SOME SPECIAL FEATURES OF THE CURRENT FINANCIAL POLICY AND A REVIEW OF TAXATION REGULATORY DOCUMENTS ISSUED IN THE PERIOD OF JULY THRY AUGUST 2013

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It is impressive what the Supreme Arbitration (Commercial) Court of the Russian Federation (the SAC of Russia) managed to achieve in order to adapt Russia's law enforcement practices to a free-market environment against general uncertainty regarding the state financial policy. First of all, measures to establish relationship between the Russian legislation and international practices in the context of economic and financial regulation are worth mentioning. In the period under review, the SAC of Russia followed up the issues which are relevant for the benefit of Russia's budget. The SAC of Russia managed to successfully develop decisions, which are universal from the international law point of view, on making Russian regulations applicable to Russian and foreign parties to legal proceedings.

Economic growth rates continued to slow down in Russia in the period of July thru August 2013. According to the Ministry of Economic Development and Trade of Russia, growth rate in 2013 may slow down to a level below 2%[1]. Capital outflow deepened in the same period. In Russia, several facilities of extraction and primary treatment of many raw commodities have been suspended due to decline in export of raw materials which was caused by slowdown in growth rates in China, the principal consumer of raw materials. For example, RUSAL announced that it suspended its aluminum production at certain of its aluminum smelters due to high costs and uncertainty in the tariff policy, until the world market price of aluminum resumes $2000 – 2400 per ton (presumably, for a period of four years at five plants). Being the most important source of a relative federal budget's affluence, still high crude oil prices have become a source of constant tension, since they dependent largely upon the FRS's policy: once costs on repurchase of US government bonds go down, the US dollar is to get stronger, i.e. US-dollar inflow into global markets is to slow down followed by falling crude oil prices.

In order to prevent social-related consequences of stagnation and a likely weakening of the national currency, the government has been strengthening financing of budget sectors, thereby having produced such a phenomenon as growth in personal income tax revenues against reduction of profit tax revenues[2]. In our opinion, the phenomenon may suggest that another problem, which in short term would strongly impede the development of the domestic market, has aggravated – a gap in salaries paid in the public sector and the domestic market. In a free market, salaries of government employees are generally many times lower than labor remuneration in the business sector. In contrast, in the Russian Federation, the federal government provides top-ranking government officials and those employed at state-owned corporations with a risk-free salaries which are several and dozens times as much as the labor remuneration of employees in the private sector[3],[4].

Generally, the federal government intentionally maintains a relatively low level of public servants' salaries in competitive market environment, which simply can be explained from the economical point of view by inducing people to go to earn money in business in a free market. If people go into business, a free market

1 Ф.Сморщков, Газета.ru от 26.08.2013 «Улюкаев умеряет оптимизм». (F. Smorshkov, Gazeta.ru, dated 26.08.2013 "Ulyukayev mitigates optimism".

2 А.Зотин, «Дыру по прибыли считают», Журнал «Коммерсант Деньги», № 33 (941) от 26.08.2013. (A. Zotin, "The profit dependant hole", No. 33 (941) dated 26.08.2013.) According to the Rosstat (Federal State Statistics Service), the balanced financial result of enterprises in the H1 2013 is 21.7% less year on year. This was the cause that lead to a gap in profit tax revenues. According to the data provided by the Federal Treasury of Russia, profit tax revenues in regional budgets have contracted by Rb 285bn (by 26%) against the previous year. Personal income tax revenues increased in H1 2013 by 11% year-on-year, thereby having prevented regional budget revenues from shrinking. See kommersant.ru/doc/2259759 for more details.

3 А. Алексеевских, Т. Ширманова, «Зарплаты региональных чиновников в 1,5 раза выше, чем у сограждан», сайт Izvestia.ru от 21.08.2013. (A. Alekseevskykh, T. Shirmanova, "Regional bureaucrats' salaries are 1.5 times the average wages of those employed in other sectors"). Salaries of regional bureaucrats are 56% higher than the average wages across the country. Bureaucrats earn twice as much money as their compatriots in as many as 12 regions.

4 «Передовики доходопроизводства» ("Top earners") See the website: gazeta.ru/business/2013/08/26/5606229.shtm dated 26.08.2013. This is the first time that CEO journal has published its rating of salaries paid to corporate board members of Russian state-owned companies. Sberbank is ranked No1, where a board member's monthly earnings equal to Rb 11,7m on average. VTB Group is ranked No2 (Rb 10m), followed by Russian Railways and Gazprombank (both Rb 6.1m) which are ranked No3 and No4 respectively.

will be developing. If the federal government pays high risk-free salaries to government employees, it thereby stimulates imports. This is why consumer demand promotion through simply paying higher salaries for government employees, as some experts recommend to do, would have no effect whatsoever on the domestic market development in Russia. Instead it would further widen the spiral of salary (pension) and price and result in degradation of the domestic production market which would become uncompetitive and unable to afford a "salary race" offered by the budget[1], as well as tariffs of public utility services. In our opinion, this is the key factor which constrains the appearance of a small business segment in Russia. It is at least subsidized regions that have already been facing the issue of monitoring the population of bureaucrats[2].

However, the situation is unlikely to improve in a short term period. The guidelines of the fiscal policy for 2014–2016 provide for additional (against current expenditure obligations approved for execution) budget funds which are to be allocated mostly to: pay salaries to the personnel employed at federal healthcare, educational, cultural, research and social security facilities; federal state civil servants and holders of public offices (i.e. senior government officials); increase pensions for retired servicemen by a least 2% above inflation rate; increase the strength of contract servicemen, and some other payments, including the monthly third-child benefit and contributions to investment funds. In doing so, expenditures is expected to increase 22% (i.e. more than Rb 5 trillion) in a period of three years, and deficit (which is planned to be maintained at about 0.6% of GDP) will be covered mainly by increasing state debt which is expected to increase by about Rb 4 trillion[3] in three years, and the remainder – through revenues from privatization of state-owned property.

It is impressive what the Supreme Arbitration (Commercial) Court of the Russian Federation (the SAC of Russia) has managed to technically achieve in order to adapt Russia's law enforcement practices to a free-market environment against general uncertainty regarding the public financial policy. First of all, measures to establish relationship between the Russian legislation and international practices in the field of economic and financial regulation are worth mentioning.

In the period under review, the SAC of Russia worked out the issues which are most important for the benefit of Russia's budget. The SAC of Russia managed to successfully develop decisions, which are universal from the international law point of view, on making Russian regulations applicable to Russian and foreign parties to legal proceedings, namely: 1) the SAC of Russia established that it is only parties to transactions which act in good faith that are to be entitled to seek judicial protection of their ownership interests; 2) according to legal actions concerning infringement of legal entity's ownership interests, top managers of such legal entity are to be entitled to judicial protection to the extent that they were acting in good faith and in compliance with their assigned functions.

The foregoing can be illustrated with a few examples of how worked out legal positions can be used to protect the interests of Russia's budget and economic interests of Russia's legal entities.

There are some principal channels which manufacturers generally use for tax-free transfer of revenues from Russia to states with low-tax jurisdictions, namely: a) transfer pricing, b) moving consideration of economic disputes to foreign jurisdictions, c) exploiting opportunities provided by domestic legislation for moving actual headquarters of a Russian organization to foreign jurisdictions.

With regard to transfer pricing, it is often used as part of transactions, when revenues of a party to a transaction may actually be assigned to the other party thereto due to the use of non-market prices between the counterparties, i.e. the revenues are moved out for the purpose of taxation in a state which offers a preferential tax regime. Since such transactions are generally closed between related parties, the Tax Code of the Russian Federation (the TC of Russia) contains

1 «Росстат: зарплаты сотрудников администрации президента РФ выросли на 66% в 2013 году» ("Rosstat: The Presidential Executive Office personnel's salaries have increased by 66% in 2013", see the website: kommersant.ru/news/2263034/rubric/3. "In H1 2013, salaries of the personnel at the Presidential Executive Office have increased 66.5% against the previous year …, with average salary having reached more than Rb 171,300. Average salaries of those employed at the Russian Government Administrative Office have increased 50.8% to reach Rb 167,000, State Duma personnel's salaries have raised 28% to reach Rb 67,000 during the same period. Salaries of those employed in the Federal Drug Control Service of the Russian Federation have increased by 40% to reach Rb 75,200, and of those employed at the Ministry of Defense have grown up by 50% to reach Rb 75,700. In contrast, salaries of the personnel at the Ministry of Healthcare have dropped by almost 24% to Rb 61,800, and at the Ministry of Regional Development by 25.5% to Rb 49,500".

2 Н. Городецкая, «Популяция региональных чиновников будет взята под контроль. Депутаты хотят дать правительству право ограничивать их численность» (N. Gorodetskaya, "The population of regional bureaucrats will be put under control. PMs are ready to let the government limit the size of bureaucratic population"), see the website: kommersant.ru dated 30.08.2013. "...According to Rosstat, as of October 1, 2011 (these are the latest data available on the Rosstat's official website), a total of 667,140 persons were holding "public offices and civil offices in the Russian Federation", and 454,600 persons were holding federal government offices, and just 182,600 persons were holding regional government offices".

3 In other words, it will exceed Rb 12 trillion to account for more than 13% of GDP against 10% as recommended by the IMF.

a mechanism of identifying an aggregate shareholding proportion in case of multi-way inter-company shareholding schemes for the purposes of legal recognition of parties as related parties, as well as specifies criteria of classifying transactions between related parties (affiliates) к category of entities subject to control by Russian tax authorities.

In its Latter dated August 16, 2013 No. 03-01-18/33535 the Ministry of Finance of Russia explained the provisions of the TC of Russia which concern related parties and recognition criteria for transactions between such parties as controlled for tax base assessment purposes, application of the inter-company shareholding interest assessment rules provided for by the TC of Russia, market price valuation by types of transactions between related parties, recalculation of revenues and costs of parties to a transaction for banking sector entities.

Rules for valuation of prices, revenues and costs for transactions between related parties for the purposes of recognizing such transactions as controlled ones and assessing a tax base for profit tax imposed on parties to such transactions are regulated by Section V.1 of the TC of Russia (Articles 105.1–105.17 of the TC of Russia).

The Ministry of Finance of Russia explains that all revenues of related parties must be taken into account in determining a sum criterion with a view to recognizing transactions as controlled ones for profit taxation purposes. In cases when revenues which are recognized in determining a corporate profit tax base don't derive from direct settlement of transactions between related parties, such revenues are to be ignored in determining the sum criterion, namely revenues as an excess of the amount of revaluation of assets over the amount of revaluation of liabilities due to changes in the currency exchange rate; positive differences from an excess of positive revaluation of precious metals over negative revaluation; amounts of recovered reserves whose build-up costs were previously recognized as expenses; revenues from shareholding interest in other organizations, including dividends etc.

At the same time, Ministry of Finance of Russia gave comments about specific features which taxpayers should consider in calculating the sum criterion for financial transactions which may be recognized as controlled ones. In particular, under credit agreements, repo transactions, in determining compliance with the sum criterion, interests should be considered according to their recognition specified in Chapter 25 of the TC of Russia (given the rule of capitalization, i.e. interests which exceed the established standard are to be recognized as dividends), no stock market transactions executed as part of regular stock market trading are to be recognized, since prices of such stock market transactions are market prices *a priori*; in contrast, over-the-counter transactions with debt securities executed by related parties are to be qualified as controlled ones, in which case the amount of accrued (accumulated) interest income (coupon yield) as well as regular payments of accumulated interest income (coupon yield) by the issuer (originator) under debt security issue terms and conditions are to be considered in calculating the sum criterion; under transactions which refer to the placement of issued stocks (interests, units), revenues and costs of the issuer (taxpayer) and revenues and costs of the buyer (taxpayer) of such stocks (interest, units) are not to be considered for the purposes of determining the sum criterion, and, consequently, neither quantifiable revenues as property nor proprietary rights received as contributions to the charter (pooled) capital (fund) of an organization are to be considered in determining the sum criterion and; the amount of a remuneration received, etc. are to be considered for the purposes of determining the sun criterion for deals involving bank guarantees and sureties for the benefit of a related party.

Technically, Ministry of Finance's explanations are not juridically legitimate. Similarly, we believe that calculation of a shareholding interest is not quite correctly illustrated in the scheme available in Schedule 2 to the explanation letter. Nevertheless, the letter is an illustration of Ministry of Finance's position concerning recognition or non-recognition of specific financial transactions between related parties as controlled ones, whereas Article 105.16 the TC of Russia reads that it is the taxpayer who is to be obliged to notify tax authorities of executed controlled transactions. This means that failure to provide such a notice will be treated as breach of the law on the taxpayer side. We will further explain herein that Russian tax payers should be very careful with all general recommendations of the Ministry of Finance of Russia so as to avoid violations of the law which actually may lead to a liquidation under the Law.

Ministry of Finance's explanations have made it clear how difficult it is to determine an inter-company shareholding interest , especially if parties to transactions are located outside the Russian Federation and end beneficiaries can't be identified. Moreover, it is difficult to determine the real price of an intra-group transaction which may comprise a set of separate, not synchronized in time operations, as well as revenues and costs of all the parties to a controlled transaction.

In order to trigger a mechanism of control over transactions between related parties with multi-way, cross-border shareholding, all participants and their

shareholding interest should be indentified first. This task can be accomplished much easier with the help of a solution which the SAC of Russia found as part of the Ruling awarded by the Presidium of SAC of Russia on 26.03.2013, No. 14828/12, on the case No. A40-82045/11-64-444. The reason of a conflict was that an off-shore company which was not obliged to identify its beneficiary owner under the law of the country of incorporation was a party to a deal concerning establishment of the title to a property located on the territory of the Russian Federation.

Since the Presidium of SAC of Russia is to rely on the precedence of the international agreements over the local legislation, the suggested method of beneficiary identification for such cases, if they are considered on the territory of the Russian Federation, is neat and technically universal.

In particular, the Presidium of SAC of Russia noted that "It is in itself not illegal if a legal entity, which is incorporated in an off-shore zone and therefore not obliged to publicly disclose its beneficiary, obtains registration of title to a real property located in the Russian Federation".

However, such a legal arrangement of holding real property located on the territory of the Russian Federation should not imply that rights and legal interests of unlimited range of third parties appear to be affected or breached because of their participation (including involuntary participation too) in legal relations to which an off-shore company is acting as the other party.

Due to non-public structure of share/interest-holding in the off-shore company, in this legal case it was hard to prove that the property was acquired in bad faith or other factors legally related to protection of third party interests, because a respective foreign legal system have special rules for disclosure of information about off-shore companies' beneficiaries.

In this regard, in case when the issue of application of Russian legal provisions on third party protection refers to an off-shore company, it is the off-shore company that must justify the presence or absence of circumstances protecting the off-shore company as a separate entity in its relations with third parties. Justification first of all means disclosure of information of who is really behind the company, in other words, who is the beneficiary owner.

To make it simpler, the position of SAC of Russia relies upon the following: if the beneficiary owner of a legal entity may not be disclosed under the off-shore legislation, then it is only bona fide parties to a transaction that may be entitled to legal protection on the territory of the Russian Federation, thereby identifying real shareholders and beneficiaries. In other words, the off-shore company may register its title to a property, but the beneficiary owner must be identified when action proceedings take place in a Russian court.

There is another scheme designed to avoid disclosure of the beneficiary under an agreement, when such an agreement contains a provision that economic disputes must be considered within a non-Russian jurisdiction.

The SAC of Russia examined such a situation in its Information Letter No. 158 concerning the practice of consideration in arbitration courts of cases in which foreign parties are involved. The Letter was posted in the official SAC of Russia website on 26.07.2013.

In the first section of the Information Letter No. 158 the Presidium of SAC of Russia explained that arbitration courts must not interfere with parties' agreement on the selection of a competent court (prorogation agreement), unless there is a reasonable need to do so.

The following conditions are to be met to recognize that a dispute in which a foreign party is involved falls within the jurisdiction of Russian arbitration court, where the other party denies such jurisdiction:

- The Russian arbitration courts possess the exclusive jurisdiction (Article 248. Arbitral Procedural Code of the Russian Federation, hereinafter – the APC of Russia);
- A prorogation agreement[1] on the submission of a dispute to a Russian arbitration court have been concluded between the parties (Article 249 thereof);
- There is close relationship between legal relations in dispute and the territory of the Russian Federation (Article 247 thereof).

According to Article 247, exclusive jurisdiction of an arbitration court of the Russian Federation arises under transactions: at the place where the respondent resides or respondent's property is located; the dispute has arisen from an unjust enrichment, which has taken place on the territory of the Russian Federation; the dispute has arisen from relations involved in the circulation of securities which were issued on the territory of the Russian Federation, etc.

According to Article 248 thereof, the exclusive jurisdiction of arbitration court of the Russian Federation arises in the following cases: with regard to disputes on a property owned by the Russian Federation, including disputes related to privatization of state-owned property and forcible alienation of the property for public needs; with regard to disputes whose object

1 Prorogation agreements (derived from latim prorogatio) refer to agreements on jurisdiction which define a country whose courts will possess the jurisdiction for the settlement of disputes concerning foreign trade transactions.

immovable property, if such property is located on the territory of the Russian Federation, or the title to this property; *with the regard to disputes concerning the establishment, liquidation or registration on the territory of the Russian Federation of legal entities and of self-employed entrepreneurs, as well as challenge of the decisions taken by such legal entities, etc*.

According to Article 249 thereof, if the parties of which at least a single one is a foreign person, have concluded an agreement, while laying down in it that an arbitration court in the Russian Federation possesses jurisdiction for the investigation of a dispute involved in the performance by them of business or other economic activity, that has already arisen or that may arise, the arbitration court in the Russian Federation shall possess the exclusive jurisdiction for an investigation of the given dispute on the condition that such agreement does not modify the exclusive competence of a foreign court.

Therefore, if the parties have agreed that a foreign court will possess jurisdiction over their transactions and they will submit no disputes under the Russian court system, then in order to stop disinvestment and tax-free transfer of revenues from the Russian Federation, a Russian arbitration court possesses an important jurisdiction such as the right to liquidate the Russian party to a transaction, which will not be deemed to be an illegal action as long as it meets the requirements set forth in Paragraph 2, Article 61 of the Civil Code of the Russian Federation (the CC of Russia) which stipulates that legal entity may be liquidated by the court decision in case of repeated or gross violations of the law or other regulations.

As noted above, violation of the rules which require notification of the existence of controlled transactions may well be recognized as violation of the Russian legislation and the ground for liquidation of a Russian legal entity as a party to such transactions. The fact that liquidation of law violators by the decision of local judicial authorities is a common practice is evidenced by the situation which *En+ Group* encountered after the Montenegro Government initiated bankruptcy proceedings against one of its subsidiaries, *Aluminum Plant Podgorica* (APP), situated in *Podgorica*. In the summer of 2013, the Ministry of Finance of Montenegro submitted an APP bankruptcy lawsuit to the Podgorica Arbitration Court on the ground of a €24.4m debt owed by the plant which was accumulated after the Ministry of Finance of Montenegro paid €24.4m to Deutsche Bank under a government guarantee (APP previously breached covenants[1] on a €135m loan and failed to repay that loan)[2].

Another channel designed for disinvestment and tax evasions refers to mala fide usage of formal opportunities provided by the Russian legislation.

In its ruling No. 62 issued on July 30, 2013 according to Article 13 of the Federal Constitutional Law dated 28.04.1995 No. 1-FKZ "On Arbitration Courts in the Russian Federation" the Plenum of Supreme Arbitration Court provided arbitration courts with detailed explanations concerning recovery of legal entity's losses by persons that make up the corporate management body of the legal entity.

According to Paragraph 3, Article 53 thereof, a person that makes up the corporate management body of a legal entity must act in good faith and wisely for the benefit of the legal entity. Such person shall be obliged to recompense the losses he has inflicted through his actions or omissions upon the legal entity. At the same time, the claimant must prove the existence of circumstances which can evidence that the director has failed to act in good faith and/or wisdom through his actions (omissions) (Paragraph 5, Article 10 thereof).

The SAC of Russia pointed to the fact that courts must not apply formally Paragraph 5, Article 10 thereof. Generally, in practice the claimant has no sufficient documented evidence, because corporate performance documents are kept by the director. With a view to settling this collision, the SAC of Russia refers to the good faith formula of those involved in the process. Should the director refuse to provide explanations or his explanations be apparently incomplete, if the court decides that director has failed to behave in good faith (Article 1 thereof), the court may charge the director with the burden of proving that the director has not neglected his duty to act in good faith and wisely for the benefit of the legal entity.

Furthermore, the SAC of Russia specified the cases in which director's mala fide actions (omissions) are deemed to have been justified, in particular when the director: was acting without approval of his/her superior authorities where there was a conflict between his/her personal interests (interests of director's affiliated persons) and legal entity's interests; has concealed information about the transaction or provided unreliable documents on the transaction; withheld legal entity's documents after his/her resign, etc.

However, the explanations failed to cover many still unresolved controversial issues, thereby creating legal channels for a large-scale disinvestment and weakening legal entities.

For instance, the SAC of Russia provides the definition of a transaction under disadvantageous terms and conditions and even specifies criteria (signs) thereof:

1 Covenant refers to a binding agreement to perform or refrain to perform particular actions.

2 О. Алексеева, А. Топалов, «Дерипаска засудит Черногорию на миллиард евро», сайт Газета.Ru от 13.08.2013. (O. Alekseeva, A. Topalov, "Deripaska files a 1 billion euro lawsuit against Montenegro", Gazeta.ru dated 13.08.2013.

"Transaction under disadvantageous terms and conditions refers to a transaction whose price and/or other terms and conditions are much worse for the legal entity than the price and/or other conditions for similar transactions executed under comparable circumstances (e.g., if a consideration which the legal entity has received under the transaction is twice or more the value of consideration executed by the legal entity in favor of the counterparty)".

This case only refers to prices. However, one may not rule out the situation when manipulation with inputs becomes the reason for disinvestment at the enterprise. For example, if amortization of fixed assets (extracting, pipeline and other companies) have a big share in costs in an industry, it (amortization) is recognized in pricing and accrued in costing. One may not rule out that revenues from accrued amortization recovery simply remain on an off-shore account. In such a case, profit from the difference between revenues and costs which include the accrued amortization is paid as befits in Russia. The amount of recovered amortization constitutes corporate internal resources, a real source of replacement of fixed assets, modernization, and investments, and also equity capital which the company is free dispose of at its own discretion. It is therefore not always that amounts obtained for amortization recovery return to Russia. Sometimes they seem to be deposited into third parties' accounts from which the third parties allocate them as direct investments or loans to the same enterprise, thereby making it possible to draw more money from Russia through accrued interest and even more legally reduce the taxable profit[1]. Huge dividends are paid from time to time from such corporate resources instead of investing in the corporate development and modernization.

However, all of the foregoing schemes don't fall within the definition of "transaction on disadvantageous terms and conditions". These amounts stay out of tax control – tax authorities deal with profit tax, whereas only the Central Bank of Russia deals with capital outflow[2]. It is minority shareholders that seems to be the only way to prevent such disinvestment schemes, especially if they are employed and make up the corporate management body at the same company: nobody but them can really see that neither upgrade nor modernization have been performed against a significant increase of prices of products. According to the explanation of the SAC of Russia, in accordance with Part 2, Article 225.8 of the APC of Russia, the founder's (participant's) claim for recovery of losses is to be satisfied in favor of the legal entity in whose interests the claim was filed. Furthermore, the order of enforcement is to specify the founder (participant), who exercised claimant's procedural rights and obligations, as recoveror, whereas the legal entity in whose interests the claim was filed is to be specified as a person in whose favor the recovery is exacted.

In our opinion, when requested by an employee, the administration is to be obliged to purchase for him/her a specific stock of shares of the company in which he/she is employed, provided that it would repurchase thereof in case of his/her voluntary termination of employment.

Following are the documents issued in the period under review which are worth noting.

The SAC of Russia published a decision on August 2, 2013, No. BAC-6446/13 which may be of interest in the context of study of pricing in the area of natural monopolies. The decision explains the principles of regulated pricing (tariffication) in the electric power industry with regard to the claim of Rayonniye Elektricheskiye Seti (District Electric Power Grids) LLP on incompliance with the applicable legislation of Subparagraph 5, Paragraph 28 of *The Guidelines for Regulated Pricing (Tariffication) in the Electric Power Industry* which were approved by the Russian Government on 29.12.2011, No. 1178. In particular, according to the claimant, pricing rules prevent him from refunding all related costs through revenues generated from retail electric power supply services, because the rental price paid to the equipment owner for the usage of power grid facilities only may be deduced in respect to a part of accrued amortization and property tax paid, which relate to the leased facilities.

The SAC of Russia explained that the challenged regulation is economically feasible and legally reasonable, because the rental fee also contains lessor's – the

1 It is obvious that the Russian Government is determined to regain control over capital movements. See: «Путин: налоги с угля должны платиться в РФ, а не уходить в офшор. Путин отметил, что такой подход сформирован во всех развитых странах», сайт BFM.ru от 26.08.2013. ("Putin: coal taxes are rather to be paid in the Russian Federation than go offshores. Putin noted that such an approach is applied worldwide" website: BFM.ru dd. 26.08.2013.) "Centers of profit and tax revenues generated from coal companies should be situated in Russia rather than offshore. Since the resource base of our coal companies is located in Russia, profit centers and, consequently, taxation should also be located in Russia rather than somewhere abroad ..., in offshores", said President Putin at a fuel-and-energy complex meeting.

2 А.Башкатова, «Российский инвестиционный бум в офшорах. Сделки госкомпаний обернулись аномалиями в первом квартале 2013 года», сайт ng.ru 19.08.2013. (A. Bashkatova, "Russian investment boom in offshores. State-owned companies' transactions have led to anomalies in 1Q 2013", website: ng.ru 19.08.2013.) "Central Bank's statistics on Russian companies' investments to other countries boggles the imagination. During Q1 2013 alone our companies invested in non-CIS countries almost half as much as they did throughout the entire 2012".

owner of leased facilities – profit. If the entire amount of rental fee was built into tariffs, the owners of such facilities would gain an unreasonable extra income built into the rental fee and paid by electric power consumers in the region.

At the same time, as noted by the SAC of Russia, restricting other leaseholder's mandatory costs to property tax only is unfair, because the leaseholder has to pay other mandatory payments relating to leasehold of power grid facilities, namely transport tax, land tax, environmental charges for negative impacts on natural habitats, which the owner the facilities includes into the rental fee – being built into revenues and paid as part thereof, these costs must be refunded to the leaseholder, because the owner of property is legally obliged to pay such taxes.

However, the SAC of Russia denied leaseholder's claim for refund of a few other taxes. For instance, according to the SAC of Russia, the claimant for no good reason referred the following taxes to be included into leaseholder's costs as part of the rental fee: value added tax, personal income tax and lessor's profit tax. Payment of these taxes are paid because of lessor's rental income rather than property possession. Therefore, the court made a clear division between lessor's mandatory payments to be refunded to the leaseholder in respect to leasehold of the power grid facilities and lessor's mandatory payments referred to the revenue side of rental fee which are not refundable to the leaseholder.

The Letters issued by the Federal Tax Service of Russia on August 15, 2013, No. AC-4-3/14908@ and the Ministry of Finance of Russia on 06.08.2013 No. 03-03-10/31651 contained explanation of the tax treatment for amounts generated when a limited liability partnership (LLP) reduces its charter capital to a value less than the value of its net assets.

It was explained that if the charter (pooled) capital has been reduced in accordance with the requirements set forth in Article 30 of the Federal Law dated 08.02.1998 No. 14-FZ "On Limited Liability Partnerships" due to reduction in the value of net assets lower than nominal level of the charter (pooled) capital of a year following the accounting year, such a reduction of the charter capital may not be deemed to be LLP's revenue. The Ministry of Finance of Russia referred to the position of SAC of Russia set out in the Court Ruling dated 13.10.2009 No. SAC-11664/09, under which the reduction amount of the charter capital will be deemed to be LLP's extraordinary revenue and considered for profit taxation purposes to the extent that the charter capital is reduced on a voluntary basis and the charter capital reduction is not accompanied by respective payment (refund) of a part of a contribution to the partnership capital.

The Letters issued by the Federal Tax Service of Russia on August 15, 2013, No. AC-4-11/14909@ and the Ministry of Finance of Russia on 06.08.2013 No. 03-04-07/31472 contained explanation of taxation of personal income (personal income tax) of board members whose tax residency is outside the Russian Federation. The Federal Tax Service and the Ministry of Finance of Russia explained that the 30% standard tax rate is to be applicable to all non-resident incomes, save for incomes generated by highly qualified employees (Paragraph 3, Article 224 of the TC of Russia). A 13% rate is established for such specialists.

The term *highly qualified specialist* is defined in Article 13.2 of the Federal Law dated 25.07.2002 No. 115-FZ "On the Legal Status of Foreign Nationals in the Russian Federation". If the amount of payment (labor remuneration) for employment duties performed (based on a labor contract or civil law contract) to a foreign specialist is at least Rb 2m annually (this amount is established for other foreign nationals, save for academicians and professors; persons engaged by residents of special economic zones; persons who participate in the implementation of the Skolkovo Project and are subject to different labor remuneration criteria), the foreign specialist, if other requirements of the provision of the Law are met, may be deemed to be highly qualified and his/her income is subject to personal income tax at a 13% rate. Consequently, if the labor remuneration of board member paid by the employer or owner of works (services) is less than the established minimum (Rb 2m annually), the board member shall be deemed to be highly qualified specialist for personal income taxation purposes.

The Russian Government Decree dated August 8, 2013, No. 680 authorized the Ministry of Economic Development and Trade of Russia within three months to develop and approve a technique intended to determine the ceiling amount of payment for the provision of a public service provided for by Paragraph 30 of the Russian Government Decree dated May 6, 2011 No. 352 "On the Approval of the List of Services which are Necessary and Compulsory for the Provision of Public Services by Federal Executive Bodies" when such services are provided by organizations other than federal state agencies or federal unit enterprises.

It refers to the service of checking applicant's compliance with accreditation requirements for the purpose of certification of agencies and testing laboratories (centers) under the Law on Technical Regulation.

It is not quite clear, why this only refers to the ceiling amount of payment for being eligible to provide public services and nothing about the criteria to be met by a business eligible for the provision of paid public service of checking applicant's compliance with accreditation requirements for the purpose of certification of agencies and testing laboratories (centers) under the Law on Technical Regulation. Perhaps, this refers to engaging intermediator firms for accreditation of international experts, because accreditation must be approved by the Ministry of Economic Development of Russia or a self-regulatory organization which unites major manufacturers in respective areas. The amount of payment is unlikely to be established unless the issue of who is entitled to perform accreditation is resolved. Once again we are facing the situation, when the Law authorizes the Russian Government to determine the amount of mandatory payment, and eventually this function has eventually been redirected to the relevant ministry. We believe that in a free market environment ministries should perform such cost calculations for public services exclusively with the participation of self-regulatory organizations.