Amendments to the Federal Law concerning the legal status of foreign nationals in the Russian Federation

In Brief

Federal Law No.86-FZ “On Introduction of Amendments to the Federal Law “Concerning the Legal Status of foreign nationals in the Russian Federation” and to several legislative acts of the Russian Federation” (the Law) was signed by the President Dmitry Medvedev on May 19, 2010. Important tax and work permit developments surround foreign nationals who engage employment in the Russian Federation under a “highly qualified specialist” status.

What has changed?

The Law provides special legal status to foreign, highly qualified specialists engaged to work in Russia and arriving in Russia under the visa and non-visa procedure. In accordance with the Law, a highly qualified specialist shall be defined as a foreign national whose annual remuneration shall not be less than 2 million rubles (approximately USD 60,000 / EURO 53,000). Thus, the monthly remuneration of such specialist shall not be less than 166,667 rubles (approximately USD 5,600 / EURO 4,500). The Law provides the possibility to reduce the stipulated amount of annual remuneration of highly qualified specialists based on the relevant resolution of the Government of the Russian Federation.

Generally, the Law significantly simplifies the procedure of employment of foreign nationals in cases where they are highly qualified specialists engaged for work in Russia, in particular:

- The employer of highly qualified specialists shall be exempt from the obligation to obtain quotas for such specialists;
- The employer shall have a right to employ foreign, highly qualified specialists without an employment permit (e.g. a special permission from the immigration authorities);
The employer shall have a right to appraise the qualification of highly qualified specialist on its own and it will not be required to provide to the migration service any education certificates confirming the qualification of such foreign specialists.

Significant changes introduced relate to the term of validity and extension of the term of validity of work permits and work visas obtained for highly qualified specialists. Thus, the work permit and work visa issued to such specialists shall be valid for the period of the employment contract concluded with him/her in Russia. But such term shall not be more than 3 years (for the moment such period shall not be more than 1 year).

The work permit and work visa can be extended for a subsequent three-year period and the number of such extensions would not be limited by legislation.

Furthermore, it will be possible to apply for the issuance of one work permit allowing a highly qualified specialist to perform his/her work activity under the employment or civil-law contract in several constituent regions of the Russian Federation. For the moment, the migration legislation provides for the necessity to obtain a work permit for each region.

The term of issue of a work permit for highly qualified specialists shall be reduced from the current 30 days to 14 working days.

Foreign, highly qualified specialists, as well as members of their families, shall have voluntary health insurance under the agreement. Also, such employees and their family members shall have a right to apply for residence permits for the period of validity of relevant contracts.

At the same time, the Law stipulates that employers are obligated to register highly qualified specialists with the tax authorities with further notification to of the migration authorities.

In addition to the above, the law establishes the obligation of the employer to notify migration authorities, on a quarterly basis, with respect to the payment of salary to highly qualified specialists, to report on the termination of employment contracts or civil-law contracts and inform said authorities with respect to all cases of unpaid leave lasting for more than one month.

Foreign staff of representative offices of foreign legal entities established and accredited in the Russian Federation

In accordance with the amendments introduced by the new Law “Concerning the Legal Status of foreign nationals in the Russian Federation”, foreign nationals employed for work in representative offices of foreign legal entities duly accredited and registered in the territory of the Russian Federation shall have a right to perform their labour activity in such representative offices without individual work permits. Accordingly, the employer shall have a right to employ said mentioned foreign nationals without an employment permit. The amount of foreign employees of the representative office shall be confirmed by the state accreditation body under the procedure of accreditation of the representative office.

However, such a simplified procedure of foreign nationals’ employment shall be provided only under the “principle of mutuality” and in accordance with the international agreements of the Russian Federation.

Changes to the Rules on Employment of Foreign Nationals Arriving to Russia under the Non-visa Regime

The Law has also introduced a license (“patent”) which will be issued instead of work permits to non-visa foreign nationals employed by individuals to work in Russia (e.g. housekeepers, babysitters, etc). The license shall be issued for a period from one to three months with a further possibility to extend but not exceeding 12 months. The foreign nationals working under said license shall be obliged to make tax payments in the form of fixed advance payment amounts of 1,000 rubles (approximately USD 35 / EURO 27) per month (see details in tax section).

Changes in Tax Legislation

The main tax development is the granting of special benefits to two categories of foreign nationals: highly qualified professionals and persons employed by Russian citizens.
Highly qualified professionals

One of the measures, which is aimed at improving the work conditions of foreign professionals in Russia, is a change in the tax treatment of foreign nationals who are not tax residents in Russia.

The income of individuals – who are not tax resident in Russia – from labour activities performed by them as highly qualified professionals will be taxed at a personal income tax rate of 13%, and not 30% applicable to the same income of those non-residents who do not fall into the category of highly qualified professionals.

A foreign national with work experience, skills and accomplishments in a particular area of activity shall be considered a highly qualified professional if the conditions of attracting him/her to engage in work activity in Russia include receiving a salary (compensation) of two or more million rubles in a period not exceeding one year.

In the given context, work activity is understood to mean activity performed on the basis of an employment or civil-law contract for the performance of work (provision of services).

The following may engage highly qualified foreign professionals:

- Russian commercial organisations;
- Affiliates of foreign legal entities, that are accredited in Russia; and
- Accredited scientific, innovative, medical, etc. organisations performing activity in accordance with state priority areas in the development of science, technology and engineering in Russia.

Based on the provisions of the law, one may conclude that the beneficial tax treatment will cover only income received from the sources listed above.

Therefore, the beneficial tax treatment for non-residents will not extend to foreign professionals engaged by representative offices of foreign legal entities. It is worth bearing in mind that individuals who together with foreign citizenship also maintain Russian citizenship do not qualify for the tax benefits (which the status of a highly qualified professional provides). In addition, Russian non-residents will find themselves in a less advantageous position than highly-qualified foreign professionals.

Highly qualified professionals, and their family members, shall have the right to apply to the immigration authorities to receive a residence permit for the duration of concluded contracts. After receiving a residency permit, sums of compensation paid will be recognised as a basis for assessing insurance contributions to the state non-budgetary funds.

Highly qualified foreign professionals must be tax registered. The exchange of information on such persons between the immigration and tax authorities is also prescribed.

Persons employed by Russian citizens

Foreign citizens employed by individuals based on employment or civil-law contracts for the performance of work (provision of services) for private, domestic, and other similar needs unconnected with any entrepreneurial activity (such as care assistants, housemaids, gardeners, etc.) can also apply for the special tax preferences.

Income from such employment with non-resident individuals shall be subject to a tax rate of 13%.

In addition, foreign nationals falling into this category who came to Russia under a procedure not requiring a visa, and who are in Russia legally, may perform work activities for individuals based on a patent.

Personal income tax shall be paid by making fixed advances equal to RUB 1,000 per month (from 2012, this sum must be annually index-linked). It is also prescribed that the said foreign nationals shall be exempt from filing tax returns on their income, save for the instances established by law.

The Bottom Line

All amendments to the Russian Tax Code come into force from the day of their official publication (Rossiyskaya Gazeta, No. 109 of May 21, 2010), but they will be applied from July 1, 2010.

Consequences of the amendments include:

- The majority of expatriates may be able to benefit from the tax preferences established for highly qualified professionals.
Global Watch
International Assignment Services - Russia
June 03, 2010

- A foreign national, may qualify for the status of a highly qualified professional. The planning of such foreign national’s arrival into Russia, as well as departure, may be more flexible.

- The requirement to register, for tax purposes, all foreign citizens who wish to claim the status of a highly qualified professional.

- A reduction in the tax burden for non-resident foreign citizens who receive highly qualified professional status.

- A reduction in costs for employers who have undertaken to pay expatriates (irrespective of their tax status) a fixed net amount of compensation.

- Potentially bigger burden on the labour compensation fund of the employer as a result of the requirement to pay insurance contributions to social non-budgetary funds when a highly qualified professional receives a Russian residency permit.

This document was not intended or written to be used, and it cannot be used, for the purpose of avoiding tax penalties that may be imposed on the taxpayer.