutory capital of a taxpayer or a foreign company and a taxpayer are treated related parties, and
- the amount of loan exceeds the value of a foreign company's share in a statutory capital of a taxpayer by more than three times.

Alteration of Tax Calculation Methods

Taxpayers are given the possibility to change during the current tax period the procedure of CIT calculation from the method based on CIT amount calculated for previous year to the method based on income estimated to be derived within a current year.

Taxpayers who have changed CIT calculation method as described above are obliged to file tax returns in which altered CIT amounts are reflected. Such return shall be filed not later than 20th day of the third month of the quarter in which CIT calculation method was changed.

Non-Operating Income / Expenses

1. Additionally included:

- accounts payable in case of liquidation of creditor that are accounted as non-operating income;
- amounts of financial rebates granted by a supplier to a customer that are accounted for as non-operating income by a supplier and as non-operating expenses by a customer;
- income / expenses from exchange or conversion of foreign currency at the rate different from the rate established by the National Bank shall be accounted for as non-operating income / costs;

2. The procedures for (1) recognition of input VAT as non-operating costs if there are no documents confirming application of 0% VAT or VAT exemption and (2) for further recording of such amounts as non-operating income if appropriate documents were submitted to the Tax Authorities are clarified;

3. Non-operating income derived from rental and financial lease transactions is defined as amount of leasing payments received by a lessor plus reimbursement not included in leasing payments but received by a lessor according to the terms of the respective agreement.

4. operators of engineering and transport infrastructures shall not report as non-operating income costs of construction of items of engineering and transport infrastructure that were transferred free of charge to the state ownership by investors.

CIT Exemptions

1. Income derived from selling of goods of own production is exempt from CIT if:

- such goods are included in the list of innovative goods approved by the Council of Ministers, or

- such goods are included in the list of high-technology goods approved by the Council of Ministers. However, this exemption is granted if revenue from selling of such goods comprises at least 50% of total revenue of a taxpayer. Otherwise, such income is taxable at the 10% rate;

2. Investor is entitled to reduce taxable income received from selling of an item of immovable property it constructed by costs of construction of items of engineering and transport infrastructure adjacent to such item of immovable property. This CIT relief is granted on condition that items of engineering and transport infrastructure concerned are transferred free of charge to the operators of such items;

3. Limit of CIT relief of a company's taxable income donated to state-financed organizations acting in the sphere of health care, education, social security, culture or sport is increased from 5% to 10%;

4. 3 year CIT exemption granted to hotels supplying accommodation for tourists is extended to other companies who supply such services.

5. CIT relief of company's taxable income spent on financing of capital investment is abolished.

WITHHOLDING TAXES

Taxable Objects

1. Income of foreign companies received from organization and carrying out of entertainment shows in the territory of Belarus is excluded from the list of taxable objects as such shows can be organized and carried out in the territory of Belarus only by Belarusian resident companies;

2. The list of taxable services in the sphere of data processing is extended by including, *inter alia*, services of hosting, selling of computer time, services related to databases and Internet search engines.

Tax Exemptions

Exemptions are extended to:

1. Income received from leasing of vessels to the Belarusian entities carrying out merchant shipping as well as income received from supplying of services of training in the sphere of vessel maintenance rendered to Belarusian entities carrying out merchant shipping. The exemption is granted to a foreign company who is a resident of a state with which Belarus did not conclude Double Taxation Treaty;

2. Reimbursement (recovery of expenses) and fees paid to foreign banks for granting credits and loans to Belarusian borrowers.

PERSONAL INCOME TAX (PIT)

Income

Income received as a result of a loan granted in a foreign currency being repaid in Belarusian rubles at the exchange rate different from the exchange rate established by the National Bank is subject to 12% PIT.

PIT Exemptions

1. Income received in the form of value of sanatorium voucher bought by Belarusian companies or individual entrepreneurs for children younger than 18 years old is exempt from PIT in the amount up to BYR 1 750 000 from one source during one tax year;

2. Tax exemptions previously established in basic units are now defined in Belarusian rubles. They are as follows:

- up to *BYR 26,5 mln.* – gift income received from individuals;
- up to *BYR 8 mln.* – non-employment income (e.g., financial support, gifts, payments for insurance, etc.) if received from an employer;
- up to *BYR 530 thousand* – non-employment income if received from other companies;
- up to *BYR 53 mln.* – donations to disabled persons, under-age orphans or under-age children left without care of parents made by Belarusian companies and nationals;

3. Donations to persons who need medical aid provided by Belarusian companies and nationals are fully exempt from PIT.

Tax Deductions

Amounts of standard tax deductions are increased.

Parents who have two and more children are granted double standard tax deduction.

Professional tax deduction for taxpayers who received income from leasing of premises is abolished.

Tax Rates

Flat rates are applied to income received from lease of premises if such income does not exceed BYR 26,5 mln. per a tax year (previously – 500 basic units).

Range of flat rates is defined in the Annex 26 to the Tax Code whereas specific tax rates will be established by the Councils of Deputies of Minsk and oblasts depending on the category of the place where leased premises are located.

Procedures of Taxation

➤ Income received in the form of loans given by foreign companies not acting through permanent establishment in Belarus or by foreign nationals:

- shall be declared by a taxpayer unless such loan was paid off within the same tax period when it was granted;
- is charged with 12% PIT.

Amounts of PIT paid by a taxpayer are refunded or set off proportionally to amounts of loan paid off to a creditor.

➤ Income derived by a taxpayer from business activities carried out after he/she was deregistered as an individual entrepreneur is taxable as follows:

- taxpayer submits a tax return to the Tax Authorities,
- taxpayer pays PIT before May, 15th according to the tax return.

Tax Refund

If a tax agent is not able to refund to a taxpayer overpaid amounts of PIT, such refund can be made by the Tax Authorities on the basis of a taxpayer's application.

REAL ESTATE TAX

Non Taxable Objects

1. Items of residential construction, but only in those parts of buildings that are considered residential (before they were not regarded as taxable objects in full);
2. Buildings and installations of above norm construction in progress in the part where construction is performed without subcontracting (before they were not regarded as taxable objects in full).

Tax exemption

1. buildings and installations of cultural organizations, including the ones on lease;
2. buildings and installations of agricultural purpose not only actually

used, as it was before, but intended to be used for production of agricultural goods;

3. until 1 January 2016 buildings and installations of scientific organizations, scientific and technological parks, technology transfer centers, including the ones on lease.

Procedure of Calculation

Procedures of calculation and payment of Real Estate Tax on items acquired (withdrawn) within the tax period as well as in case the company has moved from the special tax treatment to general one has been clarified.

Estimation of Tax Base

Tax base on items of real estate leased by companies from individuals can be estimated by the former without tax authorities being necessarily engaged as it was previously, for instance, by way of acquiring of opinion letter from a certified appraiser.

Change of Tax Rates

Coefficients to Real Estate Tax established by the local Councils of Deputies apply only from 1 January of the year following to the one when the decision to introduce the respective coefficients is taken.

Tax Filing and Payment

The term of tax return filing by companies has been shifted from *20 January to 20 March*, and the term of payment – from *22nd day of the first month of the quarter to 22nd day of the third month of the quarter*.

LAND TAX

Taxpayers

Individuals who inherited land plots are now regarded as taxpayers. Land tax on the inherited land plot or the land plot where inherited real estate is located is calculated from the 1st day of the month next to the one when the inheritance was opened.

Tax Rates

Tax rates provided for in Annexes 2 & 3 of the Tax Code are indexed.

Doubled tax rates are applied to land plots occupied with objects of above norm construction in progress.

Change of Tax Rates

Coefficients to Land Tax rates established by the local Councils of Deputies apply only from 1

January of the year following to the one when the decision to introduce the respective coefficients is taken.

Exempt from Land Tax

1. Land plots allocated to companies for residential buildings' construction, within the construction period. Exemption is *applicable to the residential part of the building only*;
2. Before 1 January 2016 land plots of scientific organizations, scientific and technological parks, technology transfer centers;
3. Land plots of cultural organizations;
4. Land plots provided for construction of motorway service and infrastructure thereto – within the period of performance of design works, construction as well as within 2 years after such objects were put into operation;
5. Land plots within the borders of free economic zones (FEZ) provided to FEZ residents registered as such from 1 January 2012 for the purpose of objects construction – for the period of such objects design and construction, but not more than for 5 years from the registration date. FEZ residents registered as such before 1 January 2012 are entitled to the corresponding benefit not earlier than from 1 January 2017 and within not more than five years from this date;
5. Land plots occupied by objects and installations for use of renewable energy resources as well as land plots provided for the period of such objects' and installations' construction (reconstruction).

STATE DUTY

Significant number of amendments was made. They are primarily aimed at:

1. Broadening of the scope of actions subject to state duty, increase of the corresponding rates;
2. Introduction of additional state duties benefits;
3. Change of certain state duties' rates;
4. Taxpayer's entitlement to *set off* state duty against upcoming payments and (or) performance of tax obligation to pay other taxes, duties, levies, apart from the right to refund overpaid (overcharged) state duties;
5. Introduction of the possibility to confirm payment of the state duty made via the system of single processing and information space.

SIMPLIFIED TAXATION

Taxpayers

The companies operating in the sphere of tourism have been entitled to apply the simplified system of taxation.

Gross Revenue

The limit of annual gross revenue has been increased up to *BYR 12 billion* for business entities which apply the simplified taxation *with VAT payment*, and up to *BYR 3,4 billion* for the ones *who do not pay VAT*.

Tax Rates

- *7 percent* – for companies and individual entrepreneurs not paying VAT;
- *5 percent* – for companies and individual entrepreneurs paying VAT;
- *2 percent* – for companies and individual entrepreneurs in relation to revenue gained from sale of goods (works, services), property rights abroad. This provision will be applied starting from 31 December 2013.

Tax Accounting

The range of entities/persons entitled to keep simplified tax records without accounting record keeping in case the simplified taxation is applied includes companies with number of employees *not more than 15 individuals* and individual entrepreneurs with gross receipts not exceeding *BYR 3,4 billion* from the beginning of the current tax year.

SPECIFICS OF TAXATION IN FEZs

Due to obligations incurred by the Republic of Belarus in connection with its membership in the Customs Union a number of tax and customs benefits for Free Economy Zone (FEZ) residents was cancelled:

1. for FEZ residents which will be registered after 1 January 2012:

- Tax reliefs arising from sale of import-substituting goods are cancelled;
- Land tax benefits are introduced (see above).

2. for FEZ residents which were registered before 1 January 2012:

- Tax reliefs arising from sale of import-substituting goods will be in effect within seven years from the date of registration as a FEZ resident;

- Land tax incentives can be applied not earlier than from 1 January 2017 (see above).

OTHER TAXES

The procedure of calculation and payment of ecological tax, production tax, patent fees, single tax for individual entrepreneurs and other individuals, single tax for agricultural producers, gambling tax, levy on performance of craft activity and levy on services in agricultural and ecological tourism has been clarified. Some other amendments in relation to the above taxes (levies) have been introduced.

Provisions regarding local taxes and levies have not been amended.

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