

AN OVERVIEW OF NORMATIVE DOCUMENTS ON TAXATION ISSUES IN MARCH–APRIL 2013

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Economy of Russia in April 2013 was more clearly demonstrating stagnation. In this regard, the lack of funds was aggravated and as a result, federal agencies are again searching for resources, which is gradually shifting from the proposals on the use of public reserves for investment purposes (the position of Ministry of Economic Development of Russia) to the search of new sources of budget replenishment (Russian Ministry of Finance position). Last month, the economic situation was discussed at many representative meetings of the government.

On April 18, 2013 at a meeting of the State Duma, Dmitry Medvedev, Prime Minister of the Government of the Russian Federation¹ has made a report on the work of the RF Government in the past year. According to the report, in 2012, the Russian GDP has grown, although starting from H2 of the year the growth rate began to decline sharply, but real wages in the past year have increased, unemployment was low (just over 5%), inflation was at an acceptable level (about 7%), the budget was managed to be restrained from deficit, and the national debt was kept within 10% of GDP. Medvedev confirmed the commitment to preserve the fiscal rules in the further activities of the RF Government, as it provides a macro-economic stability and allows firmly to resist inflationary pressures. As the means of economy support, the Prime Minister has outlined plans to invest Rb 40bn of pension savings in the purchase of infrastructure bonds of OAO “Russian Railways”, OAO “FGC UES”, OOO “Agency for Housing Mortgage Lending”, OPK “Oboronprom” and OAO “ROSNANO” under the state guarantees of the Russian Federation.

The reasons for the sharp slowdown of growth rate in Q I 2013 and possible ways to overcome the negative trends in the economy were discussed at a meeting with the Russian President Vladimir Putin on April 22, 2013 with the participation of the economic bloc of the government and representatives of the expert community². As an incentive of economic growth there was considered a gradual decrease in lending rates by the banks with government participation, which should, according to the participants’ opinion, to create competition in the financial market, as well as a decrease in inflation rate to 6%, which would reduce the refinancing rate of the RF Central Bank and revive lending to manufacturing sectors. Since the agreed position on measures to stimulate the economy at this meeting could not be reached, the President of the Russian Federation requested the preparation of proposals by May 15, 2013³.

At an international conference with the participation of the “Big Twenty” countries’ representatives, the Sberbank of Russia held on April 18-19 2013, the impact of the sovereign debts on the growth rate of the world economy. A large amount of sovereign and corporate debts, on the one hand, and accumulated as a result of mitigation policy in regard to exchange rates cheap liquidity, on the other hand, provide a volatile impact on the economic situation. Liquidity is somehow available at the market, but investors are reluctant to invest it in stocks and corporate obligations of the debtor states or to spend it on the purchase of sovereign debts of the states with unstable financial standing (it is worth to remember, that the cause of Cyprus crisis were among other things, investments the national banks in Greek securities). Investors are looking for opportunities to invest in real assets with good returns or at least able to maintain the market value even in case of the forced innovations of accumulated debt in the economies. Investors took a wait-and-see approach; the market is working at minimal volumes. Hence, the decline in demand for commodities, the number of which suppliers include Russia, the slowdown of manufacturing in China due

1 Prime Minister’s summarizing. Dmitry Medvedev told about all that he could do // Kommersant No. 68 (5099), of 18.04.2013.

2 A. Kolesnikov. Margin is annihilated. At a meeting with Vladimir Putin, for the sake of GDP growth, it is agreed to reduce its costs and expenses of the state-owned corporations // Kommersant No. 71 (5102), 23.04.2013.

3 D. Smirnov. Prescription for accelerating of economy will be provided by May 15 // KP.ru, 24.04.2013.

to the lower export opportunities. In fact, the following happened: the states have accumulated large debts, including corporate risks (distribution of liquidity by buying corporate bonds to support producers), and now they are forced to restructure (reduce) their liabilities in the first place in the social and government spending spheres.

The decline in demand for hydrocarbons in the foreign market has not led the development of the domestic market in Russia. This is due to the fact that in Russia the problem of growth of corporate debt has several other reasons – the lack of resources available to corporations in the country. There has been rapid growth of the Russian corporations' foreign debt along with the non-decreasing capital outflow. The danger of this phenomenon is that if capital outflow is converted in the growth of the external corporate debt (the funds are raised for repayment of previous obligations with interest), which can lead to the formation of the bond bubble in the Russian economy. Outside claims on bankruptcy in this case can by “domino effect” bring down the interrelated production at any time. The current situation in view of the high social risk will inevitably lead to an unexpected increase in government spending to fight unemployment, so the task of the state is the preemption of undesirable developments. Proposal, expressed at the meeting with the Russian President by O. Vyugin, Chairman of the Board of Directors of MDM Bank to reduce the state-owned banks lending rates are unlikely to solve the problem; rather, it would undermine the financial stability of such banks, since a forced decrease of the rates will be provided by non-market methods.

However, the solution of the Russian economy problems is now really dependent on its ability to attract domestic commercial banks to lend to the national business or not. Surveillance on the part of a competent lender-resident over the activities of the debtor-resident in order to secure the repayment of funds granted is the most effective way to develop a competitive domestic market. Apparently, the Russian government now needs to have a discussion on how the development of the domestic economy with the banking community in the first place.

To solve the problems of economic development by means of only government financial policy is unlikely. Contradictions in the goals of economic blocs in the Russian government often result in inconsistent decisions, which reduces confidence in the investment environment. Here is an example.

Although oil prices exceed the price estimated for the budget formation, nevertheless, estimates of the budget deficit since the beginning of 2013 are steadily growing. Privatization program was adjusted literally on the fly: instead of selling the shares of privatized enterprises in the market and addressing the revenue to the budget, the issue of privatization by issuing additional shares is actively discussed. This will lead to the result, that the money from privatization will be addressed to the capital of privatized companies, rather than to the budget. As a result, a share of planned income will be lost. The question arises: if during the budget planning for these sources (Rb 500bn) government expenditures were foreseen, why in March 2013, i.e., in 2 months after the Budget Law came into force, the question of a fundamental change in the scheme of privatization is raised¹? Apparently, the situation with the refund of the value added tax (VAT) on the projects, associated with completed the construction objects of large infrastructure projects, related to preparation for the APEC Summit (held in 2012 in Vladivostok) and the Sochi Olympics (to be held in 2014) was unexpected for financial planners. Massive refund of VAT will reduce budgetary resources. A. Siluanov, the RF Minister of Finance commented on the situation, that the plan for the mobilization of the lost revenues for Rb 500bn will be ready by summer. According to him, most likely, the authorities will have to increase the national debt. Recall that the national debts are deferred taxes. The total amount of the mentioned gaps in the budget revenues estimates (Rb 1 trillion) is comparable to the VAT revenues to the RF federal budget for six months². And this is not the only problem.

Due to the fact that the Russian oil industry has been able to move to production of gasoline “Euro-5” standard, the budget has lost excise taxes (about Rb 100bn) targeted for the formation of road funds, which are awarded for the production of low-level gasoline³. This gap in revenue the Rus-

1 K. Sugrobov. Hole of the ruble. Russia's budget is predicted a trillion deficit // Lenta.ru, 26.03.2013.

2 analytic/nalog.ru/portal/index.ru-ru.htm

3 S. Kulikov. The Ministry of Finance came up with additional taxes on gasoline. Excise taxes on environmentally friendly fuels may be increased // ng.ru, 10.04.2013; F. Sterkin, I. Kezik. The Ministry of Finance will not touch oil. The

sian Ministry of Finance also proposes to cover at the expense of compliant taxpayers by increasing the excise tax on high-quality gasoline and increasing the rate of tax on mineral extraction (MET).

In our view, the situation is rather tricky. If there was a really lack of the estimated budget or it could not be obtained, it is improper now to force taxpayers to pay for expenses that have been taken under the virtual income. Such solutions unreasonably increase the tax burden on market participants and undermine their confidence in the current economic policy. The more so, because the Russian government officially stated that it will not increase the tax burden till 2018. A valid source of financing in such a situation, in our opinion, should be considered the sale of state property.

Among technical issues on mandatory payments, published in the normative acts and documents of the Russian Ministry of Finance and the Federal Tax Service of Russia, it is worth noting the following.

1. By the Federal Constitutional Law from 05.04.2013 No. 1-FCL changes were made to Art. 89 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”. This law provides the right of the President of the Russian Federation, the Federation Council, the members of the Federation Council, deputies of the State Duma, the legislative bodies of Subjects of the Russian Federation and the Supreme Court of the Russian Federation and the Supreme Arbitration Court of the Russian Federation to carry out necessary preparation of new laws relating to their conduct and submit them to the State Duma. The new law is necessary for the legislative position of the Constitutional Court. The term for submission of the new law draft to the State Duma of the Russian government is extended from 3 to 6 months, commenced from the date of publication of the decision of the Constitutional Court of the Russian Federation. We can only welcome the judiciary power joining to the development of bills correcting existing laws in case of the Constitutional Court internal conflict. This solution is aimed at improving the quality, efficiency and level of professional legislation development, given the complexity of the Russian legislation.

One example, when there is a need for a thorough professional documentary verification by judiciary authorities can be the developed at the initiative of the Accounts Chamber Bill, which implies criminal responsibility for the non-payers of insurance premiums up to 2 years imprisonment. According to the Accounting Chamber, the Bill is designed to eliminate the imbalance in the level of accountability for violations of tax laws and legislation on insurance premiums. It is proposed to equalize the rights of the Federal Tax Service of Russia and state non-budgetary funds, giving the right to the Pension Fund of Russia (PFR) bring to trial the non-payers of insurance premiums to the funds. Recall that the said conflict of rights between the FTS of Russia and state social extra-budgetary funds arose solely as a result of replacement of the unified social tax (UST) with insurance contributions and withdrawal thereof from the Tax Code to a separate area of the law. The consequence of this was the solution to authorize several supervising bodies (in particular, the UST) instead of one (FTS of Russia). A simple equalization of rights of controlling authorities in respect of enforcement to incompliant payers in the absence of legislation regulating relations in the sphere of compulsory payments (taxes and insurance premiums) may in fact lead to increased pressure on the producers by simple formal reasons, which is unacceptable. We believe the introduction of separate measures of criminal liability for non-payment of insurance premiums inappropriate. In fact, that the gap between revenue and expenditures of non-budgetary funds is covered by the budget funds, i.e., by taxes. For payers insurance premiums are recorded in expenses deductible from the tax base for profits tax and the tax on personal income (PIT). Thus, there cannot and should not be duplication in the responsibility and in a manner of its enforcement for taxes and insurance payments¹. If criminal liability for failure to pay taxes is regulated by Art. 198 and 199 of the RF Criminal Cod (RFCC), the responsibility for non-payment of insurance premiums should be also introduced in these Articles. In addition, the rules must be set adding liability for violation tax legislation and legislation on insurance

threat of increasing MET can cause oil producers to agree to an accelerated indexation of excise and export duties on oil // *vedomosti.ru*, 22.04.2013; I. Kezik. Oil producers are threatened to be subject to increased tax burden by \$6bn // *vedomosti.ru*, 11.04.2013.

1 M. Soltys, P. Chuvilyaev. The Ministry of Labor went wrong. Violators of fiscal discipline are at the threat of imprisonment // *MK.ru*, 16.04.2013.

premiums, otherwise one and the same person will be punished repeatedly, as the non-payment of taxes and insurance premiums will be qualified as violations of different violations. Adoption of the proposals of the Accounting Chamber without regard to the above-mentioned facts will actually lead to economically unjustified direct growth of criminal liability limits as compared with the limits agreed by the legislator at the time of enactment of the Tax Code of the Russian Federation and in the period of unified social tax application.

2. Decree of the Government of the Russian Federation of 04.03.2013, No. 511-p has approved the Strategy for development of the RF power supply network. The strategy is committed to the creation of OAO "Russian network", which will control about 70% and 90% of the distribution of backbone networks in Russia, as well as other independent network organizations. The Strategy highlights the fact that the tariff for power supply network in Russia has almost exhausted its growth potential. The cost of electricity produced by the network for many industrial consumers is approaching the cost of electricity from its own generating capacities (including the cost of their construction), which leads to the development of distributed generation and withdrawal of consumers from the centralized power supply. Thus actually reflects one of the most important developments in the Russian economy – electricity tariffs do not play a monopoly role component (ersatz-tax) in the prices of domestic producers. In this regard, prices of commodity producers are now starting to be compliant with the laws of the free market. Of course, this is not applicable to all regions of Russia, but a possibility for the distributed generation accession will be quite possible to provide an impact on the rates of centralized power supply. Now the global networks will be forced to keep their prices at the level comparable with those of the distributed regeneration, and learn to perform effectively in those cost limits, which it provides.

This is not accidental, that the Strategy implies the electrical energy accounting in the retail market from 2017 to transfer to the procedure, under which all the responsibility for the installation, operation and implementation of electricity services will be transferred from the consumer to the power network organizations. This will inspire optimization of the network configurations to ensure the alignment of capacity utilization, especially since according to the Strategy, the price for electricity for the Russian industries is brought actually in line with the European level. The share of the cost of electric network complex in the final price of electricity makes about 40% (34% in 2012 with no loss), which is also similar to the relevant indicator of the industry share in the major developed countries.

Another positive result of changes in the order of power supply service in connection with the development of competitive market relations will be the rejection of cross-subsidization in the network complex, which in 2012 has exceeded Rb 220bn. Cross-subsidizing led to an overestimation of additional enforced costs of individual industrial sectors and affected the competitiveness of their products. Now the regional budgets will have to take on subsidizing the poor social class, which hopefully will lead to a reduction of the tax benefits of the regions and lead eventually to increased interest of regional administrations to improve the profitability of operating in their territory enterprises that will contribute to the development of regional markets for goods (works, services).

It should be added that from 2014 there will be introduced social norm of energy consumption (i.e., standardized rate of this public utility); consumption in excess of the standard rate will be paid at an increased rate.

3. Federal Law of 05.04.2013, No. 60-FZ of the RF Labor Code (RF LC) implies the introduction of a new form of employment, i.e., remote operation. This innovation will inevitably lead to the question of the application of Art. 131 of the RF Labor Code to the calculation of wages to an employee working outside the RF and the order of payment of personal income tax.

Article 131 of the RF Labor Code specifies that the payment of wages is made in cash in RF currency (RUR). However, according to the same Article, in accordance with a labor agreement or the employment contract upon written request of the employee, wages may be made in other currency, unless it does not contradict the legislation of the Russian Federation and the international treaties of the Russian Federation.

According to the Experts¹, on the basis of Art. 6.9 of the Federal Law of 10.12.2003 No. 173-FZ “On Currency Regulation and Currency Control”, payments in foreign currency between residents are not allowed, and between resident and non-residents, in contrast, are made without restrictions². Hence, the experts concluded that the payment of the resident organization (even a standalone subdivision of the Russian foreign organization) wages in foreign currency to its resident-employees are not allowed. However, if the employee is a foreign citizen, the Russian legislation seems to allow him to be paid salary in foreign currency.

The problem arises in case of application of personal income tax rate, under which the payroll tax is paid by a citizen of another country, employed by the Russian company and paid in foreign currency to the foreign account. It should be remembered that in accordance with the Tax Code of the Russian Federation, the citizen who resides more than 180 days a year abroad is recognized as tax non-resident. On the contrary, a citizen of a foreign country, staying in the territory of the Russian Federation for 180 days is considered to be tax resident. Tax resident shall pay personal income tax at the rate of 13%, a non-resident – at the rate of 30%.

4. The letter of the Russian Ministry Finance of April 5, 2013 No. 03-11-10/11254 explained in detail the issues related to the order and conditions of the transition to the imposed on 1.01.2013 patent system of taxation, in view of its conversion into an independent diverse form of special tax regime. The Ministry of Finance of Russia explained that the recommended application form for a patent was approved by the Order of the Federal Tax Service of Russia as of December 14, 2012 No. MMV-7-3/957@. The application can be made by an individual entrepreneur through electronic communication channels. The application must specify a start date and end date of the patent. Herewith, the date of signing of the application should be provided at least 10 days before the commencement date of the patent.

5. The Letter of the Russian Ministry of Finance and the Federal Tax Service of Russia of April 1, 2013 No. BS-4-11/5665@ is forwarded thorough the information system that as of 04.01.2013 there is no legal basis for the actions of tax authorities for receiving, processing and use for the purposes of assessment the tax on personal property of individuals the data on inventory of the value of real estate, presented by any authorities (organizations) as of 01.01.2013. The fact is that from January 1, 2013 the Technical Inventory Bureau does not perform real estate recording in the territory of the Russian Federation. The functions of property registration and cadastre registration of passports are transferred to the Federal Service for State Registration, Cadastre and Cartography under the Ministry of Economic Development of the Russian Federation. Meanwhile, the procedure for calculating the indicated service inventory value of real estate has not been established. The effective legislation also has not yet established bodies (organizations), which should immediately implement the state technical accounting and inventory to determine the value of real estate.

According to the Federal Tax Service of Russia, the assessment of the tax on personal property should be suspended before the legal basis thereof is created.

6. The letters of the Russian Federal Tax Service as of March 26, 2013 No. ED-4-3/5200@ and the Ministry of Finance of Russia as of 01.03.2013, No.03-04-07/6189 has clarified the issue of personal income tax of an employee on daily business trips.

The Ministry of Finance of Russia explains that in accordance with Para. 1, Art. 217 and Para. 12, Section 3, Article 217 of the RF Tax Code, the per diem compensations are excluded from payments related to the of job duties of the taxpayer, that is, they are subject to personal income tax. Accordingly, per diems shall not require documentary evidence of expenses.

If the funds paid to the employee for the purpose of a one-day business trip are not diems, but are other costs associated with business trips of the employee with the permission or knowledge of the employer (Article 168 of the RF Labor Code), they are exempt from tax in full in the presence

1 A. Borisov. Opportunities of (non) resident // Consultant, “EJ-Lawyer” No. 49, 2004.

2 It is necessary to distinguish between the concept of “resident” and “non-resident” in the currency and tax laws. Uniform Specifics of these terms interpretation in the framework of the Tax Code will be commented on in the text of the Review.

of documentary evidence for the expenditures. In the absence of such documentary evidence, monetary funds paid to employees in return for one-day trips may, in accordance with the Decree of the Presidium of the Russian Federation of 11.09.2012, No.4357/12 be exempt from taxation in the amount of Rb 700 rubles for business trips within the RF territory and Rb 2,500 rubles for travel abroad. Funds exceeding these daily amounts are subject to personal income tax.

7. By Federal Law of 05.04.2013, No.39-FZ changes were made to the Tax Code of the Russian Federation in connection with the refinement of the principles of price assessment for the purposes of VAT.

Premium of the seller (free or beneficial transfer of goods, works, services) paid to the buyer, is non-deductible from the tax base, except in cases when the reduction in the cost of shipping on the amount of such premiums (payments) is provided directly by the contract.

The growth of the tax base for VAT purposes (as a result of rising prices or volumes of shipped products) is accounted for the tax period in which the documents were drawn up, which serve as a basis for issuing adjustment invoices. Herewith, the taxpayers are allowed to compile a single adjustment invoice for the changes in the value of goods shipped from under two or more invoices drawn up earlier by this taxpayer for the same recipient.

The timelines of audits by tax authorities for control of transactions made in 2012 are refined (shifted).

8. Application of VAT on received forfeits was explained by the letters of the Federal Tax Service of Russia of April 3, 2013 No.ED-4-3/5875@ and the Ministry of Finance of Russia of 04.03.2013 No.03-07-15/6333 on the issue of VAT payment on the amounts received by the sellers from the buyers for breach of the supply contracts. Referring to the decision of the Presidium of the Russian Federation of February 5, 2008 No.11144/07, the Ministry of Finance of Russia noted that the a forfeit is a form of liability for delay in the performance of obligations under the contract and is not directly connected with the payment for the products in the framework of business, so the amount of the forfeit is not subject to VAT.

However, if the sellers received from customers amounts stipulated by the terms of contracts, referred to as the forfeit (fine, penalty) they are not regarded as those in the sense of Art. 330 of the Civil Code of the Russian Federation, but in fact constitute an element of pricing, such amounts are included in the tax base for VAT on general grounds.

9. The letters of the Federal Tax Service of Russia of March 25, 2013 No.ED-4-3/5036@ and the Ministry of Finance of Russia of January 21, 2013 No. 03-11-09 / 6 addressed the issue of taxation of repo transactions by taxpayers applying the simplified taxation system (STS).

Each part of the REPO transaction should be subject to taxation as an independent commodity transaction and to be deductible from the proceeds of the cost for purchasing goods. Under such approach, according to the Ministry of Finance of Russia and the Federal Tax Service of Russia, the rights of STS taxpayers in repo transactions with the securities will not be harmed.

10. The letter of the Russian Ministry of Finance and the Federal Tax Service of Russia of April 4, 2013 No. ED-4-3/6073@ clarifies the procedure for payment of personal income tax in the preparation of an individual gains lottery tickets' distributor, acting on the basis of the agency contract in the name and on behalf of the lottery organizer. Distributor of lottery tickets is not a tax agent and does not have to report to the tax authorities on those who won the lottery. Physical entity receiving a prize, on the contrary, must declare its income, assess and pay personal income tax on winnings for the lottery ticket. Thus (with the exception of beneficial lotteries that do not involve charging for participation therein), income on the lottery proceeds, including the winning lottery ticket at the usual lottery ticket, turns to citizens into a serious legal problem (which is not even realized by the majority of lotteries participants). Let us explain the situation.

A winning under lottery ticket is a second source of income for the common person apart from wages. If there is a second source of income from which tax has not been withheld by the tax agent, a citizen, by law, is obliged to apply to the tax office, declare total revenues, assess and pay tax

(including on the lottery ticket at the rate of 35% instead of the general rate of 13%). And those who do not formally become violators of tax laws, and will be subject to tax penalties. This situation exists since January 1, 2002, and no one has yet taken steps to change it. Foreign citizens who will come to the Olympic Games, who buy a lottery ticket and win, will be formally tax offenders as well. To avoid misunderstandings, we believe it is appropriate for the Russian Ministry of Finance and the Federal Tax Service of Russia before the Olympics (where surely will be presented all sorts of charitable lotteries) to make changes to the current taxation of income on lottery tickets' gains. Namely, for example, introduce the imputed tax on each winning lottery ticket below a certain value and eventually liberate citizens and other individuals from the obligation to declare a small amount of winnings on lottery tickets

Recall that the order of the lottery in the Russian Federation is regulated by the Federal Law of 11.11.2003, No. 138-FZ. The amount of the prize fund of a lottery against the revenue of its arrangement must be at least 50%, and the amount of the targeted allocations, provided by the terms of the lottery (for sports, education, health, etc.) should make not less than 10% of the proceeds from the lottery. Lottery is subject to registration. The lottery terms, its location, the procedure for obtaining a gain are to be specified in the ticket. ●