AN OVERVIEW OF NORMATIVE DOCUMENTS ON TAXATION ISSUES FOR OCTOBER–NOVEMBER 2013

L.Anisimova

Russia's tax and fiscal policy during the period under consideration was extremely contradictory. On the one hand, the shortage of budget revenues resulting from the stagnant state of the Russian economy compelled the authorities to make an emphasis on forceful methods in their fight against tax fraud and tax evasion. On the other hand, the October-November period of 2013 saw the adoption of several normative documents establishing that income from some types of financial activity, deemed excessively risky for the persons carrying it out as well as for the economy as a whole, should be exempt from taxation. This series of tax exemptions can be reasonably interpreted as a direct encouragement of such activities; moreover, it should be said that the aforementioned tax benefits are not envisaged in The Main Directions of Tax Policy for 2013–2015.

1. RF President Vladimir Putin submitted to the State Duma a draft law establishing that the Investigative Committee (hereinafter to be referred to as the IC of Russia) should be vested with the authority to initiate criminal proceedings for tax-related offences. The draft law envisages that Russia's investigative bodies should get back their pre-2011 right to initiate criminal proceedings for failure to timely pay tax[1]. Both the RF Government and the business community requested that the draft law should be revised. It should be said that, contrary to ordinary procedure, the draft law had not been discussed at a Government meeting before being introduced to parliament.

A few words about the essence of the problem. Tax evasion regulations are defined by the RF Tax Code (hereinafter to be referred to as the RF TC). They envisage a number of procedural actions (tax inspections, demands that taxes be paid, the opportunity to resolve tax issues between parties without initiating criminal proceedings, and other 'soft' rules long adopted by taxmen around the world in their dealings with businesses for the purpose of detecting and recovering tax arrears without disrupting the business process). The RF Criminal Code (hereinafter referred to as the RF CC) represents a different area of law and is based on different rules: in accordance with the RF CC, the very fact of a tax not being paid timely should be interpreted as a tax crime to be repressed. When these two legislations were used in parallel, there emerged a conflict of interest between taxmen and law enforcers – those who were first to detect one or other tax offence, would apply to it their own legislation. This issue was repeatedly examined in legal studies[2]. At present, the IC of Russia has the right to initiate criminal proceedings for tax-related offences only on the basis of materials submitted by the Federal Tax Service of Russia (hereinafter to be referred to as the FTS of Russia), although several years ago investigation agencies had the authority to unilaterally initiate criminal investigations.

The current President of Russia believes that the sole authority to file tax cases, granted to the tax authorities as a result of the 2011 reforms, unjustifiably reduces the time frame and possibilities for launching criminal cases by adopting, for that purpose, the time frame and the rules for tax inspections established by the RF TC (tax inspections should be carried out no more frequently than once in three years). President Putin's meeting with the Head of the FTC of Russia produced a compromise decision on that issue. The compromise version of the draft law establishes that the investigation agencies, including the Investigative Committee, should be obliged to request relevant doc-

1 See Decision of the Plenum of the Supreme Court of the Russian Federation, of 28 December 2006, No 64 'On the Practical Application, by Courts of Justice, of Criminal Legislation Concerning Liability for Tax Crimes'. In accordance with Point 3 of the Decision, 'the evasion of paying taxes and (or) fees, the liability for which is envisaged by Articles 198 and 199 of the RF CC, shall be deemed to be intentional deeds aimed at non-payment thereof that resulted in the non-payment or partial payment of the corresponding taxes and fees to the budget system of the Russian Federation… As, in accordance with the corresponding provisions of tax legislation, the time frame for submitting the tax declaration and the time frame for tax payment may not coincide, the moment of termination of a crime punishable under Article 198 or Article 199 of the RF CC shall be deemed to be the actual non-payment of taxes (or fees) within the time frame established by tax legislation'.

2 See, for example, N. A. Kolokolov, *Stadii ukloneniia ot nalogov: primenenie ugolovnoi otvetstvennosti* [The Stages of Tax Evasion: Application of Criminal Responsibility] // *Nalogi* [Taxes], 2009, No. 1. The article has been included in the ConsultantPlus system. 'How should the moment of termination of a crime be determined, if the crime has not been exposed by a tax body obliged to impel the taxpayer to pay the tax, but by a preliminary investigative body? Should the latter begin by insisting that the tax must be paid? I do not think so, because this is simply not its function. Moreover, if the preliminary investigative bodies begin insisting that taxes should be paid, there will be no persons convicted of tax crimes: who will dare disobey an investigator pressing charges?'

uments from the FTS of Russia when initiating criminal proceedings for tax-related offences[1].

We believe that the situation in 2011 crucially differed from that in 2013. Since 2011, a number of seminal methods of tax control have been introduced into practice, including electronic financial statements, electronic VAT invoices, etc. The system of electronic correspondence between the tax agency and the banking sector has become so sophisticated that now the cooperation between the IC of Russia and the FTS of Russia has been largely transformed and progressed to a level where granting access to relevant databases does not result in the immediate stoppage of the activities of organizations-taxpayers, as it inevitably used to be the case in the past as a result of seizure of important documents.

Recent opinion polls indicate that some businessmen are in favor of restoring the right of the IC of Russia to initiate criminal proceedings for tax-related offences. The tax authorities are incapable of investigating transactions; they do not aim at reclassifying transactions, nor at identifying the participants of relevant transactions, nor at exposing the actual relationships – although, for example, minority shareholders are primarily interested in these very issues[2,3]. Thus, the activity of the IC of Russia can become a very effective tool in combating tax avoidance by the transfer of assets abroad, and in preventing the appropriation of assets belonging to Russian legal entities by their foreign shareholders and creditors. The importance of this task cannot be underestimated, bearing in mind that capital flight from Russia continues unabated.

1 *Putin predlozhil kompromiss po spornomu nalogovomu zakonoproektu* [Putin's compromise offer on the controversial draft law on taxes]. Lenta.ru, 25 November 2013.

2 It should be noted that, in accordance with Russian legislation, only minority shareholders have the right to file a lawsuit to protect the ownership interests of a legal entity in the name of that legal entity in the event when the claim is lodged against the management bodies of a joint-stock society, or against other persons exerting influence on the activity of that society, for example, its majority shareholder.

3 See, for example, R. Faliakhov, *Bastrykin soberiot nalogi. Vladimir Putin: SKR smozhet vozbuzhdat' ugolovnye dela po narusheniiam nalogovogo zakonodatel'stva na osnove operativnykh materialov MVD* [Bastrykin will collect all the taxes. Vladimir Putin: The ICR will be able to launch criminal cases for tax legislation violations on the basis of the Ministry of Internal Affair's operative data]. Gazeta.ru, 15 November 2013.
The current state of affairs, when criminal cases can be launched only on request of the tax authorities, is really outrageous – says Valery Tutykhin, partner of the law firm *John Tiner & Partners*. – We have many instances in our practice, when, in the interests of minority shareholders, we contest the decision to withdraw assets from a joint-stock society. We see that the withdrawal was accompanied by tax fraud, but the criminal case will inevitably be launched only in regard to the withdrawal of assets. While the tax-fraud component, as a rule, will remain unattended to.

2. In an effort to reduce capital flight, Russia introduced a number of other changes to her tax legislation. Previously, in order to attract investment, dividend income had been taxed at a reduced rate of 9% for residents, and 15% for non-residents. This is significantly below the standard corporate profits tax rate of 20%.

The principal aim of Law of 2 November 2013, No. 306-FZ 'On the Introduction of Alterations to Parts One and Two of the Tax Code of the Russian Federation and Some Legislative Acts of the Russian Federation' was the introduction of the so-called 'punitive' (30%) tax rate designed to prevent capital flight to offshore tax havens in those cases when the recipients of dividends paid by Russian organizations are non-disclosed (that is, have not been identified).

In brief, the most important innovation introduced by the Law is that the tax agent's obligations are transferred to those Russian depositories that actually make payments on Russian securities to foreign legal entities in the person of either their nominal holder, or a depository situated outside of the Russian Federation, or a trustee, which assert their right, based on the ownership of Russian securities or securities issued by foreign emitters, to receive income from participation in the capital of a Russian organization, in the form of dividends, that should be paid into the bank accounts of the nominal holder of the securities, the foreign depository or the trustee, respectively, for the purpose of transferring it to its non-disclosed owners.

According to the Law, such foreign depository (or a nominal holder, or a trustee) should be deemed to be the receiver of income and be obliged either to provide information on its tax residence for the purpose of determining the tax rate to be applied to the income transferred to it, or to disclose and confirm, by presenting proper documentation, information on the persons who have opened depo accounts with the said foreign depository (or at a nominal holder or at a trustee) and at their tax residence.

The legislations of offshore tax havens forbid the disclosure of information on beneficiaries. If a nominal holder (or a foreign depository, or a trustee) is a tax resident of an offshore tax haven (a zone with a tax regime laxer than that in the Russian Federation, that has not concluded a double taxation avoidance agreement with the Russian Federation), the monies transferred to it should be taxed at the newly introduced 30% rate.

A similar procedure and a similar 30% rate were also introduced within the framework of profits tax – with regard to dividends paid on Russian securities to their nominal foreign holders (or foreign depositories, or trustees) who are residents of the said zones with tax regimes laxer than that in the Russian Federation,

that have not concluded double tax avoidance agreements with the Russian Federation and do not disclose the identity of their beneficiaries and the tax residence thereof.

It is very important that, under the new Law, the tax agent (a Russian depository) should not be obliged to calculate and pay the amount of tax that is not withheld by it, because the information and (or) the documents submitted to it by an organization acting in the interest of third parties were unreliable and (or) incomplete, and also in the event when such organization refuses to submit, on request of the tax body carrying out an off-site or on-site tax inspection, the information and documents envisaged by the RF TC. This approach is a traditional and widely used method used in combating offshore tax havens.

According to the information published by business newspapers and magazines, the RF Ministry of Finance is now busily mapping yet another, even more radical, reform designed to toughen the general rules for granting tax deductions and exemptions on dividends received. It is reputed that under the new rules, the taxpayers will be obliged to pay taxes in full, and only then to submit the documents and calculations concerning the deductions and exemptions[1], etc.

We believe that this plan is rather flawed from the economic point of view: if an investor is able to confirm his right to a tax deduction, the authorities should build no artificial barriers to that investor's income earning. If honest investors suffer, Moscow's future as a financial center will suffer with them.

3. By Federal Law of 2 November 2013, No 307-FZ alterations are introduced in Chapter 30 of the RF Tax Code 'Tax on Property of Organizations', whereby regions are granted the right to levy property tax on real estate entities consisting of retail outlets and offices (administrative and business centers) on the basis of their cadastre value (which is approximated to market value). It should be pointed out that to apply tax rates in the amount of 1.5–2% of market value in conditions of a stagnating economy may prove to be too burdensome for businesses. Such rates, in fact, represent a ceiling even in developed countries. As a rule, in case of a switchover to estimations based on property's market value, it is recommended that the relevant tax rates must not exceed the level of 0.2–0.5%. This practice helps to soften, to a certain degree, the shock produced by the increased estimated value of immovable property, as well as to prevent the emergence of loss-making businesses in the relevant territory. As estimated by market participants themselves, the balance sheet value of immovable property entities in the Russian Federation often amounts to only 10% of their cadastre value. In other words, it would be feasible to compensate for the tenfold growth of estimated value by establishing a lower tax rate[2].

By Article 378.2 of the RF Tax Code, an administrative and business center is defined as a detached non-residential building (construction, structure), where the premises belong to one or several owners; it must answer at least one of the following conditions:

1) the building (construction, structure) is situated in a land plot on which, among other types of uses, it is permitted to erect office buildings intended to be used for business, administrative and commercial purposes;

2) the building (construction, structure) is intended to be used or is actually being used for business, administrative and commercial purposes. In this connection:

- the building (construction, structure) is recognized to be intended to be used for business, administrative and commercial purposes if the intended use of premises with total area no less than 20% of that building's (construction's, structure's) total area, in accordance with the cadastre passports of the relevant immovable property entities or the technical registration (inventory) documents relating to the said immovable property entities, it envisaged that they house offices and related office infrastructure (including centralized reception rooms, meeting rooms, office equipment, parking sites);
- the building (construction, structure) is recognized to be actually used for business, administrative and commercial purposes if no less than 20% of its total area is occupied by offices and related office infrastructure (including centralized reception rooms, meeting rooms, office equipment, parking sites).

As is evident, the definition of an administrative and business center may be interpreted sufficiently broadly, which at first will inevitably give rise to disputable situations. We believe that this definition may be extended to property entities owned by state corporations, federal property entities and those owned by municipal formations, which may result in an additional growth of federal and municipal budget expenditure and the budget deficit.

1 M. Papchenkova: 'The tax regime for investors is being toughened. Only after the tax is paid in full, tax exemptions for dividend income will be taken into account and the taxpayer compensated. We are told that the Ministry of Finance's project will be a new tool in the struggle against offshore tax havens. Experts complain in unison: "For investors, it will be a disaster".' See bmf.ru, 29 October 2013.

2 R. Makarov. *Rossiiskomu biznesu podstavili nozhku* [Russian Business Has Been Tripped Up]. See mk.ru of 28 October 2013, economics/ realestate/ article/ 2013/10/28/937421.

4. Alongside the measures designed to toughen the tax policy, over the period under consideration some tax exemptions were also introduced, which we believe to be rather controversial. It is not quite clear who has initiated such measures, how they can be justified and substantiated from the point of view of economics, and which of the relevant economic structures conducted their expert's estimation.

By Federal Law of 2 November 2013, No 301-FZ alterations are introduced to a number of RF legislative acts, including the RF Tax Code. In accordance with the amendments to Articles 266 and 297.3, the exemptions previously applicable only to banks should be extended to credit cooperatives and microfinancial institutions. Thus, in particular, by Article 266 it is established that 'credit consumer co-ops and microfinancial institutions may create reserves against dubious debts with regard to outstanding debt arising as a result of failure to pay interest on debt liabilities'. And in Article 297.3 it is envisaged that 'credit consumer co-ops and microfinancial institutions are granted the right to create, beside the reserves against dubious debts envisaged by Article 266 of the RF Tax Code, also reserves against potential losses from loans'.

In this connection, we believe it necessary to offer some explanations. Within the framework of the RF Tax Code, banks were granted an exclusive tax exemption, which was not enjoyed by other sectors. Since banks earn their living by making long-term investment, on a temporary basis, of money owned by others (their depositors) in the financial market – that is, make that money available for investment in production, the State decided to soften for the economy the potential consequences of failure to repay the issued bank loans – namely, to deduct from tax base not only the amount of non-repaid loans which is not covered by banks' security, but also the amount of interest that banks have failed to receive on such loans – so that banks were able to fulfill their obligations to their clients. This arrangement represents a kind of 'additional coating' designed to ensure the banking system's smooth running – alongside the requirement that loans should be issued against security, the introduction of a bank loan insurance system, and mandatory required reserves that banks must place on the RF Central Bank's accounts.

Microfinancial institutions do not bear such important social responsibilities as banks do. Essentially, from the point of view of their economic function, they are mutual benefit funds that provide unsecured loans, at a cost. The absence of security adds to the relationship between the borrower and lender an adventuristic and speculative flavor. The non-repayment risks are compensated for by an excessively high interest rate. Instead of settling, in due time, the issue as to the permissible limits for such an activity, the bodies responsible for bank supervision have evidently overlooked the sphere of control over microfinancial institutions, and this, in our opinion, resulted in the resources of ordinary commercial banks (including their clients' deposits) also getting involved in speculations in this very risky market.

We regard the extension to microfinancial institutions of the tax exemption that was previously enjoyed only by banks as the result of direct lobbying, which will inevitably conduce to undermining both the sustainability and the equilibrium of the banking system, because in this way money will be withdrawn from the production sector (where, in fact, surplus product is created, which is the genuine source of banks' income in the form of interest) into the market for unsecured financial speculations.

That the introduction of these exemptions is the result of lobbying is further confirmed by the fact that the mechanism stipulated in the Law does not envisage any protection of the budget's interests. The possibility to write off the non-repaid loans and lost interest against diminished tax base implies that clients' debts must also be immediately written off, and the clients informed about their debts having been written-off[1]. Microfinancial institutions, in the event of debt written-off and interest lost at the expense of reserves funded by profit before tax, immediately become tax agents obliged to pay personal income tax, and so they must submit to the tax inspectorate at the place of their registration information concerning each writing-off operation and the amount of personal income tax base or each relevant client (the writing-off of debt for the client represents income in kind). And in case of a foreign borrower the microfinancial institution will probably have to pay the amount of personal income tax due to be paid by the borrower, that has not been deducted by the microfinancial institution at source, and also refund the lost amount of budget revenue. Otherwise there will emerge one more significant channel for tax-free capital outflow, because microfinancial institutions are subject to special sector specific legislation, which imposes no constraints concerning borrowers.

If such debts are sold by a microfinancial institution to a collection agency with a discount, the amount of discount must not be written off against reserves and

1 Evidently the lawmakers, when granting to microfinancial institutions a tax exemption in the form of the possibility to write off unsecured loans and lost interest at the expense of budget revenue, have simply 'forgotten' that by doing so they also annul the debts incurred by individual borrowers, who are thus obliged to pay only the amount of personal income tax on the relevant sums.

thus reduce the microfinancial institution's taxable base (profit), because otherwise the discount will diminish the aggregate tax base by being recorded twice – by the microfinancial institution as part of reserves (expenditures) and by the collection agency as part of income. The new Law regretfully contains no stipulations whereby a microfinancial institution, in an event of selling the relevant debt to a collection agency, should be obliged to restore, as part of taxable non-operating income, the amount of charged reserves.

The possibility for microfinancial institutions to write off from their balance sheets, in one or other way, the debts incurred by individual borrowers against consumer loans is fraught with high corruption risks, because the actual amount of debt is either written off for the borrower (and thus is in part redeemed at the expense of budget revenue in the form of lost amount of tax on profit (that otherwise would have been paid by the microfinancial institution – in other words, the borrower received a gift of money), and the borrower pays only personal income tax, at 13% rate, on the written-off debt; or the microfinancial institution 'sells' this debt to a collection agency, to be collected in full and with interest.

All these issues, unfortunately, are not reflected in the newly adopted document, with the inevitable conclusion that the Law has been introduced only in order to enable microfinancial institutions write off their losses and lost income at the expense of budget revenue.

5. The RF Ministry of Finance and the RF Federal Tax Service continue publication of their explanations and clarifications concerning the filing of notifications on financial deals, controlled by tax agencies, concluded between related entities, including credit institutions. Thus, in particular, this issue is covered by Letter of the RF Federal Tax Service of 1 November 2013, No OA-4-13/19652, whereby explanations are offered concerning the procedure for filing, in the form of a single notification, the information on a group of similar deals with securities (the RF Ministry of Finance and the RF Federal Tax Service recommend that the general rules established for recognizing goods to be identical, and the conditions of a deal comparable, should be followed in this instance, given that the RF Tax Code contains no special norms whereby these notions can be applied to securities). Besides, it is explained that information should be entered in the notifications on controlled financial deals on deals involving debt liabilities (loans, credits, deposits, etc.), operations with currency and precious metals carried on by credit institutions, operations with derivative financial instruments[1], operations in the framework of currency and interest rate swaps, operations with promissory notes, and so on.

It should be noted that, by comparison with the previously issued explanations as how to file notifications on controlled financial deals, Letter of the RF Ministry of Finance and the RF Federal Tax Service of 1 November 2013, No OA-4-13/19652 has not been revised by higher judicial instances, and consequently it cannot be considered to be incorporated in prevailing tax legislation.

6. Letter of the RF Ministry of Finance of 28 October 2013, No 03-04-07/45465 and the RF Federal Tax Service of 8 November 2013, No BS-4-11/20000 explains the procedure of levying personal income tax on income received in the form of actual value of a participant's share in a society's charter capital, withdrawn by the participant when the latter leaves the society.

The essence of the problem is as follows. By Resolution of the RF Constitutional Court (hereinafter to be referred to as *RF CC*) of 16 July 2009, No 1015-O-O, shares in a charter capital of a limited liability society are qualified as ownership rights, and so are not to be understood as property, consequently in the event of sale of such a share, no deduction from personal income tax is to be granted.

At the same time, the possibility to deduct from personal income tax the cost of acquisition, by an individual, of a share in a charter capital, when the individual sells (or redeems) the aforesaid share, is directly stipulated in the second paragraph of Subitem 1, Item 1 of Article 220 of the RF Tax Code, although the deduction of expenditures in the framework of that Article represents a form of property tax deduction.

Letter of the RF Ministry of Finance of 28 October 2013, No 03-04-07/45465 and the RF Federal Tax Service of 8 November 2013, No BS-4-11/20000 offers the following explanations: 'By Article 210 of the RF Tax Code it is established that, when determining personal income tax base, all incomes of a taxpayer should be taken into account, received in the form of cash or in kind, or the right to dispose of such incomes, as well as income in the form of material gain defined in accordance with Article 212 the RF Tax Code. So, when a participant leaves a limited liability society, personal income tax should be levied on the actually paid full amount of the withdrawn share in accordance with the general rule' – that is, without deducting the cost of acquiring that share. At the same time, we believe

1 Within the framework of the RF Tax Code, the term *derivative financial instruments* is translated into *financial instruments of derivative transactions*, with some reservations; for explanations, see Article 214.1 and Article 301 of the RF Tax Code.

that the RF Ministry of Finance and the RF Federal Tax Service must also take into account the possibility of the second paragraph of Subitem 1, Item 1 of Article 220 of the RF Tax Code being treated as a special norm established with regard to income received from the sale (or redemption) of a participant's share in a charter capital. In this case, regardless of the fact that such expenditures represent a form of property tax deduction, they may be taken into account for the purpose of reducing the base for levying tax on the transaction of sale (or redemption) of a participant's share in a charter capital. Such an approach is compatible with the standpoint of the RF Supreme Court (hereinafter to be referred to as *RF SC*). In the *Overview of Legislation and Judicial Practice of the RF SC for Q3 2007*, approved by Decision of the RF SC's Presidium as of 7 November 2007 (the Decision was issued prior to the Resolution of the RF CC, and its wording was not adjusted after the issuance of the Resolution), it is noted that, in accordance with the second paragraph of Subitem 1, Item 1 of Article 220 of the RF Tax Code, in an event of sale, by a participant in the charter capital of an organization, of the participant's share (or part of it), 'the taxpayer may reduce the sum of taxable income by the amount of actually incurred expenses in connection with the receipt of the said income, confirmed by proper documentation.

Sometimes, in their previously issued explanations, the RF Ministry of Finance and the RF Federal Tax Service expressed a standpoint similar to that of the RF SC, discussed above. Thus, for example, in Letter of 6 April 2011, No. КЕ-4-3/5392 it was explained that, '… in the event of sale of a share in a charter capital of an organization, irrespective of the actual period of enjoying that right, the taxpayer (an individual) may reduce the amount of income thus received by the amount of expenses, confirmed by properly formalized documents, incurred in the course of acquisition of the aforesaid share, plus the amount of expenses, confirmed in the same manner, incurred in the course of making additional contributions (or deposits) to the charter capital, on condition that the amount by which the charter capital has been increased is subject to registration in the procedure established by existing legislation'.

Thus, we believe that, in the event of redemption (or sale) of an individual's share in a charter capital, if tax has been paid by the tax agent on the full amount of income received by the said individual – that is, without setting it off against the amount of actually incurred expenses in the course of acquiring the share in the charter capital – that individual has the right, later on, to independently apply to the tax agency with the request that the amount of expenses incurred while acquiring the share in the charter capital be set off against the current personal income tax base, in order to reduce it accordingly.

Experts have pointed to the lack of unanimity in the standpoints of different judicial bodies whilst issuing decisions concerning the possibility to deduct, from tax base, an individual's expenses incurred in the course of acquiring a share in a company's charter capital in the event of its sale (or redemption). In some cases, a court ruling is issued to the effect that such expenses should be subject to deduction. Other judicial bodies rule that a taxpayer has no right to apply property tax deduction (generally and with regard to the part relating to the acquisition expenses) to the realization of ownership rights, irrespective of the existence of the norm specifically stipulated in the second paragraph of Subitem 1, Item 1 of Article 220 of the RF Tax Code. A review of judicial practice can be found, for example, in publications released by the ConsultantPlus service network[1].

7. Letter of RF Ministry of Finance and the RF Federal Tax Service of 1 November 2013, No ND-4-8/19645@ offers explanations concerning the procedure of writing off the excess amount of taxes, penalties and fines paid by a taxpayer. Thus, in particular, the Letter explains as follows. In accordance with Article 78 of the RF Tax Code, the excess amount of tax paid by a taxpayer should be refunded on the basis of a written application submitted by the taxpayer. In presence of an outstanding amount of a tax or levy, or penalties due to be paid to the same budget (or off-budget fund), an excess amount of tax can be refunded to the taxpayer only after the refund has been set off against the outstanding payment (or debt). The application concerning the refund of excess amount of tax can be submitted within a period of three years. Tax agencies are obliged to notify taxpayers of each excess payment of tax within 10 days after such a payment has been identified.

If a taxpayer has been notified of the fact of excess payment of tax and failed to submit an application requesting that the excess amount should be refunded (or set off), and did not submit to tax agencies accounting and tax reports, on the basis of which the excess payment could be carried forward and set off

1 *Prodazha fizicheskim litsom doli v ustavnom kapitale obshchestva s ogranichennoi otvetstvennost'iu: nekotorye spornye voprosy ischisleniia NDFL* [Sale by an individual of a share in the charter capital of a limited liability society: some disputable aspects of personal income tax calculation]. Materials prepared on the basis of legal acts issued as of 24 January 2011 by A. V. Zhigachev. The wording of the second paragraph of Subitem 1, Item 1 of Article 220 of the RF Tax Code remains unaltered as of 26 November 2013, which means that the analysis of judicial decisions is still valid.

against future payments, the said amount of excess payment may be written off after the expiry of the 3-year period by decision of the director of relevant tax inspectorate[1]. In cases when taxpayers carry on financial and economic activity, submit to a tax agency their accounting and tax reports, but fail to submit thereto applications requesting that the amount of excess payment of tax should be written off, any decision issued by the director of a tax inspectorate that such sums should be written off will be invalid, as explained by the RF Ministry of Finance and the RF Federal Tax Service.

1 As budget revenue. – Author's note.