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Russian Law Review

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The purpose of the reviews below is to provide the clients of Maxima Consulting and Law and other interested parties with the latest information on basic amendments to the Russian law which may influence their activities or affect their interests in any other way. Opinions and comments provided in these reviews are not legal opinions and do not cancel necessity in special legal advice on certain issues.

A double tax treaty was entered into between Russia and Latvia

This treaty shall apply to **profits and capital taxes** collected on behalf of the contracting state or its political subdivisions or municipalities regardless the method of collection.

This Treaty shall apply to the following taxes existing, in particular, **in Russia**:

- corporate profits tax;
- personal income tax;
- corporate property tax;
- individual property tax.

In Latvia such taxes include, in particular:

- corporate income tax;
- individual income tax;
- real estate tax.

The Treaty shall be applicable **to any similar or substantially similar taxes** imposed on profits or capital after the execution thereof in additional to or instead of the existing taxes.

See: Treaty between the Government of the Russian Federation and the Government of the Republic of Latvia "On Avoidance of Double Taxation and Prevention of Fiscal Evasion in Respect of Profits and Capital Taxes" of 20 December 2010.

From 1 January 2012 a particular set of medical devices and products should be available in first-aid kits for the purposes of first-aid treatment of employees

According to the Requirements to completing of first-aid kits with medical devices for the purposes of first-aid treatment of employees (becomes effective on 1 January 2012) approved in compliance with the Labour Code of the Russian Federation, in particular, the following **medical devices** should be available in a first-aid kit:

- arresting bleeding tourniquet;
- sterile medical gauze bandage;
- bactericidal adhesive plaster;
- artificial respirating unit;
- non-sterile medical (examination) gloves;
- 3-layer non-sterile medical face mask;
- isothermal rescue blanket.

It is determined that a first-aid kit should include Recommendations on application of medical devices contained in it for the purposes of first-aid treatment of employees with pictures and there should be specified those actions the description (pictures) of which are listed in these Recommendations.

The devices are listed together with their quantity, presentation and compliance with GOST. After the best before date and if the devices are used, the first-aid kit should be replenished. The first-aid kit should be completed with medical devices registered in the Russian Federation.

Article 5.27 of the Administrative Offences Code of the Russian Federation provides for the **liability** for breach of labour laws and law protection laws.

See: Order of the Ministry of Health and Social Development "On Approval of Requirements to Completing of First-Aid Kits with Medical Devices for the Purposes of First-Aid Treatment of Employees" No. 169n of 5 March 2011. Registered with the Ministry of Justice of the Russian Federation No. 20452 of 11 April 2011.

Amendments aimed at the improvement of the mechanism of migration registration of foreign citizens and stateless persons were introduced to law

Federal Law "On Migration Registration of Foreign Citizens and Stateless Persons in the Russian Federation" No. 109-FZ of 18 July 2006 was amended to the extent related to the determination of a party hosting foreign citizen or stateless person in the Russian Federation and the place of residence of foreign citizen or stateless person in the Russian Federation (these amendments became effective on 25 March 2011).

Now the premises, institution or organisation where a foreign citizen or a stateless person stays and/or at the address of which such person should be registered with the migration authorities shall be deemed the **place of residence** of such foreign citizen or stateless person.

The following persons/organisations may act as **hosting party**:

- citizen of the Russian Federation;
- foreign citizen or stateless person permanently residing in the Russian Federation;
- legal entity, branch or representative office of legal entity;
- federal state authority, state authority of a constituent territory of the Russian Federation, local authority;
- diplomatic mission or consular office of a foreign country in the Russian Federation;
- international organisation or its representative office in the Russian Federation, or representative office of a foreign country to international organisation located in the Russian Federation where foreign citizen or stateless person actually resides or is engaged in labor activity (is located).

In the Law the notion of hosting party was extended: foreign citizen may act as hosting party in respect of members of his/her family, **provided that he/she is a highly-skilled professional and owns residential premises in the Russian Federation.** Therefore, provision of a highly-skilled professional with a right to act as hosting party for members of his/her family does not depend upon whether such foreign citizen obtained a status of permanently residing in the Russian Federation. Availability of ownership title to residential premises in the Russian Federation (regardless its area) for foreign citizen shall be of the essence.

Timescales within which foreign citizen temporary staying or sojourning in the Russian Federation, or a party hosting such foreign citizen are obliged to carry our formalities required for **the migration registration** of such citizens were increased. These timescales now equal 7 day (used to be 3 days). It should be noted that as a general rule the required formalities related to the migration registration shall be

carried out by hosting party by means of filing a notification on the arrival of foreign citizen to the place of residence with the migration authority. The following situations are exceptions and in such situations foreign citizens themselves are obliged to notify about place of their residence by virtue of Federal Law "On Migration Registration of Foreign Citizens and Stateless Persons in the Russian Federation" No. 109-FZ of 18 July 2006:

- if documented admissible excuses preventing hosting party itself from filing a notification on the arrival of foreign citizen to the place of residence with the migration authority is available;
- if foreign citizen wants to declare his/her own residential premises located in the Russian Federation as his/her place of residence;
- if foreign citizen permanently residing in the Russian Federation wants to notify the respective migration authority about his/her arrival to the place of residence in person or in accordance with the prescribed procedure by mail (a written consent of hosting party is mandatory).

Also starting from 25 March 2001 lawmaker decided to **waive prosecution for breach of migration rules** of those foreign citizens who were not registered at the place of their residence (save for some cases expressly determined by law). Such approach seems logical as far as in most cases, as it was discussed above, the obligation to ensure migration registration of foreign citizens at the place of their residence is imposed on hosting party, not on such foreign citizen.

Those foreign citizens that are invited to the Russian Federation **for business or humanitarian purposes** in order to carry out employment activity and who are attracted to conduct scholastic activity in the state educational establishments (save for ecclesiastical educational institutions) **are not required to obtain work permit**; for the said category of foreign citizens issuance of standard business and standard humanitarian visas is provided for.

See: Federal Law "On Amendment of the Federal Law "On Migration Registration of Foreign Citizens and Stateless Persons in the Russian Federation and Certain Legislative Acts of the Russian Federation" No. 42-FZ of 20 March 2011, Federal Law "On Amendment of Article 13 of the Federal Law "On Legal Status of Foreign Citizens in the Russian Federation" and Article 25.6 of the Federal Law "On Procedure of Exit from the Russian Federation and Entrance to the Russian Federation" No. 80-FZ of 21 April 2011.

Requirements to construction and design organisations regulating obtaining of competency certificate related to works effecting safety of construction facilities by such organisations have been established

By virtue of Article 55.5 of the Town-Planning Code of the Russian Federation the Decree of the Government of the Russian Federation has established the **following basic requirements to the issuance by self-regulating organisations of competency certificates** related to certain types of works:

- works on construction, reconstruction and capital repair related to permanent structures that effect safety of nuclear energy use facilities;
- works on drafting of project documents that effect safety of nuclear energy use facilities;
- works on engineering survey that effect safety of nuclear energy use facilities;
- works on construction, reconstruction and capital repair related to permanent structures that effect safety of highly dangerous and technically complicated facilities (except for nuclear energy use facilities);

- works on drafting of project documents that effect safety of highly dangerous and technically complicated facilities (except for nuclear energy use facilities);
- works on engineering survey that effect safety of highly dangerous and technically complicated facilities (except for nuclear energy use facilities).

In addition, the Decree of the Government regulates in details **staff composition** of the said organisations (employees of an individual entrepreneur), including number and qualification of officers of the organisation (directors, chief engineers and their deputies), heads of structural subdivisions, specific experts.

Decree of the Government of the Russian Federation No. 48 of 3 February 2010 in which similar basic requirements were set out, is deemed ineffective.

See: Decree of the Government of the Russian Federation "On Basic Requirements to the Issuance by Self-Regulating Organisations of Competency Certificates Related to Works at Highly Dangerous and Technically Complicated Permanent Structures Effecting Safety of Such Permanent Structures" No. 207 of 24 March 2011.

New procedure for regulating of relations connected to the application of electronic signature has been established

Federal Law "On Electronic Signature" No. 63-FZ of 6 April 2011 has been enacted. This law is aimed at replacing Federal Law "On Electronic Digital Signature" No. 1-FZ of 10 January 2002 which shall cease being in force from 1 July 2012.

Federal Law "On Electronic Signature" became effective on 8 April 2011 in order to perfect previous legislation on electronic digital signature. The new Law regulates relations involving application of electronic signatures in the course of consummation of civil transactions, rendering services and performing functions by state and municipal authorities, as well as when making other legally significant actions in a manner that slightly differs from the formerly applicable.

In particular the Law determines:

- principles of application of electronic signature;
- types of electronic signatures and legal regulation of their application;
- scope of authority of federal bodies in the sphere of application of electronic signatures;
- rendering services by certification authorities and procedure for their accreditation;
- generation and issuance of an electronic signature verification key certificate.

Pursuant to the new Law an **electronic signature** means information in the electronic format attached to other information in the electronic format (to the signed information) or otherwise connected to such information and used for the purposes of identification of person who signs such information. Therefore, a concept of "electronic digital signature" shall be eliminated.

Parties to electronic interaction may apply either **simple** or **enhanced** (including **qualified** and **unqualified**) electronic signatures subject to the restrictions provided for in the Law. It is determined that the information signed with the help of a qualified electronic signature is deemed an equivalent of a hard copy document bearing handwritten signature, unless otherwise stated by law. As far as it relates to soft

copy documents signed with the help of a simple or unqualified signature, they are deemed equivalents of the signed hard copy documents only provided that it is expressly stated by law.

The Law qualifies the following persons as parties to the relations in the sphere of the application of electronic signature: the federal executive body with powers in the sphere of electronic signature, the certification centre (a legal entity, a structural subdivision of a legal entity or an individual entrepreneur conducting business related to the generation and issuance of an electronic signature verification key certificate) and the **owner of a signature verification key certificate** (natural or legal person to whom/which a signature verification key certificate was issued).

The Law also establishes the requirements to the **certification centres**, however, the accreditation rules as such for these centres are established by the federal executive authority which performs functions related to the development and implementation of the state policy and legal and regulatory framework in the IT sphere. The list of information to be stored at a certification centre, including all the data permitting, if required, to carry out investigative activity is determined.

In connection with enacting of the Federal Law "On Electronic Signature" some legislative acts were amended. In particular, rules regulating the application of simple electronic signatures when rendering of services by the state and municipal authorities were established. Moreover, according to the Arbitrazh Procedure Code of the Russian Federation and the Civil Procedure Code of the Russian Federation those documents that are signed by means of electronic signature or other analogue of a handwritten signature, are admissible as written evidences in the situations and in accordance with procedure set out by the Arbitrazh Procedure Code of the Russian Federation, the Civil Procedure Code of the Russian Federation and other federal laws (including the Federal Law "On Electronic Signature"), other regulations or agreement, or determined by the Higher Arbitrazh Code of the Russian Federation within its competence.

See: Federal Law "On Electronic Signature" No. 63-FZ of 6 April 2011, Federal Law "On Amendment of Certain Legislative Acts of the Russian Federation in Connection with Enacting of the Federal Law "On Electronic Signature" No. 65-FZ of 6 April 2011.

New rules of road transportation have been established

New Rules of road transportation have been approved. These Rules establish procedure for organisation of transportation of various cargo types by motor transport, ensuring safety of cargo, vehicles and containers, as well as cargo transportation conditions and provision of vehicles for such transportation.

In particular, the Rules regulate procedure for conclusion of transport and freight agreements. Procedures for drawing up acts and fling claims are determined. Maximum allowable weight, axial load and dimensions of vehicle are established. The Rules also set out the procedure for determination of cargo weight. Procedure for sealing of vehicles and containers is prescribed.

Conclusion of a transport agreement shall be evidenced by a waybill drawn up by a consignor (its form is attached to the Rules), the agreement may provide for otherwise. In accordance with the Rules the cargo shall be delivered in city/suburb traffic during 24 hours; long-distance/international traffic - time is calculated on the basis of 24 hours per each 300 km (unless otherwise stated in the transport agreement). The carrier shall notify both consignor and consignee about delay.

The Regulation shall become effective upon expiry of 3 months from the date when it was officially published save for some provisions for which other dates of entry into force have been established.

See: Regulation of the Government of the Russian Federation "On Approval of the Rules of Road Transportation" No. 272 of 15 April 2011.

Now it is required to substantiate the initial price of a state/municipal contract

Substantiation of the initial (maximum) price of contract (lot price) in compliance with the provisions of article 19.1 of Federal Law "On Placement of Orders on the Shipment of Goods, Performance of Works, Rendering of Services for the State or Municipal Needs" No. 94-FZ of 21 July 2005 is to be included into **tender documents and auction documents** placed on the official sites in the Internet. Tender documents are to be elaborated by the customer, the authorised body, the specialized organisation and approved by customer, the authorised body.

In order to substantiate the initial (maximum) price both of the state (municipal) contract and of a specific lot one may use the following sources of price information applied for this purpose:

- state statistics data;
- information on manufacturers' prices;
- publicly available results of market survey, results of market survey initiated by the state or municipal customer or the authorised governmental body;
- own calculations.

The Government of the Russian Federation is entitled to establish procedure for forming of the initial (maximum) prices of contracts (specific lots) on certain types of goods, works, services, including establishing of an exhaustive list of sources of information on prices for goods, works, services. The Government of the Russian Federation shall also determine **placement details for a specific order** on shipment of goods, performance of works or rendering of services for the federal needs. Furthermore, it may also introduce additional requirements (including qualifying requirements) to the participants of placement of orders.

It is determined that if an order for shipment of new machines and equipment in the amount of **50 million rubles and more** is placed or if an order for shipment of medical equipment is placed, the supplier is obliged to provided security (in the amount equal to 2-10% of the lot's price).

The amendments became effective on 27 April 2011.

See: *Federal Law "On Amendment of Federal Law "On Placement of Orders on the Shipment of Goods, Performance of Works, Rendering of Services for the State or Municipal Needs" No. 79-FZ of 21 April 2011".*

New law on licensing of certain activities

The new Federal Law on licensing regulating licensing system in the Russian Federation has been enacted.

The Law provides for further **cut down of the list of activities subject to licensing**.
Commencement of certain activities **shall be subject to notification procedure**:

- manufacturing of prosthetic and orthopaedic appliances against orders of citizens;
- manufacturing and sale of special gaming equipment;
- ensuring of aviation security;
- manufacturing and repair of measuring instruments;
- exhibiting and collecting of arms.

In some spheres licenses will be replaced by mandatory civil liability insurance (overseas shipment of dangerous cargos, towing by marine vessels, loading and unloading of dangerous cargos in sea ports).

However, 49 activities still require licenses, including medical and pharmaceutical activity, restoration of historical and cultural monuments, arms trading, fire fighting, passenger traffic.

A **unified** procedure of issuance of licenses shall be introduced. As a general rule a license shall be issued for an **indefinite period of time** (activities to be licensed are specified in part 1 of article 12 of the Law). Those licenses that were issued before the effective date of the Law in respect of activities specified in part 1 of article 12 of the Law shall be valid for an indefinite period of time.

From 1 July 2012 some licensing procedures will be converted into the **electronic format**.

Licensing control has been changed: licensees will be checked within 1 year from the date of obtaining of the license, since it is the first year when the risks of damage when conducting licensed activity are the highest. Further checks should be carried out in the ordinary course - once in 3 years.

The Law shall become effective on 3 November 2011 save for some provisions for which other dates of entry into force have been established.

See: Federal Law "On Licensing of Certain Activities" No. 99-FZ of 4 May 2011.

Some articles of the Administrative Offences Code of the Russian Federation related to giving/getting a bribe have been amended

The amendments introduced to the Administrative Offences Code of the Russian Federation aim at the enhancing of the state control over combating corruption and bribery.

The Federal Law has established a new type of a bribe taker - **an officer of a public international organisation.**

Pursuant to the amendments introduced, nowadays the punishment for bribe depends upon its size. The bribes are ranked as follows:

1) **ordinary** (up to 25,000 rubles);
2) **sizeable** (from 25,000 to 150,000 rubles);
3) **large** (from 150,000 to 1,000,000 rubles);
4) **especially large** (exceeding 1,000,000 rubles)

It is determined that now penalties may also be imposed as an alternative to imprisonment (but only as an additional measure).

An independent component of crime has been introduced - **mediation in bribery**.

An administrative liability is being introduced for illegal remunerating of foreign officer. Legal entities will be fined for such action.

There was created an **institute of legal aid on the matters related to administrative offences** focusing on the investigation of corruption made by Russian companies aboard. It is assumed that if legal proceedings stipulated for in the Administrative Offences Code of the Russian Federation are required to be carried out in a foreign country, an officer who carries out administrative proceedings shall file a legal aid request with the relevant officer or authority of the foreign country in compliance with the international treaty of the Russian Federation or on a reciprocation basis which is assumed unless proved otherwise.

It is assumed that a legal aid request shall be filed through the Supreme Court of the Russian Federation, the Higher Arbitrazh Court of the Russian Federation, the Ministry of Justice of the Russian Federation, the Ministry of Internal Affairs of the Russian Federation, the Federal Security Service, the Federal Service for the Control of Drug Trafficking, the body authorised by virtue of the international treaty of the Russian Federation and the General Prosecutor's office of the Russian Federation.

Furthermore, the **minimum amount of penalty was increased** from 2,000 to 5,000 rubles.

The amendments are effective from 17 May 2011.

See: Federal Law "On Amendment of the Criminal Code of the Russian Federation and the Administrative Offences Code of the Russian Federation in Connection with Enhancing of the State Control over Combating Corruption" No. 97-FZ of 4 May 2011.

Execution of agreements with the tax authorities obliging the taxpayer to ensure contribution of specific amount of taxes to the budget is impermissible

The Federal Tax Service informs that in 2011 there were some cases when the Administrations of the Federal Tax Service of Russia and for the constituent territories of the Russian Federation delivered letters to the taxpaying legal entities on the **conclusion of "Commitment Agreements" with the tax authorities** related to payments to the budget under which the taxpaying legal entity undertakes to ensure payment of taxes to the federal budget for the amount not less than the one specified in such Agreement.

Due to the fact that conclusion of the said agreements contradicts articles 23 and 44 of the Tax Code of the Russian Federation, the Federal Tax Service of the Russian Federation brings it to notice that **such actions** of tax authorities **are impermissible**.

See: Letter of the Federal Tax Service of the Russian Federation "On Impermissibility of Agreements between Companies and the Tax Authorities" No. 3H-4-1/8319 of 25 May 2011.

Real estate disputes are arbitrable

Upon the request of the Higher Arbitrazh Court of the Russian Federation the Constitution Court of the Russian Federation has reviewed certain provisions of the Civil Code of the Russian Federation, the

Federal Law "On Arbitration Courts in the Russian Federation", the Federal Law "On State Registration of Rights to Immovable Property and Transactions Therewith", the Federal Law "On Mortgage (Real Estate Charge)" for their compliance with the Constitution in connection with uncertainty whether the provisions of legislation disputed in the request comply with the Constitution of the Russian Federation. The said provisions of legislation relate to the **arbitrability of civil disputes involving real estate**.

The Constitutional Court of the Russian Federation recognized that the disputable provisions of legislation allow arbitrability of civil disputes involving real estate (including foreclosure of the mortgaged real estate) and the state registration of the respective title on the basis of awards of arbitration courts and that they do not contravene the Constitution of the Russian Federation.

The Constitutional Court, in particular, specified that the right of the parties to the dispute for free disposition of their civil rights is based on part 1 of article 34 and part 2 of article 45 of the Constitution of the Russian Federation, and the requirement of the state registration of transfer of title to real estate does not modify the nature of legal relations critical for determination whether such dispute falls with the competence of arbitration court.

However, notions "court" and "arbitration court" do not become identical in the context of judicature function incident to the state court only. Just the consequences of the adjudication (for the purposes of the state registration or foreclosure of real estate) are treated as equal.

See: Ordinance of the Constitutional Court of the Russian Federation "On Review of provisions of clause 1 of article 11 of the Civil Code of the Russian Federation, clause 2 of article 1 of the Federal Law "On Arbitration Courts in the Russian Federation", article 28 of the Federal Law "On State Registration of Rights to Immovable Property and Transactions Therewith", clause 1 of article 33 and article 51 of the Federal Law "On Mortgage (Real Estate Charge)" for their compliance with the Constitution in Connection with the Request of the Higher Arbitrazh Court of the Russian Federation" No. 10-P of 26 May 2011.

The law establishing legal and organisational framework of the national payment system has been enacted

Prior to enacting of Federal Law "On National Payment System" No. 161-FZ of 27 June 2011 the growing business of the instant payment operators was not legally regulated. Even despite of the fact that in Russia popularity of such chains as "Yandex.Money", "Cyberplat", "WebMoney", "Qiwi" is growing each year, and new e-wallets are being registered and actively used.

In the new Law the **national payment system** means all money transfer operators (including e-money operators), bank paying agents (subagents), paying agents, organisations of the federal postal service when rendering payment services in compliance with the legislation of the Russian Federation, payment systems operators, payment infrastructure services operators (participants of the national payments system).

The Law establishes **requirements to participants** of the payment system, detailed regulation of **technology** of money transfers (in particular limitation of operations with electronic payment systems by specific amounts), **requirements to payment systems** (including procedure and consequences of recognition of a specific payment system as "systemically important" or "socially important", the risk management requirements), as well as the procedure of exercising **control and supervision** by the Bank of Russia in the national payment system**.** Participants of the national payment system are obliged to **guarantee bank secrecy** and protection of information on the means and methods of ensuring of the

information security, personal data and other information subject to mandatory protection in accordance with the legislation of the Russian Federation. For the purposes of observance of the confidentiality of the information received from the user of e-money, the Law provides for the obligation of money transfer operators, bank paying agents (subagents), payment systems operators, payment infrastructure services operators **to ensure protection of the information** during money transfer in compliance with the requirements established by the Bank of Russia.

The Law introduces legitimate definitions of such concepts as **e-money** and **electronic means of payment**. As soon as the Law becomes effective, in Russia there will appear a new form of non-cash payment – an **e-money transfer** which can be carried out only by those credit institutions that obtained from the Bank of Russia a **license** permitting e-money operations. E-money means monetary funds contributed by clients to credit institutions which are to be registered without opening bank accounts.

The Law shall become effective on 29 September 2011 save for some provisions for which other dates of entry into force have been established.

See: *Federal Law "On National Payment System" No. 161-FZ of 27 June 2011.*