SECTION V.2. TAX CONTROL IN THE FORM OF TAX MONITORING

CHAPTER 14.7. TAX MONITORING. REGULATIONS ON INFORMATION EXCHANGE

Article 105.26. General Provisions Concerning Tax Monitoring

1. The objective of tax monitoring shall be to check the correct calculation (withholding) and full and timely payment (remittance) of taxes, levies and insurance contributions in relation to which responsibility for the payment (remittance) thereof is placed in accordance with this Code on the organization which is the taxpayer (levy payer, payer of insurance contributions, tax agent) (hereafter in this Section referred to as “organization”).

The objective of tax monitoring in relation to a member of a consolidated group of taxpayers shall also be to check the correct determination of income received and expenses incurred by that member for the purposes of the calculation and payment of tax on profit of organizations for the consolidated group of taxpayers.

In this respect, it shall not be an objective of tax monitoring in relation to a member of a consolidated group of taxpayers to check whether other members of the consolidated group of taxpayers have correctly determined income received and expenses incurred for the purposes of the calculation and payment of tax on profit of organizations for the consolidated group of taxpayers.

[clause 1 as reworded by Federal Law No. 240-FZ of 03.07.2016]

2. Tax monitoring shall be conducted by a tax authority on the basis a decision to conduct tax monitoring.

3. Except as otherwise established by this clause, an organization shall have the right to submit an application to a tax authority for tax monitoring to be conducted provided that the following conditions are simultaneously met: [as amended by Federal Law No. 130-FZ of 01.05.2016]

[EY Note: paragraph 1 of subsection 1 of clause 3 of Article 105.26 is amended from 01.07.2021 – Federal Law No. 470-FZ of 29.12.2020]

1) the aggregate amount of value added tax, excise duties, tax on profit of organizations and tax on the extraction of commercial minerals payable to the budget system of the Russian Federation for the calendar year preceding the calendar year in which the application for tax monitoring to be conducted is submitted, not including taxes payable in connection with the movement of goods across the customs border of the Customs Union, is not less than 300 million roubles. [as amended by Federal Law No. 240-FZ of 03.07.2016]

[EY Note: paragraph 2 of subsection 1 of clause 3 of Article 105.26 is amended from 01.07.2021 – Federal Law No. 470-FZ of 29.12.2020]

Taxes which an organization is obliged to pay both as a taxpayer and as a tax agent shall be taken into account in determining the aggregate amount of the taxes referred to in this subsection. [paragraph inserted by Federal Law No. 240-FZ of 03.07.2016]
For an organization which is a member of a consolidated group of taxpayers (including the responsible member of that group), the aggregate amount of taxes specified in this clause shall include an amount of tax on profit of organizations determined on the basis of income received and expenses incurred by that organization which are taken into account in calculating the consolidated tax base; [paragraph inserted by Federal Law No. 240-FZ of 03.07.2016]

[EW Note: subsection 2 of clause 3 of Article 105.26 is amended from 01.07.2021 – Federal Law No. 470-FZ of 29.12.2020]

2) the aggregate amount of income received according to data in the organization’s annual accounting (financial) statements for the calendar year preceding the calendar year in which the application for tax monitoring to be conducted is submitted is not less than 3 billion roubles;

[EW Note: subsection 3 of clause 3 of Article 105.26 is amended from 01.07.2021 – Federal Law No. 470-FZ of 29.12.2020]

3) the aggregate value of assets according to data in the organization’s accounting (financial) statements as at 31 December of the calendar year preceding the calendar year in which the application for tax monitoring to be conducted is submitted is not less than 3 billion roubles.

[EW Note: paragraph 7 of clause 3 of Article 105.26 is reworded from 01.07.2021 – Federal Law No. 470-FZ of 29.12.2020]

In the case of organizations in relation to which tax monitoring is conducted, the conditions established by this clause need not be met in order for a decision concerning the conduct of tax monitoring to be adopted in accordance with clause 4 or 7 of Article 105.27 of this Code. [paragraph inserted by Federal Law No. 130-FZ of 01.05.2016]

4. The period for which tax monitoring is conducted shall be the calendar year. [as amended by Federal Law No. 130-FZ of 01.05.2016]

5. The time period of the conduct of tax monitoring for the period specified in clause 4 of this Article shall commence from 1 January of the year of that period and shall end on 1 October of the year following that period. [clause 5 as reworded by Federal Law No. 130-FZ of 01.05.2016]

[EW Note: new paragraphs are added to clause 5 of Article 105.26 from 01.07.2021 – Federal Law No. 470-FZ of 29.12.2020]

[EW Note: clause 6 of Article 105.26 is reworded from 01.07.2021 – Federal Law No. 470-FZ of 29.12.2020]

6. Regulations on information exchange shall set out the procedure for the submission to a tax authority of documents (information) pertaining to the calculation (withholding) and payment (remittance) of taxes, levies and insurance contributions in electronic form and (or) for access
to information systems of an organization which contain the above-mentioned documents (information), at the organization’s option. Regulations on information exchange shall also indicate the manner in which the tax authority may, if necessary, inspect the originals of such documents. [as amended by Federal Law No. 240-FZ of 03.07.2016]

Regulations on information exchange shall set out the manner in which an organization records income and expenses, taxable objects and the tax base in accounting and tax ledgers and provide details of accounting ledgers and analytical tax ledgers and information on the organization’s system of internal control over economic events and the correct calculation (withholding) and full and timely payment (remittance) of taxes, levies and insurance contributions. [as amended by Federal Law No. 240-FZ of 03.07.2016]

The form of and requirements relating to regulations on information exchange shall be approved by the federal executive body in charge of control and supervision in the area of taxes and levies.

[EY Note: paragraph 1 of clause 7 of Article 105.26 is amended from 01.07.2021 – Federal Law No. 470-FZ of 29.12.2020]

7. For the purposes of conducting tax monitoring, the system of internal control over economic events and the correct calculation (withholding) and full and timely payment (remittance) of taxes, levies and insurance contributions (hereafter in this Chapter referred to as “internal control system”) shall be understood to mean the totality of the organizational structure, methods and procedures approved by the organization for the ordered and efficient conduct of financial and economic activities (including the achievement of financial and operating targets and the preservation of assets), the detection, correction and prevention of errors and misstatements in the calculation (withholding) of taxes, levies and insurance contributions and the full and timely payment (remittance) thereof and for the timely preparation of accounting (financial), tax and other reports of the organization.

The internal control system used by an organization must meet the requirements established by the federal executive body in charge of control and supervision in the area of taxes and levies for the organization of an internal control system. [clause 7 inserted by Federal Law No. 240-FZ of 03.07.2016]

**Article 105.27. Procedure for the Submission of an Application for Tax Monitoring to be Conducted and the Adoption of a Decision to Conduct (to Refuse to Conduct) Tax Monitoring**

[EY Note: paragraph 1 of clause 1 of Article 105.27 is amended from 01.07.2021 – Federal Law No. 470-FZ of 29.12.2020]

1. An application for tax monitoring to be conducted shall be submitted by an organization in relation to which tax monitoring is not conducted to the tax authority for that organization’s location not later than 1 July of the year preceding the year for which tax monitoring is to be conducted. [as amended by Federal Law No. 130-FZ of 01.05.2016]
An organization which is classified as a major taxpayer in accordance with Article 83 of this Code shall submit an application for tax control to be conducted to the tax authority with which it is registered as a major taxpayer.

The form of an application for tax control to be conducted shall be approved by the federal executive body in charge of control and supervision in the area of taxes and levies.

[EY Note: clause 1.1 of Article 105.27 loses force from 01.07.2021 – Federal Law No. 470-FZ of 29.12.2020]

1.1. While tax monitoring is being conducted, an organization shall have the right to submit an application for the conduct of tax monitoring for the following period not later than 1 September of the last tax monitoring period, on which the tax authority may adopt a decision in accordance with clause 7 of this Article.

[clause 1.1 inserted by Federal Law No. 130-FZ of 01.05.2016]

2. The following shall be submitted together with an application for tax control to be conducted:

1) regulations on information exchange; [as amended by Federal Law No. 240-FZ of 03.07.2016]

2) information on organizations and physical persons who/which have a direct and (or) indirect participating interest in the organization which is submitting the application for tax control to be conducted where that participating interest amounts to more than 25 per cent;

[EY Note: subsection 3 of clause 2 of Article 105.27 is amended from 01.07.2021 – Federal Law No. 470-FZ of 29.12.2020]

3) the organization’s accounting policies for taxation purposes as effective in the calendar year in which the application for tax control to be conducted is submitted;

4) internal documents regulating the internal control system of an organization.

[subsection 4 inserted by Federal Law No. 240-FZ of 03.07.2016]

3. An organization which has submitted an application for tax control to be conducted may, before the tax authority has adopted a decision to conduct tax monitoring or to refuse to conduct tax monitoring, withdraw it on the basis of a written application.

In the event that an application for tax monitoring to be conducted is withdrawn, that application shall not be considered to have been submitted.

3.1. Where submitted regulations on information exchange do not contain all the information specified by clause 6 of Article 105.26 of this Code, the tax authority shall, not later than one month after receiving an application for tax monitoring to be conducted, notify the organization of this and request that necessary explanations (additional documents and information) be presented and (or) that appropriate amendments (additions) be made to the regulations on information exchange within 10 days.

[clause 3.1 inserted by Federal Law No. 240-FZ of 03.07.2016]
4. After considering an application for tax control to be conducted and documents (information) submitted by an organization in accordance with clauses 2 and 3.1 of this Article, the director (deputy director) of a tax authority shall, by 1 November of the year in which the application for tax control to be conducted has been submitted, adopt one of the following decisions: [as amended by Federal Law No. 240-FZ of 03.07.2016]

1) a decision to conduct tax monitoring;

2) a decision to refuse to conduct tax monitoring.

5. A decision to refuse to conduct tax monitoring must be substantiated. The grounds for adopting a decision to refuse to conduct tax monitoring shall be:

1) failure by an organization to present all or some of the documents (information) required in accordance with clause 2 of this Article;

2) failure by an organization to satisfy the conditions stipulated by clause 3 of Article 105.26 of this Code;

3) non-conformity of the regulations on information exchange to the prescribed form and requirements for regulations on information exchange;

4) the non-conformity of the internal control system used by an organization to the established requirements for the organization of an internal control system. [subsection 4 inserted by Federal Law No. 240-FZ of 03.07.2016]

6. A decision to conduct tax monitoring (a decision to refuse to conduct tax monitoring) shall be sent to the organization within five days from the day of its adoption.

[Note: clause 7 of Article 105.27 is reworded from 01.07.2021 – Federal Law No. 470-FZ of 29.12.2020]

7. During the two tax periods following a period in which tax monitoring is conducted on the basis of a decision adopted in accordance with clause 4 of this Article, tax monitoring shall be conducted on the basis of a decision of a tax authority adopted in relation to each of those periods. The tax authority shall adopt such a decision unless an application for the discontinuation of tax monitoring is submitted by the organization concerned before 1 December of the year preceding the next tax monitoring period.

A decision to conduct tax monitoring for an ensuing period shall be sent to the organization concerned before that period begins. [clause 7 inserted by Federal Law No. 130-FZ of 01.05.2016]

Article 105.28. The Procedure for the Early Termination of Tax Monitoring

1. Tax monitoring shall be terminated early in the following cases:

1) a failure by the organization to comply with the regulations on information exchange, where this has become an impediment to the conduct of tax monitoring;
2) the discovery by the tax authority that the organization has presented inaccurate information in the course of the conduct of tax monitoring;

[EY Note: subsection 3 of clause 1 of Article 105.28 is amended from 01.07.2021 – Federal Law No. 470-FZ of 29.12.2020]

3) systematic (on two or more occasions) failure to present documents (information) and explanations in the manner prescribed by Article 105.29 of this Code in the course of the conduct of tax monitoring.

[EY Note: a clause 1.1 is inserted in Article 105.28 from 01.07.2021 – Federal Law No. 470-FZ of 29.12.2020]

[EY Note: clause 2 of Article 105.28 is reworded from 01.07.2021 – Federal Law No. 470-FZ of 29.12.2020]

2. A tax authority shall notify an organization in writing of the early termination of tax monitoring within ten days from the day on which circumstances specified in clause 1 of this Article are established, but not later than 1 September of the year following the period for which tax monitoring is conducted.

CHAPTER 14.8. PROCEDURE FOR THE CONDUCT OF TAX MONITORING. REASONED OPINION OF A TAX AUTHORITY

Article 105.29. The Procedure for the Conduct of Tax Monitoring

1. Tax monitoring shall be conducted by authorized officials of a tax authority in accordance with their official duties at the location of the tax authority.

[EY Note: paragraph 1 of clause 2 of Article 105.29 is amended from 01.07.2021 – Federal Law No. 470-FZ of 29.12.2020]

2. Where, in the process of conducting tax monitoring, inconsistencies are found in details contained in documents (information) submitted or inconsistencies are found between information submitted by the organization and information contained in documents in the possession of the tax authorities, the tax authority shall notify the organization of this with a request to present necessary explanations within five days or to make appropriate adjustments within ten days.

[EY Note: paragraph 2 of clause 2 of Article 105.29 is amended from 01.07.2021 – Federal Law No. 470-FZ of 29.12.2020]

In the event that, after examining explanations presented by an organization or where none are presented, a tax authority finds evidence that taxes, levies and insurance contributions have been incorrectly calculated (withheld) or have not been paid (remitted) in full or on time, the tax authority shall be obliged to prepare a reasoned opinion in accordance with the procedure laid down in Article 105.30 of this Code. [as amended by Federal Law No. 243-FZ of 03.07.2016]
3. When conducting tax monitoring a tax authority shall have the right to request an organization to present necessary documents (information) and explanations associated with the correct calculation (withholding) and timely payment (remittance) of taxes, levies and insurance contributions and to engage an expert and a specialist in accordance with the procedure established by Articles 95 and 96 of this Code. [as amended by Federal Laws No. 130-FZ of 01.05.2016, No. 243-FZ of 03.07.2016]

4. Requested documents (information) and explanations may be presented to a tax authority in person or through a representative, sent by registered mail or transmitted electronically via telecommunications channels. [as amended by Federal Law No. 240-FZ of 03.07.2016]

Documents in paper form shall be presented in the form of copies certified by the organization. It shall not be permitted to require notarial certification of copies of documents presented to a tax authority (to an official) unless otherwise provided by the legislation of the Russian Federation.

Where documents requested from an organization have been prepared in electronic form in formats prescribed by the federal executive body in charge of control and supervision in the area of taxes and levies, the organization shall have the right to send them to the tax authority in electronic form via telecommunications channels.

The procedure for sending a request to present documents and for presenting documents at the request of a tax authority in electronic form via telecommunications channels shall be established by the federal executive body in charge of control and supervision in the area of taxes and levies.

5. Documents (information) and explanations which have been requested in accordance with clause 3 of this Article in the course of the conduct of tax monitoring shall be presented by an organization within ten days from the day on which the relevant request was received.
Where an organization is unable to present requested documents (information) and explanations within the time period established by this clause, that organization shall, within a day following the day on which it received the request to present documents (information) and explanations, notify tax authority officials who are conducting tax monitoring in writing of its inability to present documents (information) and explanations within the specified time period and of the time period within which the organization is able to present the requested documents (information) and explanations.

[EY Note: paragraph 3 of clause 5 of Article 105.29 is amended from 01.07.2021 – Federal Law No. 470-FZ of 29.12.2020]

The notification referred to in paragraph 1 of this clause shall be submitted in accordance with the procedure prescribed by clause 3 of Article 93 of this Code. [paragraph inserted by Federal Law No. 240-FZ of 03.07.2016]

On the basis of the above-mentioned notification the director (deputy director) of the tax authority may, within two days from the day of receiving it, extend the time period for the presentation of documents (information) and explanations by the organization or refuse to extend that time period, and a separate decision shall be issued accordingly.

[EY Note: clause 6 of Article 105.29 is amended from 01.07.2021 – Federal Law No. 470-FZ of 29.12.2020]

6. A tax authority shall not have the right, in the course of conducting tax monitoring, to request an organization to present documents which were previously presented to the tax authority in the form of copies certified by the organization.

**Article 105.30. Reasoned Opinion of a Tax Authority**

1. A reasoned opinion of a tax authority (hereafter in this Chapter referred to as “reasoned opinion”) shall reflect the tax authority’s position regarding the correct calculation (withholding) and full and timely payment (remittance) of taxes, levies and insurance contributions. A reasoned opinion shall be sent to an organization in the course of the conduct of tax monitoring. [as amended by Federal Law No. 243-FZ of 03.07.2016]

A reasoned opinion shall be signed by the director (deputy director) of a tax authority.

The form of and requirements relating to the preparation of a reasoned opinion shall be established by the federal executive body in charge of control and supervision in the area of taxes and levies.

2. A tax authority shall prepare a reasoned opinion on its own initiative or at the request of an organization.

[EY Note: paragraph 2 of clause 3 of Article 105.30 is amended from 01.07.2021 – Federal Law No. 470-FZ of 29.12.2020]

3. A reasoned opinion shall be prepared on the initiative of a tax authority in the event that the tax authority establishes in the course of conducting tax monitoring that taxes, levies and
insurance contributions have been incorrectly calculated (withheld) or have not been paid (remitted) in full or on time by the organization. The reasoned opinion shall be sent to the organization within five days from the day on which it is prepared. [as amended by Federal Law No. 243-FZ of 03.07.2016]

The above-mentioned reasoned opinion may be prepared not later than three months before the period of the conduct of tax monitoring ends.

4. A request to provide a reasoned opinion shall be sent by an organization to a tax authority which is conducting tax monitoring where the organization has doubts or where there is uncertainty over matters pertaining to the correct calculation (withholding) and full and timely payment (remittance) of taxes, levies and insurance contributions in relation to a completed or planned transaction (operation) or group of interrelated transactions (operations) or in relation to other completed economic events of the organization. [as amended by Federal Laws No. 130-FZ of 01.05.2016, No. 243-FZ of 03.07.2016]

4.1. A request to provide a reasoned opinion must contain:

1) a description of the business objective and main conditions, including rights and obligations of the parties and time limits and conditions for making payments, for a completed or planned transaction (operation) or group of interrelated transactions (operations) and for other completed economic events of the organization;

2) information on activities of contract parties and other persons and functions performed by them with respect to a completed or planned transaction (operation) or group of interrelated transactions (operations) and with respect to other completed economic events of the organization, indicating the states and territories of which they are tax residents, and other information relating to a completed or planned transaction (operation) or group of interrelated transactions (operations) and relating to other completed economic events of the organization which is relevant to the procedure for the calculation (withholding) and payment (remittance) of taxes and levies;

3) the organization’s position in regard to the procedure for the calculation (withholding) and payment (remittance) of taxes and levies in relation to a completed or planned transaction (operation) or group of interrelated transactions (operations) and with respect to other completed economic events of the organization.
[clause 4.1 inserted by Federal Law No. 130-FZ of 01.05.2016]

4.2. A request to provide a reasoned opinion may be accompanied by copies of documents confirming the information stated in the request.

A request to provide a reasoned opinion in relation to a transaction (operation) or group of interrelated transactions (operations) and other economic events of an organization may be sent by an organization not later than 1 July of the year following the period in which they occurred.

When considering a request to provide a reasoned opinion, a tax authority shall have the right to request the organization which sent the request to provide documents (information) needed for the preparation of a reasoned opinion in accordance with the procedure established by
Article 105.29 of this Code.
[clause 4.2 inserted by Federal Law No. 130-FZ of 01.05.2016]

[EY Note: a clause 4.3 is inserted in Article 105.30 from 01.07.2021 – Federal Law No. 470-FZ of 29.12.2020]

5. A reasoned opinion at the request of an organization must be sent to that organization by the tax authority which has received the request within one month from the day on which that request was received.

The time period for sending a reasoned opinion at the request of an organization may be extended by a tax authority by one month for the purpose of obtaining from that organization or from other parties documents (information) which are needed for the preparation of the reasoned opinion.

[EY Note: paragraph 3 of clause 5 of Article 105.30 is amended from 01.07.2021 – Federal Law No. 470-FZ of 29.12.2020]

The tax authority shall notify the organization in writing of the extension of the period for sending a reasoned opinion within three days from the day on which the relevant decision is adopted.

6. An organization shall notify a tax authority which has prepared a reasoned opinion of its agreement with that reasoned opinion within one month from the day on which it is received, attaching documents confirming implementation of that reasoned opinion (if available).

[EY Note: paragraph 2 of clause 6 of Article 105.30 is amended from 01.07.2021 – Federal Law No. 470-FZ of 29.12.2020]

An organization shall notify a tax authority which prepared a reasoned opinion regarding planned transactions (operations) or a group of interrelated transactions (operations) of the commencement of those transactions (operations) not later than a month from the day on which they begin to take place. The notification shall be accompanied by documents (if available) confirming compliance with that reasoned opinion. [paragraph inserted by Federal Law No. 130-FZ of 01.05.2016]

[EY Note: a new paragraph is added to clause 6 of Article 105.30 from 01.07.2021 – Federal Law No. 470-FZ of 29.12.2020]

7. A reasoned opinion shall be binding on the tax authorities and on an organization during the course of tax monitoring, except where that reasoned opinion is based on incomplete or inaccurate information presented by the organization, or the fundamental conditions of a transaction (operation) or group of interrelated transactions (operations) or of another economic event do not correspond to the information presented by the organization, or at the time of the performance of the transaction (operation) or group of interrelated transactions (operations) or the occurrence of another economic event the provisions of legislation and normative legal acts on the basis of which the reasoned opinion was prepared have lost force (have been amended).
[clause 7 as reworded by Federal Law No. 130-FZ of 01.05.2016]
An organization shall implement a reasoned opinion by means of taking the position of the tax authority which is expressed therein into account in tax records and tax declarations (computations) (revised tax declarations (computations)) or by other means.

8. In the event that an organization disagrees with a reasoned opinion, it shall, within one month from the day of receiving it, present disagreements to the tax authority which prepared that reasoned opinion.

A tax authority which has received disagreements shall be obliged, within three days from the day of receiving them, to send those disagreements together with all materials in its possession to the federal executive body in charge of control and supervision in the area of taxes and levies for the purpose of initiating the conduct of a mutual agreement procedure within the framework of tax monitoring. [as amended by Federal Law No. 325-FZ of 29.09.2019]

9. A tax authority shall, not later than 1 December of the year following a period for which tax monitoring was conducted, notify the organization of the existence (non-existence) of outstanding reasoned opinions which were sent to the organization in the course of the conduct of tax monitoring. [as amended by Federal Law No. 130-FZ of 01.05.2016]

10. When conducting tax monitoring a tax authority shall not have the right to send to an organization a reasoned opinion on matters relating to the checking of prices used by the organization in controlled transactions for conformity to market prices.

**Article 105.31. Mutual Agreement Procedure within the Framework of Tax Monitoring** [title as amended by Federal Law No. 325-FZ of 29.09.2019]

1. The federal executive body in charge of control and supervision in the area of taxes and levies shall, after receiving disagreements and materials presented by a tax authority in accordance with clause 8 of Article 105.30 of this Code, initiate the conduct of a mutual agreement procedure within the framework of tax monitoring (hereafter in this Article referred to as “mutual agreement procedure”). [as amended by Federal Law No. 325-FZ of 29.09.2019]

2. A mutual agreement procedure shall be conducted by the director (deputy director) of the federal executive body in charge of control and supervision in the area of taxes and levies within one month from the day of the receipt of disagreements and materials presented by a tax authority and with the participation of the tax authority which prepared the reasoned opinion and the organization (or a representative of the organization) which presented the disagreements.

3. Upon completion of the mutual agreement procedure the federal executive body in charge of control and supervision in the area of taxes and levies shall notify the organization of the modification of the reasoned opinion or of the upholding of the reasoned opinion.

4. The notification of the modification of a reasoned opinion or of the upholding of a reasoned opinion shall be signed by the director (deputy director) of the federal executive body in charge of control and supervision in the area of taxes and levies.

The notification shall be handed over or sent to the organization within three days from the day on which it was prepared.
5. An organization shall, within one month from the day on which a notification of the modification of a reasoned opinion or of the upholding of a reasoned opinion is received, notify the tax authority which prepared the reasoned opinion of its agreement (disagreement) with the reasoned opinion, attaching documents confirming implementation of the reasoned opinion (if available).

[EY Note: a new paragraph is added to clause 5 of Article 105.31 from 01.07.2021 – Federal Law No. 470-FZ of 29.12.2020]