

Introduction

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Dear readers,

Welcome to a special edition of the People Focus covering various issues of payroll accounting, payroll taxes and social contributions, as well as some aspects of the labor law.

Starting from its adoption in late 2009, the legislation on mandatory social contributions has undergone many changes. The current year 2011 is not an exception, with the majority of Russian companies having received a «New Year gift» of new rates and rules concerning social contributions that differ from previous approaches to treatment of expatriate employees' payroll as well as new forms of payroll reports.

Labor legislation is also evolving. Along with business processes and technologies development certain aspects of HR activities have already surpassed the existing labor law paradigm (being to a large extent a legacy of the Soviet era) and this implies the need of the labor law evolution and adaptation to up-to-date requirements.

This issue of the People Focus will keep you abreast of recent developments in the social security law and the format of payroll reporting to be filed in early 2012. In addition, we will discuss the amendments (both adopted and planned) to the labor law, as well as certain aspects of the labor law enforcement.

We wish you a Happy New Year and a Merry Christmas! Let the New Year be successful for your business! We hope that analysis and discussions presented in the current edition will help you in your work.

Yours truly,

Zhanna Dobritskaya,

Head of Human Capital





Overview of legislative changes

As always, employers will face a whole range of amendments to the legislation pertaining to the calculation of salaries, taxes and social contributions. In this article we will list the most significant changes to which attention should be paid.

1 Insurance contributions

Starting from 2012 the overall rate of compulsory social contributions will be reduced from 34% to 30% of income below RUB 512,000 calculated on a cumulative basis from the beginning of the year. Additional contributions to the Pension Fund on income exceeding the threshold is introduced at the rate of 10%. It is noteworthy that in 2011 the threshold was RUB 463,000 and insurance contributions were not accrued on income above the cap.

Besides, contributions for state pension insurance will be accrued on the earnings of temporary located foreign employees (i.e. the employees without a temporary residency permit or a permanent residency permit) who have concluded labor agreements for the term of at least six months. Contributions will be accrued at 22% on the annual income up to RUB 512,000. Income exceeding this threshold will be subject to contributions at the rate of 10%.

An exception is only made for Highly Qualified Specialists (HQS) who will continue to be exempt from social contributions.

2 Personal Income Tax

Starting from 2012 the standard monthly deduction of RUB 400 will be abolished. Currently, the foregoing deduction is applicable till the month in which the income calculated by a tax agent on a cumulative basis from the beginning of a tax period exceeds RUB 40,000.

At the same time tax deductions for children have been increased. The standard monthly deduction for the third and subsequent children and for disabled children is increased retroactively as of January 2011 from RUB 1,000 up to RUB 3,000. The deduction for the first and the second children will be increased as of 2012 from RUB 1,000 up to RUB 1,400. These deductions will continue to be granted to parents till the month when the income calculated by the tax agent, which has granted such standard tax deduction, on a cumulative basis from the beginning of a tax period exceeds RUB 280,000.

In addition, the list of tax-exempt payments related to employment termination has been amended. From 2012 payments

related to employment termination (severance allowance, average monthly earnings for the period of time taken to find employment, compensatory payments to the General Manager, deputy General Manager and Chief accountant) will be subject to the personal income tax in the event their consolidated amount exceeds three-times monthly average earnings and the six-times monthly average earnings for the Far North locations and equated regions.

3 Child allowances

The state allowances to citizens with children will be increased from 1 January 2012. Therefore, the amounts of child allowances payable by employer will be as follows:

- RUB 465.2 – a lump-sum allowance to women registered in medical institutions at the early stages of pregnancy (RUB 438.87 in 2011)
- RUB 12,405.32 – a lump-sum childbirth allowance (RUB 11,703.13 in 2011)
- RUB 2,326 and RUB 4,651.99 – minimum monthly child care allowance for the first, second child and subsequent children respectively (RUB 2,194.34 and RUB 4,388.67 in 2011.)



4 Minimum wage

As of 1 June 2011 the minimum wage was increased from RUB 4,330 to RUB 4,611. However, it is necessary to take into account that constituent entities of the Russian Federation are entitled to establish a regional minimum wage.

In particular, the agreement between the Moscow government, trade unions and employer associations stipulates for 2012 an increase of the minimum wage in two stages in Moscow: to RUB 11,300 from 1 January 2012 and to RUB 11,700 from 1 July 2012.

5 Fines for incompliance with the social security legislation

Legislators have changed the amounts of fines and the application rules for incompliance with social security legislation.

From 1 January 2012 the fine for late submission of the report on the accrued and paid social contributions to the authorities will be 5% of the amount of contributions accrued for the previous three months of the reporting period for each full or partial month after the filing deadline. The fine, however, may not exceed 30% of the aforementioned amount but not less than RUB 1,000.

A fine for failure to comply with the procedure of electronic filing of the reports will be RUB 200.

A fine for the late submission of information regarding opening (closing) of bank accounts to the authorities will be introduced in the amount of RUB 5,000.

Besides, the fine for a failure to provide documents required for control of contributions payment was increased from RUB 50 to RUB 200 per each document.

Finally, we would like to note that we have outlined only a part of legislative amendments in this article. The restructuring of the system of social security contributions will likely have the most significant impact on employers as the employer will be able to pay lower amounts of social contributions in 2012 only in case of low-paid employees. Furthermore, the reform of social contributions will have a negative impact on the companies employing foreigners who are not eligible for some reasons to the status of the Highly Qualified Specialist since such companies will be obliged to make pension insurance contributions for them.

Annual payroll reporting: Review of the reporting forms, or how everything should be done in time

Only a few days remain before the year is up, but for most accountants and financiers it is not only a time for making arrangements for the coming New Year holidays, but also the beginning of the reporting period for the year when, besides routine

work, many accountants must find the time to prepare and submit the annual reporting forms, including those for payroll.

The following calendar for the submission of the annual payroll reporting will help you

arrange the working process most efficiently without omitting any reporting deadline¹.

¹ The calendar does not contain a list of the statistical accounting and reporting forms which are obligatory for organizations which carry on certain types of activity, or when the forms are submitted by organizations included in the list determined by a body of the State Statistics Service.

Submission date	Name of the reporting form	Monitoring body
Not later than 16 January (the date was changed to the closest workday)	Information on the staff size, salaries, and employee flowchart (P-4 Form)	Territorial body of the State Statistics Service
	Report on the insurance contributions to the Social Insurance Fund (4-FSS RF Form)	Territorial body of the Social Insurance Fund of the Russian Federation
	Report on the use of insurance contributions to finance preventive measures for reducing occupational injuries and occupational illnesses (if the relevant expenses were paid out of the Social Insurance Fund)	Territorial body of the Social Insurance Fund of the Russian Federation
Not later than 20 January	Information on the average headcount for the previous calendar year	Tax Inspectorate at the organization's location
	Information on the headcount and salaries (1-T Form for organizations which do not provide information by P-4 Form)	Territorial body of the State Statistics Service
	Insured persons' register (DVS-3 Form) relating to additional insurance contributions for the cumulative part of the retirement pension	Territorial body of the Pension Fund of the Russian Federation
Not later than 31 January	Notification of the employers' fulfillment of obligations to pay a salary to a highly qualified foreign specialist if the latter is employed under an employment contract or a civil-law contract	Federal executive body for immigration



Submission date	Name of the reporting form	Monitoring body
Not later than 15 February	Calculation of the contributions to the Pension Fund of the Russian Federation (RSV-1 RF Form)	Territorial body of the Pension Fund of the Russian Federation
	Information on the insurance length of service and the insurance contributions charged for compulsory pension insurance of insured persons (ADV-6-2, ADV-6-3, SZV-6-1 AND SZV-6-2 forms)	Territorial body of the Pension Fund of the Russian Federation
	Information on the amount of payments and other remuneration charged by the payers of insurance contributions - companies in favor of an individual (SZV-6-3, ADV-6-4)	Territorial body of the Pension Fund of the Russian Federation
Not later than 1 April	Information on the income of individuals and the amounts of personal income withholdings (2-NDFL Form)	Tax Inspectorate at the organization's location

A noteworthy fact is that many of the above reporting forms can be submitted to the relevant authorities by telecommunications. Such a mechanism of submitting a reporting form must be used by payers in the following cases:

- if the average headcount in the previous year was over 100 employees in relation to tax accounting;
- if the average number of employees in whose favor payments are made and other remuneration is paid was more than 50 in the previous settlement period in respect of reporting to the non-budgetary funds.

We hope the above calendar will help you successfully complete the coming reporting season; any errors made when drawing up a statement or its late submission to the relevant authorities may entail substantial administrative difficulties and occasionally lead to a financial loss for a company.

Happy New Year!



Personal income tax refund by a tax agent in 2011

The procedure for a personal income tax (PIT) refund by a tax agent has always been a matter of concern for employers.

Although the Tax Code of the Russian Federation provided for a tax refund when excess tax was withheld by the tax agent, it did not specify the time limits for the refund and the financial resources which would be used for it. As a result, companies applied various approaches, beginning with conservative ones, when tax was refunded only after a company received the relevant financial resources from the tax authorities, and ending with more practical approaches, which implied a refund from, say, the tax agent's own resources or from the amounts of tax withheld from the income of other employees.

The amendments made to the Tax Code of the Russian Federation at the end of 2010 (and effective since 2011) pertained to that difficult issue as well. To the joy of many accountants, Article 231 of the Tax Code was substantially revised and now has a detailed description of how PIT, excessively withheld from a taxpayer's income, can be refunded.


For instance, current legislation clearly determines the time limits when the tax agent should consider the taxpayer's application and ensure a refund of the excessively withheld tax, and also fines for failing to fulfill the relevant commitments. Moreover, tax agents now have the right to make a refund from the amounts of tax withheld from other taxpayers' income or from their own resources, or after the required amount is received from the tax authority.

At the same time, the amended version of the Tax Code has several norms whose application procedure gives rise to many questions and even disputes on the part of companies acting as tax agents for PIT. In this respect, the point at issue is the recalculation (and perhaps a refund) of PIT if an employee acquires the status of a tax resident in the Russian Federation.

By simply reading the relevant norm of the law, it becomes clear that in such a situation the excessively withheld PIT can be refunded only through the tax authority by submitting a tax return. In its recent clarifications, however, the Russian Finance Ministry offers a different solution, referring to the tax calculation procedure established for tax agents. According to the current rules, PIT is calculated on an accrual basis from the beginning of the year, allowing the tax agents to offset, as it were, the excessively withheld amounts (i.e., not to withhold PIT until overpayment is refunded).

However, although that seems to be a simple approach, its application gives rise to even more questions in many cases. What should be done if a part of the excessively withheld tax will not be refunded by the end of the tax period? How can account be taken of the amounts of tax transferred in line with the correct budgetary classification code, since initially it was transferred to the non-resident code? How can the 2-NDFL form be drawn up correctly? How can an employee be told that he/she should go to the tax authority himself/herself and submit a tax return in order to have the remaining amount refunded?

So far, there are no clear-cut answers to those questions and no established procedure for applying the relevant legislation. That is why many companies, whose employees acquired the status of a tax resident in 2011, did a lot of work to find an approach which would meet the requirements of current legislation as well as the employees' interests and would minimize the ensuing tax risks. Such work as well as cooperation and a dialogue between organizations and officials from financial agencies help determine the most effective approaches in unifying the practice of applying legislation that is acceptable and understandable to the tax authorities and business people alike.



New scheme for paying a sick leave allowance

The new program for paying social allowances from the financial resources of the Social Insurance Fund (SIF) got off to a start on 1 July 2011. It is currently applied in two constituent entities of the Russian Federation, i. e., Nizhegorod Region and the Karachay-Cherkessk Republic, but its implementation is planned to be extended to the whole territory of Russia by 2014. The project was aimed at changing method of paying social allowances from the financial resources of the SIF. In most of the constituent entities of the Russian Federation, the employer currently is obliged to calculate and pay them, but in the future that will be done directly through the Fund.

First of all, the new payment scheme is intended to counteract the spread of fake sick leave certificates, whereby the SIF budget suffers a considerable loss. In this respect, new forms of certificates were drawn up and used since July 2011. In April 2012, however, they will be replaced by updated forms largely because the new rules for drawing up sick leave certificates turned out to be too strict, e. g., there should be no errors or adjustments, the requirement to write a brief company name is problematic in some cases, etc. The requirements are expected to be eased with the introduction of the new form, and consequently less incorrectly completed sick leave certificates would have to be replaced. Secondly, the risk of setting incorrectly calculated allowances is expected to be reduced, since they will be calculated by the fund itself.

To receive payment when an insurance event occurs, an employee should file an application with the employer within the established time limits (presumably when the employee recovers), attaching the documents necessary for setting and paying the allowance (a disability certificate, references from other places of work on the amounts earned, etc.). In turn, the employer should use the information received to prepare the necessary documents and applications and send them to the SIF. An employee can go to the fund on his own only if the company where he worked had closed down.


When the SIF receives the relevant documents, it should issue a receipt and within ten calendar days should make the decision whether to pay the allowance or not, provided that the documents are completed correctly. If the decision is positive, the insured person will receive the allowance within two days. If the errors made when drawing up documents are discovered, the employer should make the relevant adjustments within five days, and when the fund discovers that the information is incomplete, it should issue a notification in this respect also within five days.

The new scheme has its advantages and disadvantages for companies. On the one hand, the employer would no longer be obliged to check the correctness of completion of the sick leave certificates and to take steps to verify their authenticity. The companies would no longer need to pay allowances from their own resources (not taking account of the first three days

that an employee is ill) and then receive compensation for the payments from the SIF, which requires much effort. The number of SIF audits is also expected to be reduced, since the fund itself would have to substantiate the correctness of the calculations and the relevant payments.

On the other hand, the new scheme requires a substantial increase in document flow between the employer and the SIF. For an employee to receive the relevant payments, a company must prepare many documents and submit them to the fund on its own. In this respect, it is more likely for documents to be lost and the allowances to be paid late. Moreover, although the amount of the sick leave allowance will be calculated and personal income tax from the allowances will be withheld and paid by the fund, the employer would still be obliged to calculate and take account of the amount of the allowance charged out of own funds. Hence, it seems that transition to a new payment scheme will increase the administrative workload for companies.

It is still too early to talk about the results of the initial "pilot" projects. However, some companies should already start preparing for changes which will occur soon. In 2012, the program will begin to be implemented in the Astrakhan, Novgorod, Novosibirsk and Tambov Regions, Khabarovsk Territory and Khanty-Mansiysk Autonomous District. The program will be expanded further in 2012-2013, and will be implemented in all the constituent entities of the Russian Federation beginning from 2014.



Assessment of workplaces: an unnecessary burden or guarantee of employee safety?

Most employers seek to ensure both a fair pay and favorable working environment for their employees. To achieve this, companies are often prepared to incur significant costs to arrange corporate events, provide food allowances and medical insurance for their employees. However, many employers forget about such an important procedure as the assessment of workplaces, although neglecting the assessment rules may have a negative impact on the company's business.

The first thing to do in order to adequately evaluate the importance of workplace assessment is to understand what this term means.

The point of assessment is to determine whether a workplace meets the conditions required for an employee to productively work without causing any harm to his/her health. Importantly, even if you work, suppose, in a typical office rather than in a production workshop, it does not mean that the assessment procedure may be neglected. Absolutely all organizations, irrespective of their type and place of activities, are subject to assessment.

In assessing the working conditions, you need to check on a multitude of occupational environment factors to make sure that the working conditions meet the hygienic standards, the workplaces do not pose injury risks and employees are provided with individual protective gear and all the equipment required for work. The results of assessment are used to classify the working conditions based on a number of factors.

The assessment procedure should be carried out within 60 days from the date of commissioning workplaces in a new organization, with the same period applying to newly created workplaces. Re-assessment must be performed at least once in five years. Upon completion of the procedure, the company prepares a report on the results of assessment and issues an order on its completion. The data on the organization which has gone through the assessment procedure are then submitted to the state labor inspectorate.


In accordance with the changes introduced by new rules of assessment of workplaces which entered into force in September 2011, employers are not allowed to carry out this procedure independently. They can now do this only by engaging an external organization responsible for assessment. An assessment is performed by a commission composed of designated employees of the organization that goes through the assessment procedure and representatives of the organization responsible for assessment.

If the company fails to comply with the assessment procedure it may have to pay an administrative fine varying from RUB 1,000 to RUB 5,000 for officers and private entrepreneurs and from RUB 30,000 to RUB 50,000 for legal entities. In case of a repeated failure to comply with the law, the court may take a decision to suspend the company's activities for up to 90 days. If an inadequate assessment of workplaces has resulted in serious harm to health or human death, the law provides for criminal responsibility: imprisonment of up to 5 years for those responsible for the offence.

Currently, the State Duma is actively discussing the issue of increasing fines for non-compliance with labor legislation. In particular, the fine for failure to comply with the workplace assessment rules is expected to be increased to RUB 600,000.

One should bear in mind that workplace assessment has clear benefits both for employers and employees. Benefits for arduous, harmful and/or hazardous work such as increased pay, extra vacation and shorter working day may only be provided based on the results of workplace assessment and in accordance with the procedure established by Russia's Ministry of Health and Social Development. The assessment of workplaces based on working conditions makes it possible to economically substantiate expenses on improving working conditions and purchasing protective gear. In addition, the results of workplace assessment may allow the organization to benefit from reduced rates of insurance against accidents in the workplace and occupational illnesses.

Therefore, if the company does not have effective workplace assessment results, it will be quite reasonable to include such activities in the company's business objectives for the next year. On the one hand, despite the fact that the employer may incur additional costs, the assessment of workplaces will help the company to avoid fines resulting from non-compliance with occupational safety legislation. On the other hand, it will help ensure favorable working conditions for employees and, possibly, reduce the rates of mandatory insurance contributions against accidents at workplaces and professional illness.

A photograph showing a man in a dark suit covering his eyes with his hands, appearing distressed. A young child with blonde hair is leaning over his shoulder, looking towards the camera with a slight smile. The background is blurred, suggesting an outdoor setting.

Lawfulness of dismissing a father with many children at the initiative of the employer: Constitutional Court judgment

On 15 December 2011, the Constitutional Court of the Russian Federation ruled on a case challenging the constitutionality of Article 261 of the Labor Code of the Russian Federation.

This article protects women with children under the age of three and other persons who bring up such children without a mother from employment termination at the initiative of the employer (except in cases of liquidation of the organization and faulty actions of the employee). At the same time, the existing laws do not provide for limitations regarding dismissal of a father raising children under the age of three if such children have a mother, even in cases when a mother takes care of children and, therefore, does not work.

The claimant initiated legal action after he was made redundant despite the fact that he is a father of small children, including a child under the age of three.

In terms of the existing labor law, such dismissal was legal because the claimant is not a person raising children without a mother. This point of view was upheld in decisions of the courts of general jurisdiction.


But the plaintiff appealed to the Constitutional Court as he believes that the provisions of Article 261 of the Labor Code are discriminatory because working fathers are deprived of the guarantees that protect working mothers from dismissal.

The Constitutional Court considered the compliance of Article 261 to the Constitution and the international standards and ruled that the article is not discriminatory as it provides adequate protection for working mothers being a more vulnerable category.

At the same time, the Constitutional Court analyzed the consequences of dismissing a father in a family with many children, taking into account his exceptional position: in such families the mother often cannot work because she has to take care of children and bring them up, which makes the father the sole breadwinner. Based on this, the court ruled that extended protection should be granted to large families raising under-age children.

The court also concluded that the unemployment allowance paid to a person while he or she is searching for a job is insufficient for a family with several underage children. Meanwhile, applicable laws do not provide for other social protection mechanisms for large families facing such situation. In view of the foregoing, the court ruled that Article 261 of the Labor Code of the Russian Federation is not in compliance with the Constitution of the Russian Federation as it cannot provide guarantees to a father who is the sole breadwinner in a large family with underage children, including children under the age of three, when a mother does not work and takes care of the children.

All the above being considered, we may expect either changes to the labor legislation aimed to protect fathers of underage children from dismissal or the implementation of additional measures to maintain the welfare of such families until a new job is found (e.g., unemployment allowance increase).



Remote employment and its specific features in Russia

Today remote employment is something usual in the western world. Accountants, translators, programmers and designers are among those engaged in that work. The advantages of such work are obvious: an employee does not have to spend time on going to his/her place of work and back every day, while an employer economizes on the arrangement of the working process, office space rental, compensation for the employees' transport expenses, etc.

Remote employment is becoming increasingly popular in Russia. However, such type of work is not envisaged by the Russian legislation. Many experts maintain that "work at home" is a term closest to "remote employment".

According to the Labor Code, home workers are persons who entered into an employment contract to perform work at home using the materials, instruments and equipment provided by the employer or acquired by the home worker at his/her own expense. A home worker can perform work stipulated in the employment contract with the participation of his family members, however, it does not result in employment relations between the home worker's family members and the employer.

Historically home workers were in great demand. It allowed the handicapped and women with small children to get job. However, that no longer meets the requirements of modern business. Today, some remote employees do not have a fixed working place. They always move from place to place, from one organization to another, and from region to region. Besides, the "home worker" concept was introduced into the legal field largely with regard to the work done to produce a certain product. In modern business, it implies largely the provision of services, and communications with the employer are maintained by electronic means.

For example, an employer is a large sales company whose employees are sales representatives working in over 100 cities and towns in Russia. Taking account of the costs, the company does not intend to register autonomous subdivisions in the regions where it is present.

One of the options for documenting employment relations with such employees, currently provided by the legislation, is home work. According to the gist of the provisions of the Labor Code on work at home, home workers are employees who

fulfill their duties at their residence. Since sales representatives as a rule fulfill their duties not at their residence (regular visits to the sales places, client meetings), the signing of employment contracts with them on work at home may be contested by the labor inspectorate.

As mentioned above the current legislation on the home workers' labor is not adapted to modern business requirements. The legislative regulation of remote employment may be a pressing need for many Russian employers.

Currently, the idea to legitimize remote employment is being actively discussed among business communities. For instance, the provisions of the Labor Code related to the home workers' labor may be amended soon with regard to the following adjustments.

The chapter on the regulation of the home workers' labor in the Labor Code may be replaced by a chapter on the specific features of the regulation of labor of remote employees.

According to the new provisions of the Labor Code, remote employees shall be persons who have concluded employment contract where the place of work is not



determined and persons who work outside the employer's production premises. Hence, an employee will have the opportunity to determine his/her time of work as well as time of leisure independently, and the duration of annual paid leave will be determined by the employment contract.

Currently, the relevant amendments to the Labor Code raise even more questions. Who should be regarded as "home workers" and how will they differ from distant workers? What mechanisms will be used to control the work of remote employees? How will the employer be able to take account of the time actually spent on work by each employee? What will be the basis for providing additional guarantees for work in the areas of the Far North? etc.

The consequences of adopting the new amendment also remain an open question in terms of corporate taxation. This may be a pressing issue for a company with headquarters in, say, Moscow that employs an IT specialist for work in, say, Surgut. In this case, the company may be required to register an autonomous subdivision in Surgut. That may be costly and administratively difficult to do, especially when the employee is alone and actually works at

home. In this respect, the company has the choice of either registering its legal presence or not doing so, thereby accepting the potential risks of litigation. Companies often choose the second variant, and then face the problem of paying personal income tax and profits tax to the local budgets.

All these issues may be cleared up soon. The amendment to the Labor Code regulating remote employment has been practically agreed on with the trade unions and the employers. The draft law is expected to be introduced by the Government to the Duma in January 2012.

On the whole, the new legislative norms regulating remote employment may help legitimize such a form of organization of work. However, the question of how the new legislation will help to resolve the pressing issues facing many companies, which have a wide regional network and which wish to engage in flexible employment, remains open.

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