

REVIEW OF REGULATORY DOCUMENTS ON TAXATION ISSUES IN APRIL–MAY 2013

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In the period under review, a struggle for the budget funds of the next fiscal year took place. On April 30, 2013, the Ministry of Finance of the Russian Federation submitted for consideration by the Government of the Russian Federation the draft Main Guidelines of the Tax Policy in 2014 and the 2015-2016 planned period. According to experts' estimates, the Government does not intend to change the structure of the tax system in the 2014–2016 period and introduce new taxes, except for those which has already been submitted to the State Duma. However, the Ministry of Finance has found reserves for tax revenues growth, that is, raising of rates, changing of rules of calculation and payment of some taxes and specification of procedures for collection of those taxes¹. In their turn, entrepreneurs insist on easing of the tax policy. On May 23, 2013, at the meeting in Voronezh – dedicated to the issues of development of the domestic entrepreneurship – President Vladimir Putin promised to consider the business community's proposal on the tax maneuver; however he pointed out that proposals regarding tax amnesty and tax holidays at newly established small business enterprises were not developed sufficiently, nor were convincing enough.

Late in April and May 2013, the Government of the Russian Federation had to take a number of decisions on adjustment of the 2013 budget expenditures in a situation of the unexpected shrinkage of opportunities as regards mobilization of additional budget resources due to a drop in oil prices to \$100–\$104 per standard barrel and a lack of non-oil revenues as a result of a decrease in GDP growth rates in the 1st quarter. In our view, the most dangerous thing in the existing situation is preservation of the exceedingly large public and para-public (social) sectors in the economy. In conditions of the crisis, maintenance at the expense of budget funds of a large number of able-bodied people in public service, military and law-enforcement structures and state corporations in combination with the liability to support as well at the account of the government persons of a pensionable age which begins in Russia 15 to 20 years earlier than in other countries draws over all the resources of the economy to servicing the interests and objectives of the state, prevents development of the free market and distorts the structure of prices. As a result, a distribution economy, not a market one is being reproduced in Russia.

In conditions of a crisis, countries with market economies cut state spendings and get rid of the redundant workforce in the public sector, that is, create conditions for reduction of the market cost of the workforce, redistribute it between different spheres of activities which factor is a prerequisite of qualitative changes in the structure of workforce and determination of the required level of qualification for further development of a competitive market of one or another country. Such developments are, certainly, accompanied by social protests, but the lower the share of the state in the economy, the smaller the extent of such protests. Having decided to switch over to a competitive market, the Russian state, unfortunately, permitted the public sector to become exceedingly large. It will be too difficult to overcome the consequences of a paternalistic state and social policy in a situation of limited financial resources and crisis developments.

As was stated above, in Russia the government first determines plans and programs and then looks for funds to implement them. In a situation of a developing market, the government, on the contrary, has to adopt plans and programs only within the limits of resources it can mobilize without damaging development of the private business in order to form a free market.

The difference between a monopoly market and free market consists in the fact that the latter originates from “chance” exchanges when optimal consumer properties and quantitative param-

¹ A. Mikhailov and E. Karpenko. There will be No New Taxes. The Old Ones will be Increased. Web-site of Gazeta.ru of May 5, 2013.

eters of exchangeable goods meet. However, that chance (in other words – the freedom of choice) is a prerequisite of origination of new trends in development and optimization of production forces.

In a crisis situation, requests for a reduction of a tax burden with simultaneous growth in needs of state finances intensify. Governments start raising taxes on luxury (as they do it in Russia) and individuals' income which exceeds the average nationwide level of income (for instance, in France) and consider the prospect of introducing higher taxes on consumption (at the beginning of the financial crisis in Germany the issue of a higher VAT rate was considered). In Russia, unfortunately, one should not expect high efficiency from mobilization tax measures proposed in the Main Guidelines of the Tax Policy: the most better-off people work at government institutions or state corporations, so higher taxes will mean a simple transfer of federal budget funds (in the form of a portion of wages and salaries paid them from the budget) to regional and local budgets (in the form of the individual income tax, luxury tax, corporate property tax, land use fees, property tax and other). As regards tax privileges for business as entrepreneurs propose, apart from such proposals' controversial nature which is discussed below in Russia privileges result in an additional burden on the federal budget due to a need to use federal budget funds to pay for losses of regional and local budgets. Conclusion: with a financial and mobilization allotment it is impossible to get out of the present crisis; it is necessary to cut public spendings.

In carrying out of the tax policy during the crisis, it is particularly important to observe the principle of justice and neutrality of the tax load. The main market taxes (VAT, profit tax, individual income tax, excises and rental payments) represent withholding of a certain portion (share) of the newly created value in accordance with one or another scheme. The ultimate aggregate tax burden by all the types of such taxes is finally determined as a share of the newly created value of goods (jobs and services) sold on the market. With absence of exchange transactions in goods (jobs and services), there are no taxes. Any request for exemption from market taxes stems from a misunderstanding of the principle of their operation. The market tax system is neutral: it neither creates an incentive, nor hinders the functioning of the market. Exceptions from the general scheme are taxes on property and the real-estate: they are established as shares of the accumulated value and serve as a burden which gets real estate and other property involved in the current market turnover. Taxes on costs resulting in forced deformation of the cost of production of goods by domestic manufacturers as compared to their competitors do not comply at all with the market system – it is for that reason the business community actively insists on reduction of insurance contributions. Analyzing the application of the Constitution of the Russian Federation in setting of the rates of mandatory payments (it concerns primarily the proposed rates of the property tax which is going to have an impact on a large number of people), it is important to take into account the formula developed by the Constitutional Court of the Russian Federation (CC RF) which limits the possibility of establishment of mandatory payments: “Taxation which paralyses the exercise by people of their constitutional rights is to be recognized as inadequate. For that reason, with taxes and duties becoming excessive the issue of diversification of them in order to ensure the principles of justice and equality is getting of a particular importance”¹. It is believed that the above formula is of a comprehensive nature and is to be taken into account in taking by the Government of the Russian Federation of decisions as regards any mandatory payments, particularly, in a situation of a shrinking market.

A common mistake which is made by initiators of financial changes and financial authorities consists in an intention to replace a reduction of the general level of the tax burden by individual privileges or special privilege tax regimes, that is, target tax regulation. The above moves distort the existing market relations. For example, the National Association of Stock Market Participants informs that the Ministry of Finance is considering a proposal to total the profit (losses) of nonnegotiable securities with operation results of marketable securities on the regulated securities market and the results of investors' main activities². In our view, approval of such a decision would be inexpedient.

1 See Resolution No.9-P of April 4, 1996 of the Constitutional Court of the Russian Federation.

2 M. Papchenkova. The Stock Market Loss will Permit Companies to Reduce Taxes. Web-site of vedomosti.ru of May 05, 2013. The Ministry of Finance of the Russian Federation is prepared to permit companies to save on taxes in case of losses on securities transactions: the total pretax profit can be reduced by the value of those losses. The proposal of the Ministry of Finance of the Russian Federation is included in the draft Main Guidelines of the Tax Policy in the 2014–2016 Period sent to the Government on April 30. The Ministry of Finance is prepared to permit companies to combine losses on operations with marketable securities with the results of their main activities.

It is to be reminded that professional participants in the stock market are already permitted to total the results both on marketable and nonnegotiable securities on the organized securities and financial instruments market for taxation purposes. In addition to that, dealers (not brokers!) are permitted to create reserves against depreciation of securities by withdrawing a portion of funds from taxation. The above is a violation of the equal conditions of the competition: for example, in respect of their main profile business banks, insurance institutions and non-government pension funds are permitted to form reserves from the pre-tax profit against depreciation and writing-off of customers' debts in order to prevent a collapse of a bank (an insurance institution and non-government pension fund) and protect the interests of other customers. Dealers, on the contrary, form the fund out of the pre-tax profit and that is what other market participants dream about.

To make it clear, let's explain: for example, manufacturers of goods received profit, paid the tax, then incurred losses and wrote off those losses to future profit (provided that they receive it, of course). If a manufacturer of goods failed to receive profit, got bankrupt and quitted the business, not all the losses would be written off. Dealers, on the contrary, form the reserve out of the profit for taxation purpose. It is to be noted that until that reserve (it is replenished with purchasing of new securities) has not been completely utilized the profit tax is not charged. As it can be seen, for professional stock market dealers a tax regime which provides unjustified competitive advantages is established in the Russian Federation. For the above reason, it becomes disadvantageous to grant loans, insure and invest funds of non-government pension funds' customers, while dealings in securities in one's own interests (as a dealer) is the most profitable business.

Allocation of losses related to transactions with securities which are not traded on the organized market to profit received from ordinary investors' main activities – as proposed by the National Association of Stock Market Participants – is highly undesirable. Here is an example. Russia is a member of the Geneva Bill of Exchange Convention. It is an international agreement which means an unconditional right of claim of a drawee in respect of the bill. Suppose, an oil (or gas) company shipped oil or gas to a foreign company in exchange for a bill of the third person. Unconditional right of claim under the bill means that a certain amount will be debited unconditionally from the account (including a foreign one) of the drawer in favor of the drawee (that is, without legal recourse – simply on the basis of presentation of the bill to the notary). But the drawer (suppose, it is a Cyprian off-shore company) got suddenly bankrupt and failed to pay the bill. In case of approval of the amendment proposed by the National Association of Stock Market Participants, for Russian tax authorities the losses related to that bill will be set off as a reduction of the tax base on supplies of hydrocarbons (revenues from sales of hydrocarbons = 100 units, losses from writing off of the bill = -100 units, the tax base on the profit tax = 0). It is believed, however, that it is not worthwhile to liberalize the Russian tax legislation to such an extent of the financial freedom. With the existing tax system, the profit from sales (export abroad) of hydrocarbons for taxation purposes in Russia will be taken into account without the set-off of the losses related to the failure of the bill, that is, the Russian budget will not lose anything extra.

In our view, introduction of a special regime of taxation for dealers has resulted in the fact that all the financial entities took to stock market dealings. Even banks started to operate mainly as financial market participants leaving behind lending operations (for example, A. Lebedev, owner of the NRB said that if he failed to sell the bank he was prepared to return the banking license to the Central Bank of Russia because the bank had no customers and carried out operations mostly on the financial market)¹.

1 D. Ushakova. Lebedev will turn NRB into an investment company. According to the businessman, he was prompted to do that because of absence of customers and buyers. Web-site of Izvestia.ru of May 17, 2013.

"Alexander Lebedev complained that due to constant inspections his bank (NRB) lost over Rb 6bn worth of customers' funds and they had to lay off about 1,000 employees. The businessman explains the supervising authorities' higher attention to the NRB by the Novaya Gazeta's investigations into corrupt practices in the banking sector ... According to Lebedev, only Rb 300m to Rb 400m worth of customers' funds (individuals and legal entities) without taking into account related parties are left with the NRB whose assets and capital amount to Rb 27bn and Rb 16.5bn, respectively ... According to the NRB reporting, as of April 1, the credit portfolio amounted to Rb 5.5bn, but according to Lebedev, the number of real customers amounts to about 50....According to the official statements, investments in securities make up the main portion of the bank's assets (over Rb 15bn)".

Lending which envisages checking of the customer's provisions and ongoing control over solvency and fulfillment by the customer of its obligations are replaced by issuing of securities. In issuing of bonds, there is no independent control over purpose utilization of the attracted funds, nor is there a need to make provisions for the borrowed funds and pay higher interests in case the return of funds becomes overdue (refinancing is needed, that is, bonds are to be issued to redeem the previous issues with interest), so, bond borrowing has plenty technical advantages as compared to traditional bank lending though a large number (dispersity) of bondholder-creditors may complicate the situation if a bondholder who was not paid timely takes suddenly a legal action.

In the draft Main Guidelines of the Tax Policy in 2014 and the 2015–2016 Period, the Ministry of Finance of the Russian Federation agreed with the position of the State Duma's Committee on Budget and Taxes as regards exemption from taxation of the interest income payable to foreign bondholders on so-called Eurobonds placed by corporations through foreign intermediaries¹. It concerns nominee shareholders (holders of packages belonging to anonymous owners of Eurobonds) who are to be recognized as recipients of the interest income. But as soon as those nominee intermediaries have been recognized as recipients of interest income they become in their countries the sources of income for actual bondholders, that is, they are subject to tax regulation at the place of their tax residency. For the above reasons, intermediaries reject such transactions and are prepared to act as broker-intermediaries, that is, pay the tax on commissions only at their residency. Strictly speaking, the issuer has to keep record of its bondholders, identify them and apply the double taxation agreement with a respective country as regards each recipient of interests or pay extra for that work of a broker-intermediary. In Russia, they found it rather difficult and decided that the money mattered more, so it would be easier to grant a tax privilege. It is unclear, why the Government of the Russian Federation encourages such schemes of borrowing under which the beneficiary of the income is not identified neither with the Central Depository of the Russian Federation, nor with the issuer (the source of income payment), while the anonymous owner of bonds (a recipient of the income) is granted a full tax exemption. It seems the Ministry of Finance has supported legalization of another channel of tax evasion.

Privileges related to withdrawal of funds from Russia in the form of the interest income payable to nominee holders of corporate bonds are still less clear as other government agencies and supervising authorities in their turn propose tough economic measures to prevent capital flight abroad. So, A.V. Bastrykin, Head of the Investigation Committee proposes to introduce in the legislation the criminal liability of a legal entity for capital flight² and the Accounts Chamber of the Russian Federation has turned to the State Duma with a proposal to introduce an offshore tax on foreign trade operations of Russian manufacturers with companies situated in offshore zones. According to the Accounts Chamber of the Russian Federation, such a measure will permit to raise \$48bn to the budget on an annual basis³. The Accounts Chamber of the Russian Federation was prompted

1 The Ministry of Finance suggests that taxation of interest income on Eurobonds be abandoned. Web-site of *Kommersant.ru* of May 13, 2013. "The Ministry of Finance proposes that taxes should not be charged from interest payments on Eurobonds of Russian issuers which they pay to foreign holders of those bonds, said Anton Siluanov, Minister of Finance delivering the draft Main Guidelines of the Tax Policy at the State Duma. ...Earlier, the Ministry of Finance proposed to make the rules of placement of debt securities via SPV-structures of Russian companies and the Central Depository equal as regards, among other things, taxation of interest income on securities".

2 Alexander Bastrykin proposed to introduce a criminal responsibility of legal entities for flight of capital. Web-site of *Kommersant.ru* of May 23, 2013, sledcom.ru/actual/299222/ of May 23, 2013. At the Meeting of the Scientific Council of the Institute for Legislation and Comparative Legal Science under the Government of the Russian Federation, the Chairman of the Investigation Committee pointed out that capital flight was justified to a great extent by active processes of transnational legalization of criminal incomes. A larger portion of the Russian capital is withdrawn to offshore jurisdictions with a low level of transparency of capital movement". In 2012, over \$35bn out of \$56.8bn was withdrawn through so-called doubtful operations. The Chairman of the Investigation Committee explained that "solution of the problem of repatriation of capital which was illegally taken abroad was impossible without introduction of a criminal responsibility of legal entities". It seems the Investigation Committee has decided with assistance of legal science to look into conditions of capital repatriation. However, repatriation of capital will be feasible only in case Russia has joined international agreements and not through introduction of criminal responsibility into the domestic legislation.

3 T. Shirmanova and M. Kunle. Implementation of the measure will help raise annually up to \$48bn to the budget, according to auditors' calculations. Web-site of *Izvestia.ru* of May 15, 2013. However, experts say that such straightforward formulae do not help solve the problem as capital flight schemes involve entities established in countries which are not included in the offshore list.

to make such a proposal due to the fact that the Cyprian authorities did not provide the required information on Russian beneficiaries of Cyprus-based companies¹. The above facts are explicit evidence of the lack of apprehension of free market regulation rules with various public authorities.

In our view, granting of tax privileges as regards interest income on corporate Eurobonds gives impetus to placement of bond issues abroad, upsets justice of a tax burden on banking operations, income from insurance activities and borrowing operations on the domestic market, that is, willfully violates the principle of justice and neutrality of taxation established by the Tax Code of the Russian Federation and undermines the market of traditional banking and insurance services in the Russian Federation. At the same time, it is to be noted that with introduction in Russia from 2012 of the mandatory consolidated reporting by the issuer on its marketable securities traded on foreign organized markets the issue² of control over the issuer's financial situation and activities is solved to some extent as the ultimate amounts of the issuer's obligations can be detected and, if necessary, domestic regulation measures can be applied to that issuer as a pre-emptive measure to prevent formation of financial bubbles.

A return of the Ministry of Finance and the State Duma Committee on Budget and Taxes in draft Main Guidelines of the Tax Policy in 2014 and the 2015–2016 Planned Period to the issue of a tax privilege in respect of corporate Eurobonds is allegedly caused by the fact that if such a tax privilege is unavailable corporate issuers will have to redeem bonds, while taxpayers' funds are apparently insufficient for those purposes (though a tax moratorium in respect of such interests was granted, that is, a tax privilege as regards the fact of identification of such violations was actually legalized). The present decision on introduction on a permanent basis of a tax privilege in respect of interest income on corporate Eurobonds for nonresidents (including offshore zones) is likely aimed at refinancing of obligations which were taken earlier; a failure to fulfill the above obligations would mean bankruptcy to some issuers. According to experts' estimates, the funds borrowed by Russian corporations through Eurobonds are not accompanied by actual investments – those funds are used mainly for financial operations: repurchasing of own equities and long-term refinancing at lower interests, that is, sources of debt repayment have not been created³. In a situation of falling prices on hydrocarbons and economic recession, risks from non-investment borrowings to Russian unemployment growth due to sudden bankruptcy of issuers increase. It is believed that it would be better to extend the tax privilege for the required period approved by the Government of the Russian Federation for the purpose of redemption of the existing liabilities, rather than to introduce it on a permanent basis to the Tax Code of the Russian Federation. To prevent complicated financial situations which may be related to a sudden failure of the issuer on foreign markets with all the financial and social consequences to the government, it is important to develop sectors of traditional banking and insurance services on the domestic market.

Unfortunately, domination of state-owned banks on the domestic market prevents development of market bank lending and free goods market. According to experts, state-owned banks –

1 T. Shirmanova. The Accounts Chamber: Cyprus does not disclose Russian offshore owners. Auditors found out that the Cyprian authorities did not provide to Russian tax authorities the information requested by the latter on beneficiaries of Cyprus-based companies. Web-site of Izvestia.ru of May 14, 2013. Besides, it was repeatedly stated that in addition to intergovernmental agreements governments are guided by their own Constitution. That is a real obstacle to provision of answers to some queries initiated by partners under international agreements, including those on taxation.

2 By the Information Letter of April 24, 2013 of the Financial Federal Markets Service (FFMS): "In the volume, in accordance with the procedure, within the deadlines and in the format approved for preparation and (or) provision to the FFMS of Russia in an electronic format of the 2012 consolidated annual financial (accounting) reporting in accordance with the International Standards of Financial Reporting (ISFR) and (or) the general principles of US accounting (US GAAP), Russian issuers whose securities (including bonds) are included in quotation lists are obligated to submit to the FFMS consolidated reporting prepared in accordance with international rules" the procedure for provision consolidated reporting in an electronic format to the FFMS is specified. Issuers of marketable securities traded on foreign organized (exchange) markets have to submit consolidated reporting in an electronic format to the FFMS. In accordance with Article 5 of the Law on Consolidated Financial Reporting annual consolidated financial reporting is subject to mandatory audit.

3 V. Buzoverya. Why do Russian companies borrow if they do not build up investments? Web-site of vedomosti.ru of May 20, 2013 "...Russian corporations set records as regards the volumes of placement of Eurobonds on international capital markets. So, from the beginning of the year Russian borrowers placed \$25.4bn worth of securities, thus taking Russia to the top line among all the developing countries as regards borrowings. Russia is followed by China with \$24.4bn worth of new debts on the international public debt market".

being a state financial monopoly – support weak entities many of which are actually bankrupt in order to prevent unemployment and later withdraw their profit in the form of payments on loans¹. The New leadership of the Central Bank of the Russian Federation will face quite a complicated task, that is, to carry out a transfer of the state-owned banking system to market relations. For that purpose, it is necessary to carry out a gradual securitization of debtors' debts and selective buyout from banks of securitized debts of debtors if they were recognized as backbone entities, including buying up of bonds of such debtors on the foreign market, bankruptcy of other hopeless debtors and mandatory writing off of their debts at the expense of reserves of state-owned banks.

A refusal of the financial agency from budget revenues in the form of a tax on the interest income of corporate Eurobonds also raises questions because according to experts' estimates in regions the financial situation got worse a great deal in the past year. According to the estimates of the Ministry of Economic Development of the Russian Federation, in 2-3 years the public debt of constituent entities of the Russian Federation may increase more than 100% from Rb 1.4 trillion as of January 1, 2013 to Rb 3 trillion 2015². Investors buying bonds of state-owned corporations or bonds of governments of constituent entities of the Russian Federation do not run risks: in case of a default on such bonds the Russian Federation will be answerable for its obligations with its property. However, bonds of constituent entities are more attractive to foreign companies than corporate bonds. The Euroclear and the Clearstream which came to the Russian market were not interested in securities of corporations and equities of state-owned corporations (as the Government of the Russian Federation hoped for in order to increase state revenues from privatization)³, but they get actively engaged in federal bonds trading and took interest in trade in bonds of constituent entities of the Russian Federation. There is nothing strange in that approach. As compared to bonds of other states, the above bonds are, probably, better secured and ensure high yield (despite the fact that yield on OFZ (federal loan bonds) fell from 7% to 6%)⁴. Taking into account the fact that the financial situation of constituent entities of the Russian Federation is constantly deteriorating, but their obligations are guaranteed anyway by federal property, such a situation can be called with a certain degree of irony “a growing market”⁵. As it is shown below, the new amendments to the Budget Code of the Russian Federation do not, unfortunately, limit further growth in debts of constituent entities of the Russian Federation.

The number of other documents which a particular attention is to be paid to includes the following:

1 D. Kushaev. State financing distorts the balance on the market of shares and debts and motivation of companies' owners. Web-site of vedomosti.ru of May 16, 2013. According to the expert, in Russia many companies which are formally owned by private shareholders have belonged de facto for a long time to state-owned banks. “They do not repay loans for years. Representatives of banks are members of their governing bodies and all the profit is spent on payment of interests. Not surprisingly, many leading businessmen see no problem in assigning their business to banks and the state. Particularly during the crisis, the government provided banks with long-term liquidity which the latter used for lending and refinancing of large companies in strategic and socially important areas. There were no cases of large-scale bankruptcy though many corporations operated beyond the limits of an acceptable debt burden”. The expert concludes that: “The crisis did not carry out any cleaning, nor did it make enterprises bankrupt and redistribute property from inefficient owners to efficient ones. It extended the status quo and got the government involved even to a greater extent in fulfillment of lending and proprietary functions which are not proper to it. High credit risks in the economy will sooner or later result in squeezing of that spirale, mass bankruptcies, writings off of loans and a new crisis in the banking sector”.

2 O. Bukharova. On The Report of D.F. Medvedev at the State Duma. Web-site: rg.ru of April 23, 2013.

3 M. Papechkova. The Ministry of Finance requests to speed up access of Clearstream and Euroclear to the Russian securities market Euroclear. Web-site of vedomosti.ru of May 15, 2013.

4 M. Papchinkova. Regions will manage to borrow at a lower cost. The cost of borrowings for regions and municipal governments may decrease. Foreign investors will get an opportunity to buy their debts through large clearing institutions: Clearstream and Euroclear. The analysis of views of experts E. Shilenkova, A. Lifshits, K. Vartapetova and A. Klepach. Web-site of vedomosti.ru of May 8, 2013.

5 K. Sugrobov. Loans to a hometown. How are debts of Russian regions made up. Web-site of Lenta.ru of May 15, 2013. With the share of the federal budget on the debt market amounting to 52%, regional and municipal (sub-sovereign) bonds accounted for 5%. At present, there are Rb 425bn worth of outstanding sub-sovereign securities on the market; there are outstanding bonds of 30 Russian regions and 10 municipal governments. According to forecasts of the Standard & Poors, by 2015 the deficit of regional budgets will increase to Rb 800bn, while their aggregate debt, to Rb 3 trillion. “The rate of debt growth will exceed by one-third the rate of income growth of Russian regions. The Standard & Poors points out that to stabilize the situation the government will have either increase the volumes of federal support or carry out redistribution of funds between constituent entities. Otherwise, regions and municipal governments will face bankruptcies”.

1. By Federal Law No.88-FZ of May 7, 2013, the important amendments were introduced into Federal Law No. 196-FZ of December 27, 2005 on Parliamentary Investigation by Federal Assembly of the Russian Federation. In particular, Article 4 (1) was supplemented with Cl.4 to the effect that subject to parliamentary investigation are “such facts of gross violation of financial discipline as found expression in untimely execution of revenue and (or) expenditure items of the federal budget or budgets of state extra-budgetary funds of the Russian Federation as regards the volume, structure and purpose, inefficient spending of funds of the federal budget and funds of state extra-budgetary funds of the Russian Federation and disposition of federal property”.

Investigations can be initiated by a group of members of the Council of the Federation or deputies of the State Duma whose number is no less than 20% of the total number of the members of the Council of the Federation or the State Duma by way of submitting of a written request addressed to the Chairman of the Council of the Federation or the Chairman of the State Duma for initiation of a parliamentary investigation into the facts stated in the above request. It is believed that the right to carry out independent parliamentary investigations into execution of budgets is a key point in establishment of the efficient and prompt system which would prevent corrupt practices and identify shadow schemes of allocation of public funds.

2. Of particular importance are amendments in accordance with Federal Law No.104-FZ of May 7, 2013 on Amendment of the Budgetary Code of the Russian Federation and Individual Legislative acts of the Russian Federation in Connection with Upgrading of the Budgetary Process . . .

It is to be noted that the new wording does not prevent the possibility of building up foreign currency debt of constituent entities of the Russian Federation at the expense of recapitalization of interests. In particular, the new wording of Article 104 includes the following terms of attraction of foreign debt: absence of the overdue debt and assignment of a rating by at least two rating agencies. As obligations of a constituent entity of the Russian Federation are in any case obligations guaranteed by the Russian Federation there is no doubt that positive ratings are assigned, while the absence of overdue debt as of the beginning of the year is ensured by re-financing at the end of the year with capitalization of the interests on the debtor's obligations with the creditor¹.

A similar scheme was introduced by Article 104.1 for external foreign currency borrowings by means of securities of constituent entities of the Russian Federation outside the Russian Federation.

The Budget Code of the Russian Federation sets the goals of borrowing, that is, ensuring of repayment of the existing state foreign debt of a constituent entity of the Russian Federation and (or) financing of the deficit of the budget of a constituent entity of the Russian Federation.

Among other innovations, the most important one is the norm introduced into Article 40 of the Budget Code of the Russian Federation; under the above norm at the request of financial authorities of constituent entities of the Russian Federation and municipalities the Federal Treasury authorities provide the information from the accounting documents on payments received from legal entities which payments are sources of formation of revenues of a respective budget (including a consolidated budget of a constituent entity of the Russian Federation and a consolidated budget of a municipal district). In other words, the law permits the Federal Treasury represented by its territorial agencies to provide information to constituent entities of the Russian Federation and municipalities on the received federal taxes so that constituent entities of the Russian Federation and municipal authorities could check whether the correct volume of funds was credited to accounts of their budgets.

Article 96.9 (9) determines the procedure for utilization in the current financial year of resources of the Reserve Fund due to shortfalls of the planned revenues required for financing of current budgetary spending and the budget deficit.

3. By Federal Law No.94-FZ of May 7, 2013, a number of amendments were introduced into the Tax Code of the Russian Federation. In particular, a responsibility was established for local

¹ For example, according to Article 104 of the Budget Code of the Russian Federation: “...In the current financial year the volume of specified foreign borrowings cannot exceed the volume of obligations as regards repayment in the current year of the outstanding foreign debt of a constituent entity of the Russian Federation as of the beginning of the year without taking into account obligations on guarantees in foreign currency”.

authorities to provide on an annual basis until February 1 to tax authorities at the place of their location the information on all the land plots which were recognized as a tax base of the land tax, including land plots assigned in ownership by decisions of local governments until the day Federal Law No. 122-FZ of July 21, 1997 on State Registration of Titles to Real Property and Transactions with It becomes effective. Thus, gaps will be filled in charging of the land tax on land plots which were not registered by owners of those land plots at Rosreestr; also the data of the Cadastre will be verified for the purpose of introduction of the real estate tax.

The same law sets in respect of agricultural producers and fish-farming organizations tax rates at the amount of 0% on activities related to sales of agricultural products produced by them, as well as sales of own agricultural products produced and processed by them. It is to be noted that the list of agricultural products was expanded; they include yields of water biological resources, fish and other products including those produced (caught) beyond the limits of the exclusive economic zone of the Russian Federation in accordance with international agreements of the Russian Federation in the sphere of fishery and preservation of water biological resources.

4. One cannot but mention enormous work carried out by developers of amendments and supplements to the Federal Law on Concession Agreements. Amendments introduced by Federal Law No. 103-FZ of May 7, 2013 form a comprehensive scheme of transfer of heat-supply projects, centralized systems of hot water and cold water supply and or water disposal, as well as individual units of such systems under concession agreements or leasehold agreements concluded in accordance with the procedure set by the Government of the Russian Federation with executive authorities or local authorities which carry out regulation of prices (tariffs) in accordance with the legislation of the Russian federation in the sphere of regulation of prices (tariffs).

In a nutshell, the scheme will operate as follows. Heat supply projects, water supply projects and systems of such projects will be assigned on a tender basis for development and maintenance to concessionaries; the results of the tender are published in the Internet.

For the purpose of entering into a concession agreement, the concessor sets for the bidders the following:

1) an assignment and the minimum admissible planned values of the concessionary's operating rate;

2) requests as regards specification in their bids by participants in the tender of measures aimed at establishment and (or) reconstruction of the project of the concession agreements and attainment of the goals envisaged in the assignment and the minimum admissible planned values of the concessionary's operating rate with description of the main parameters of those measures.

The assignment is formed on the basis of the approved schemes of heat supply, water supply and water removal of settlements and urban districts as regards fulfillment of tasks and attainment of target indices of development of the systems of heat supply, and (or) water supply and water removal of settlements and urban districts, zones with centralized and non-centralized water supply, boundaries of the planned zones of location of projects of heat supply and (or) projects of centralized systems of hot water supply, cold water supply and (or) water removal, as well the data of the forecast of consumption of heat, heat carriers and (or) hot water, potable water, utility water and the volume and content of waste water. The assignment has to include the values of the required heat power, the required capacity (loads) of water supply systems, sewage systems and facilities installed in those systems at certain points of supply, points of connection (technological connections), input points, feed points and disposal points and deadlines of commissioning and removal from service of the above units.

The scheme of assignment by the concessor of projects under the concession agreement suggests forward execution by the concessor of a nonnegotiable irrevocable bank guarantee.

In the Law in question, requirements to the concession documentation and the content of a concession agreement are specified in detail; in addition to the requirements specified in the bid documentation a concession agreement is to include the following:

a) the volume of useful supply of heat (capacity) and (or) heat carrier or the volume of water supply and (or) water removal within a year preceding the first year of the concession agreement, as

well as the forecast of the volume of useful supply of heat (capacity) and (or) heat carrier and the forecast of the volume of water supply and (or) water removal during the period of validity of the concession agreement;

b) prices on energy resources during the year preceding the first year of the concession agreement and the forecast of prices on energy resources during the period of validity of the concession agreement;

c) losses and unit consumption of energy resources per unit of the volume of useful supply of heat (capacity) and (or) heat carrier and per unit of the volume of water supply and (or) water removal during the year preceding the first year of the concession agreement (by each type of the utilized energy resource);

d) a value of expenditures beyond control determined in accordance with statutory acts of the Russian Federation in the sphere of heat supply, water supply and water removal (except for expenditures on energy resources, concession fee and corporate profit tax);

e) ultimate (maximum) growth of the required gross revenues of the concessionary from carrying out of regulated types of activities in the sphere of water supply and water removal as compared to the previous year and other.

As of the date of entering into a concession agreement (on a tender basis), the current discounted value of gross revenues during the period of validity of the agreement and standard profitability will be calculated. If the concessionary fails to meet the terms of activities accepted on the tender basis, the concession agreement is terminated, but the customer has to return to the concessionary the investment funds with a fixed (standard) norm of profit. To indemnify the public customer from losses in case of termination of the concession agreement, a bank guarantee will be provided. So, a bank (or the banking community) by way of guaranteeing the obligations of the concessionary will have to request an indemnification from the latter or otherwise protect itself from losses in case of early termination of the concession agreement.

Such a scheme of organization and maintenance of utilities and projects of natural monopolies can be actually recognized as a transparent and efficient one. It suggests replacement of an inefficient concessionary with indemnification to it of costs and a certain rate of profit, involves a bank guarantee, that is, ensures banking control over the solvency of the concessionary which such an irrevocable guarantee was granted to and protects the budget from losses (they are indemnified by means of a bank guarantee). Perhaps, it can be stated that the developed scheme involves a real market mechanism of containment of growth in tariffs on services of public utilities and natural monopolies.

Also, a reduction of tariffs for the next financial year in case the concessionary or the tenant failed to achieve the approved planned values of reliability indices of heat supply utilities can be regarded as a subtle decision.

To protect the interests of the concessionary, the law includes a “grandfathering clause” under which setting, changing and adjustment of regulated prices (tariffs) on goods produced and sold and services rendered by the concessionary are carried out till the end of validity of the concession agreement in accordance with the rules which are in effect as of the date of setting, changing and adjustment of prices (tariffs).

At the same time, such a scheme will work only if actual profitability under the concession agreement will be higher than the normative profitability, while the latter meets the level of interest rates on bank loans and bank guarantees.

At present, by Resolution No. 406 of May 13, 2013 of the Government of the Russian Federation documents in the sphere of water supply and water removal were approved (The Principles of price Setting; The Rules of Regulation; The Rules of Determination of the Size of the Investment Capital and The Rules of Calculation of the Rate of Return on Investment Capital). The normative profit as regards water supply and water removal is set at 7% of the amount included in the gross proceeds of costs. Expenses related to capital investments, funds used on repayment of loans, interests on loans and investment programs are to be paid at the expense of the normative profit. In addition to the above, other expenses related to the social needs of the personnel will be paid at the expense of the normative profit (that is, the sooner such programs start paying

off, the higher the share of other expenses on the social needs of the personnel in the normative profit will be).

The scheme is quite transparent and clear. The only condition for introduction of the above scheme is reduction of profitability on state borrowings as the same 7% (or a bit less) per annum a bank may receive without any risk by simply buying OFZ on the market. ●