

Humanisation of Tax Legislation Will Not in Itself Eliminate Double Tax Liability

FAO chief executives, employees of legal departments, finance directors, chief accountants and tax managers

Pepeliaev Group reports that Federal Law No. 201-FZ of 26 June 2026 "On Amendments to Part One of the Tax Code of the Russian Federation" has entered into force, abolishing penalties for the failure to file nil tax returns. According to the Explanatory Note to the draft law, this measure is intended to improve the position of taxpayers, streamline the procedure for taxpayers to interact with the tax authorities, and reduce costs for both taxpayers and the federal budget.

Taxpayers applying special tax regimes (including the simplified taxation system) may now be encouraged by the legislature not to file nil tax returns for taxes that could subsequently be assessed following a tax audit.

It should be recalled that this approach stems from the Ruling of the Russian Supreme Court's Judicial Panel for Economic Disputes dated 26 August 2022 in case No. A32-31264/2020 (Individual Entrepreneur E.T. Adonin). Following that ruling, the manner in which one tax offence is committed effectively became the objective element of another offence. A taxpayer found to have engaged in artificially splitting up a business may therefore be penalised both for a failure to submit a tax return within the prescribed time limit, resulting in tax not being paid (article 119(1) of the Tax Code), and for tax not being paid as a result of a failure to file a return under the proper tax regime (article 122(1) of the Tax Code). The combined fine may amount to as much as 70% of the unpaid tax calculated under the general taxation regime.

Moreover, the Russian Constitutional Court did not see in such interpretation and enforcement any violation either of the constitutional principle of proportionality or the related principles of fairness, adequacy and proportionality of legal measures, or of the prohibition on double punishment for the same offence (article 108(2) of the Tax Code and article 50(1) of the Russian Constitution)¹.

Will the new wording of article 119 of the Tax Code be able to protect taxpayers that apply the simplified taxation system from liability under article

¹ Ruling of the Constitutional Court of the Russian Federation No. 3286-O dated 14 December 2023

119(1) if the tax authorities reclassify their tax regime as the general taxation regime?

It appears that unless such taxpayers have filed nil tax returns under the general taxation regime, they will not avoid such liability.

A formal interpretation of article 119(1), which the higher courts applied in the Adonin case, indicates that the offence consists simply of failing to file a tax return under the correct tax regime. If a return that has been filed contains incorrect figures, these actions do not constitute an offence under this article (where they have resulted in tax being underpaid, such actions fall within the scope of article 122 of the Tax Code).

The exemption from tax liability provided for by article 119(3) concerns only cases where a taxpayer was legally obliged to submit the corresponding tax return. However, article 80(2) of the Tax Code exempts taxpayers applying the simplified taxation system from such an obligation (the taxpayer makes such a filing voluntarily).

What to think about and what to do

The beginning of 2026 has shown that the sharp increase in the tax burden on small and medium-sized enterprises (SMEs) has led not only to a 30% reduction in the number of SMEs, but also to an increased risk of tax minimisation through a business being artificially split².

Since the tax amnesty for splitting businesses has now ended, we can expect an increase in tax audits of SMEs, in the detection of arrangements to split a business artificially, and in tax liability being imposed.

With a view to minimising the tax risks, it is not advisable for taxpayers applying the simplified taxation system to discontinue filing nil tax returns under tax regimes that may apply if the tax authorities reclassify their activities as falling under the general taxation regime.

If such a reclassification occurs and the taxpayer is held liable simultaneously under articles 119 and 122 of the Tax Code, the taxpayer may rely, in its objections, not only on article 108(2) of the Tax Code and article 50(1) of the Russian Constitution, but also on article 119(3) of the Tax Code. This latter article has retroactive effect under article 5(3) of the Tax Code, and is an instrument of the legislature's good will in encouraging taxpayers not to submit unnecessary tax returns.

It should also be borne in mind that the legal position previously expressed by the Russian Constitutional Court in its refusal Ruling may be amended over time given how active taxpayers are in resorting to legal action.

Help from your adviser

Pepeliaev Group's lawyers are ready to:

² It has been reported in the media that, according to anonymous surveys, most entrepreneurs considered this method of reducing the tax burden to be acceptable

- provide support for field tax audits at every stage, from when the decision is received to appoint the audit through to when a dispute is resolved in court;
- analyse whether the tax authorities have, during tax audits, complied with the statutory requirements for taxpayers to be held liable under both article 122 and article 119 of the Russian Tax Code;
- represent taxpayers before all courts of all levels, including the Russian Supreme Court and the Russian Constitutional Court.

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