

# LEGAL STATUS OF THE CANTEEN IN THE ORGANIZATION

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Nowadays an arrangement to feed the employees is a reflection of a well-run enterprise and the sign of caring for the staff. However, as there are plenty of regulations concerning the activity of canteen, sometimes its organization become a real source of woe for the employer. Definition of the legal status of a canteen has a very important practical meaning for the purpose of proper calculation of the organization's profit tax.

One of the most important questions is whether the particular canteen should be qualified as the public catering unit for servicing labour collectives (having specific rules applying to the amounts of accrued depreciation, outlays on repairing premises, expenses on lighting, heating, water and power supply, as well as on fuel for cooking) or as a separate subdivision of the organization exercising the auxiliary activities.

While in the first case the expenses connected with the canteen's activity are included in the "other expenses involved in the production and (or) sale" (Article 264 of the Tax Code of Russian Federation), in the latter case according to the article 275.1 of the Tax Code of Russian Federation, the tax payers are to determine the tax base separately from the tax base for other types of activities.

Based on the provisions of the Russian Tax Code, one would think that it is possible to include the expenses connected with maintenance of the public catering units in the other expenses involved in the production and (or) sale, provided that only employees use such canteen. In this case there may be disputes between tax payers and the tax authorities, as the Russian Ministry for Finance repeatedly indicated in its letters that rendering of services simultaneously to the employees as well as other individuals is not the main feature when deciding if the object can be considered as the object of auxiliary works and services (e.g. the letters of the Ministry for Finance dated Novem-



ber 14, 2005 № 03-03-04/4/86, March 25, 2005 № 03-03-01-04/4-25).

The canteen is not listed in the article 275.1 of the Tax Code, therefore the Ministry's letters are not applicable. Although, on the other hand, the list of objects reflected in this article is not an exhaustive one.

The fact that a canteen renders its services only to the employees and the contract workers does not prevent the tax authorities from classifying it as a separate subdivision<sup>1</sup> of the organization rendering auxiliary works and services.

The second important distinguishing feature is the payment. The canteen which is an auxiliary subdivision provides its services in consideration for the payment by the employees, while the catering unit provides its services to the workers for free (e.g. in case if the employer pays for the food). The practice of Arbitration courts shows that the expenditures of the canteen rendering services only to the employees of the organization (when other individuals not being the employees will not be served) can be considered as "other expenses related to the production and (or) sale" according to article 264 of Russian Tax Code even if they pay for it<sup>2</sup>.

<sup>1</sup> Letter of the Ministry for Finance of the Russian Federation dated April 4, 2007 № 03-03-06/1/219 the Ministry for Finance.

<sup>2</sup> Decision of Federal Arbitration Court of North-Western district dated March 14, 2007 №

A56-53270/2005, Decision of Moscow district Federal Arbitration Court dated October 24, 2005 № KA-A40/10143-05.

Some specialists suppose the disintegration is the third distinguishing feature of auxiliary works and services applicable only to the separate subdivisions. Since the word "separate" was excluded from the Tax Code<sup>3</sup>, this statement is in doubt. Now the article 275.1 of the Tax Code is applied to taxation of the all subdivisions of commercial organization.

Recently the Ministry of Finance has liberalized its position concerning the clarification of legal status of the canteen. Thus in the letter dated March 2007 № 03-03-06/1/186 it stated that if the canteen is located on the territory of the commercial organization and rendering the service to its employees for payment or for free for the employees, the expenses from its activity should be considered as other expenses involved in the production and (or) sale.

In conclusion it is necessary to say that none of the above outlined features are completely sufficient for the determination of the legal status of the canteen operating in the commercial organization. The status of the canteen depends on the particular situation and can be defined on the basis of the whole complex of existing circumstances.

A56-53270/2005, Decision of Moscow district Federal Arbitration Court dated October 24, 2005 № KA-A40/10143-05.

<sup>3</sup> Federal Law adopted June 6, 2005 (№ 58-FZ "On the introduction of amendments to the Second part of Tax Code of Russian Federation and some other legislation of Russian Federation on taxes and dues").