

SPECIAL TAX AND MIGRATION REGIME FOR HIGHLY QUALIFIED FOREIGN SPECIALISTS ENTERS INTO FORCE ON JULY 1, 2010

July 2, 2010

To Our Clients and Friends:

On July 1, 2010, a set of amendments to various Russian laws¹ enters into force and substantially changes the existing migration and tax rules for certain groups of foreign specialists employed in Russia. The most important changes introduce a new legal regime for “highly qualified specialists” (“HQSs”), who are supposed to work under an employment or service contract, and may enjoy more relaxed tax and migration treatment (as compared to other foreign employees in Russia). The regime is subject to certain requirements with respect to both the foreign specialists and their supposed employers.

TAX AND MIGRATION BENEFITS FOR HIGHLY QUALIFIED SPECIALISTS

According to the amendments, HQSs are entitled to a 13% personal income tax rate on income derived from labor activity in this capacity, regardless of their Russian tax residency status, while generally the income of non-resident employees is subject to Russian personal income tax at the rate of 30%. This means that the employed HQSs can enjoy the lower rate even if they are present in Russia for fewer than 183 days within 12 consecutive months, and can apply it from the start of their employment as HQSs.

Although generally an HQS can work either under an employment or service contract, this particular tax benefit expressly covers income from employment only. Despite the fact that this benefit has not yet been tested in practice, one can expect that the tax authorities will disallow the application of the 13% rate to other non-employment sources of income, e.g. the remuneration of a board of directors member, even though such person may be working on the basis of a civil (service) contract.

¹ *The amendments are introduced by Federal Law No. 86-FZ, dated May 19 2010, On Amending the Federal Law on the Status of Foreign Citizens in the Russian Federation and Certain Other Legislative Acts.*

In addition to a lower personal income rate, employment as an HQS has a range of benefits:

- the employer does not have to obtain an employment permit to hire an HQS (this refers to the permit necessary for an employer; a personal work permit for its employee is still necessary, although now this, too, can be obtained upon more beneficial terms);
- work permits and visas for HQSs are issued for the term of their labor or service contract, limited to a three-year period with an unlimited right of renewal (normally they are limited to one year);
- quotas that limit the quantity of work invitations and work permits are not applicable to HQSs; and
- as for HQSs, the list of grounds for refusal to grant a work permit or residence permit, or withdrawing them, is significantly limited.

REQUIREMENTS FOR FOREIGN EMPLOYEES SEEKING TO OBTAIN HQS STATUS

A foreign employee can obtain the status of an HQS if he or she has experience, skills or achievements in a certain area (without any restrictions) and, under his or her employment terms, is entitled to compensation of 2 million rubles or more within a period of one year or less (the two million ruble threshold can be further decreased by the Russian Government). The sufficiency of the employee's qualification and competence is left to the employer's discretion, subject to the requirement that it be measured on the basis of objective, true and verifiable information (including, without limitation, references, information provided by professional recruitment organizations, awards, etc.).

REQUIREMENTS FOR EMPLOYERS SEEKING TO HIRE AN HQS

The option to employ an HQS is available only for Russian commercial and certain non-commercial² organizations and duly accredited branches of foreign legal entities (representative offices are not included). In addition, to be eligible for this right, an employer of an HQS

2 Non-commercial Russian entities include scientific organizations, organizations of professional education (except for professional religious education) and health care facilities, as well as other organizations operating in the sphere of science, technology and innovation, exploratory development, test run, manpower and training in accordance with Russian state priorities in science, technology and engineering, provided that they are duly accredited as required under Russian law.

must have no administrative charges for illegal employment of foreign employees for two years prior to the respective application. To exercise the right for employment of an HQS an employer should:

- file the relevant application to the migration authorities with submission of the necessary documents (including educational credentials of a candidate if so required to practice a specific specialization) and the labor or service agreement conditioned on issuance of the work permit);
- issue a written undertaking to compensate any state charges associated with possible deportation of the employee;
- inform the immigration authorities about the tax registration of the HQS within 30 days after the work permit is granted;
- procure voluntary medical insurance for the HQS and his or her accompanying spouse and dependants;
- submit quarterly reports to the immigration authorities on the fulfilment of payment obligations towards an HQS, termination of contracts with an HQS, as well as unpaid leave granted for more than one month within every year; and
- when applying for extension of a work permit, in addition to the documents ordinarily required, file other documentation to prove the registration of the HQS at the place of residence.

If an employer fails to observe its obligations associated with the employment of HQSs, it can be subject to up to a two-year prohibition on continuing or renewing such employment.

Notably, there now exists the possibility for foreign citizens to independently seek to obtain the status of an HQS. It is possible to file an application to the local office of Russian immigration authorities or diplomatic mission (consular office) in their home jurisdiction, prove the experience, skills or achievements in a certain area and agree to have such information disclosed to the public via a special Internet-based information bank and provided to potential employers. Further procedures include negotiating and conclusion of employment or service contracts and are the same as those HQS procedures initiated by employers.

* * *

We will be happy to answer any queries you may have on this or any other tax issues.

Alyona N. Kucher
+7 495 956 3858
ankucher@debevoise.com

Evgeny V. Smirnov
+7 495 956 3858
evsmirnov@debevoise.com

Maria A. Kirienko
+7 495 956 3858
makirienko@debevoise.com

Anna S. Dulova
+7 495 956 3858
asdulova@debevoise.com