THE REVIEW OF REGULATORY DOCUMENTS ON TAXATION ISSUES IN DECEMBER 2013 – JANUARY 2014

L.Anisimova

In the period under review, in the area of tax initiatives it is worth mentioning the speech of D.A. Medvedev, Chairman of the Government of the Russian Federation at the Gaidar Forum and signing of the General Agreement between the All-Russian Association of Trade-Unions, All-Russian Associations of Employers and the Government of the Russian Federation in the 2014–2016 period. Also, it is worth paying attention to the following new trend which emerged in the period under review: active changes in the tax legislation as regards taxation of financial entities, operation with securities and financial instruments of forward deals; aggravation by financial entities of problems in the sphere of tax administration of revenues of regional and local budgets – up to the expected limitation of the limits of their institutional responsibility for the revenues of federal and local budgets[1]; revival of the debates on further expansion of authorities of law enforcement agencies in carrying out of tax control[2].

1. At the Gaidar Forum, D.A. Medvedev, Chairman of the Government of the Russian Federation said[3] that Russia was planning to join the Organization for Economic Cooperation and Development (OECD)[4]. It would permit to receive the information from other countries' tax authorities within the framework of fight against offshore companies and participate in tax audits, but the cooperation would be somewhat limited and would not extent to collection of the value added tax (VAT), excises, severance tax, provision of the information on bank accounts of individuals[5] and other; in the internal taxation tax rates would not be changed and the five-year tax holidays in respect of the profit tax, severance tax, land tax and property tax would be in effect and the reduced rates of insurance contributions in advanced development territories situated in Siberia and the Far East would be preserved. In addition to the above, the possibility of introduction of the mechanism of delayed payments – "the so-called TIF[6] when implementation of the project begins without initial investments by the government and investors' expenditures are compensated by means of tax revenues from realization of the project as a whole"[7] – as an instrument of support of introduction of innovation technologies was announced. As one can see the Government of the Russian Federation is seeking to replace the direct state financing on joint projects with the business by subsequent tax credits and compensation of expenditures against liabilities to the budget. It is a more flexible tax policy as it is not accompanied by a build-up of direct budget expenditures and/or liabilities (including state guarantees).

2. In December 2013 – January 2014, higher economic pressure on taxpayers on the part of law enforcement agencies was observed. It is to be reminded that within the frameworks of anti-terrorist measures economic limitations and additional responsibilities as regards collection, preparation and processing of the information on cash flows and suspicious operations of counter parties and customers were imposed by new laws on market commodity producers. At present, the Investigation Committee of the Russian Federation (IC of Russia) suggests that its powers should be enlarged and the tax police service reinstated within the frameworks of the IC of Russia.

It is believed that it is time the limits of powers of law enforcement agencies in tax issues were defined more precisely. To start with, the additional responsibilities imposed on commodity producers by laws as regards collection, grouping and provision to law enforcement agencies of the information on the third persons within the frameworks of antiterrorist activities is a form of indirect and extra-budgetary taxation of market commodity producers in favor of law enforcement agencies and departments. As such expenditures are attributed to costs of commodity producers and are not financed

1 See comments on the proposal of the Federal Tax Service of the Russian Federation (FTS of Russia) as regards switchover to a new mechanism of payment of taxes on individuals' property and transport means.

2 Assignment of a tax police function to the Investigation Committee of the RF and establishment within the frameworks of the above agency of the relevant unit.

3 In an interview to the RBK TV Channel.

4 See the proposal of the Ministry of Finance of the Russian Federation and the Ministry of Foreign Affairs of the Russian Federation on ratification by the RF of the 1988 Convention on Mutual Administrative Assistance in Tax Issues.

5 V.Visloguzov and T. Grishina. Russia Gets on for a Contact with Offshore Companies. The OECD Convention on Tax Assistance is Prepared for Ratification, Web-site of Kommersant.ru of January 22, 2014.

6 Tax Increment Financing.

7 See short-hand notes of D.A. Medvedev's speech at the Gaidar Forum at the Web-site of ranepa.ru of January 15, 2013.

out of the budget, they will result in artificial and unchecked growth in the cost of production (jobs and services) of domestic commodity producers, reduce their competitive edge and make investments into the Russian economy disadvantageous. In addition to the above, domestic commodity producers may face complications on global markets as they are interlinked with state agencies not only by agreements, but also tax relations. It cannot be excluded that at a certain time their activities can be qualified as a secret realization of interests of law enforcement agencies of one country in the territory or market of another one. To prevent such complications, it is expedient to use in the Russian Federation the generally accepted practices of networking between independent profit-making organizations and law enforcement agencies. The budget is formed for the purpose of servicing the interests of the state and in market conditions it strictly regulates the ultimate pressure on taxpayers.

In a switch-over to the market, it is important to observe the balance of interests of commodity producers and taxpayers. Taxes should be collected only to the extent where such work is economically effective. Economic efficiency of the state machine should be evident in expansion of the open market, growth in the revenue base of the economy as a whole and fulfillment of the assumed social obligations at the expense of the budget. The market tax system is aimed at voluntary payment of taxes by taxpayers as it is advantageous to them to work openly by the established rules which exclude discrimination and violation of ownership rights. The objective of tax authorities is not to collect the arrears by any means, including crushing and destroying of businesses for each unpaid kopeck, but identify the facts of a failure to meet obligations set by the law, determine the more acceptable to violator-taxpayers scheme of settlement of arrears to the budget, including application of sanctions for tax violations provided for by the tax legislation. In the world, violation of the tax legislation in general sense is not a crime if its consequences can be avoided voluntarily by the violator (that is, tax arrears and a penalty accrued for an untimely transfer of the funds have been paid to the budget). To improve the business climate in the Russian Federation, it is expedient to qualify tax violations in a different way. It is believed that the field of competence of law enforcement agencies should start beyond the limits of avoidable tax violations.

3. In the period under review, a general agreement was concluded between the All-Russian Association of Trade-Unions, the All-Russian Association of Employers and the Government of the Russian Federation for the 2014–2016 period. The above agreement envisages a renewal of the earlier cancelled level of individuals' income exempted from the individual income tax with raising of that level to the minimum subsistence level set by the legislation with a simultaneous reimbursement of shortfalls in regional budgets' revenues at the expense of the federal budget; introduction of the progressive individual income tax scale; as regards the VAT it is expected to consider the possibility of a broader utilization of the declarative procedure for VAT reimbursement without a bank guarantee.

In our view, in a situation of the growing deficit of the federal and regional budgets not all the above proposals are acceptable. Introduction of the tax-free income minimum will result in growth in subsidies from the center to regions for reimbursement of shortfalls in revenues of regional and local budgets[1]. In conditions of stagnation, it is inexpedient to introduce a progressive individual income scale, too. It means liquidation of real incentives for people to develop new lines of activities in market economy and gaining new skills in dealing with modern technologies. The drivers of higher labor efficiency and structural shifts in distribution of workforce employment are high labor remuneration at newly created jobs in the market sector. It is to be noted that as long as the archaic command budget-funded and distribution economy exists concurrently with market economy it is not expedient to make equal the amounts of labor remuneration by means of introduction of a progressive income tax scale – in such a case the command and distribution economy will be funded at the expense of direct withdrawal of funds from the market sector of the economy. In the Russian Federation, due to distortions in labor remuneration as a result of the excessive number of officials and excessively high wages and salaries both at state-run monopolies and the state apparatus and incomparable mobilization potential of the budget, it would be expedient to eliminate shortfalls in the budget by means of methods of direct administrative regulation through reduction of the number of officials and, thus, increasing the average pay per one person employed in the state sector to the average market level, rather than by withdrawal of income from the market sector of the economy. Also, it is not expedient to give up banking guarantees in respect of the VAT as banking guarantees replaced direct immobilization of commodity producers' working capital to the budget[2].

1 Earlier, the income exempted from the individual income tax amounted to Rb 400 per person, while the untaxed subsistence level amounts at present to Rb 5,600, that is, compensation out of the revenues of regional and local budgets is excluded, but additional reimbursement of Rb 102bn is to be imposed on the federal level (= 13% x 140 million people. x Rb 5,600) without additional sources of the federal budget revenues.

2 It is provided for by Cl. 1.7 of the General Agreement between the All-Russian Association of Trade-Unions, the All-Russian Asso-

At the same time, the general agreement sets one of the most important issues of improvement of the investment climate in the Russian Federation, namely, a possibility of redistribution of the burden as regards payment of insurance contributions, primarily, to the mandatory pension insurance between the employer and the worker and the terms of such a redistribution[1]. Any redistribution of a tax burden from manufacturing to consumption can only be encouraged as it permits commodity manufacturers to plan the volume of their costs in the long-term prospect which factor is very important to investment decision-making. It is to be noted that contributions to social extra-budgetary funds were set, particularly, in the past few years on the basis of the needs of financing of the current social expenditures without taking into account the actual potential of producers. Changes in the accrual base will permit to manage the rates (if necessary) without exceeding the limits of the labor remuneration fund, plan in advance producers' costs and not to reduce, particularly, at the initial stage the size of workers' net wages and salaries.

4. The initiative of the Federal Tax Service of the Russian Federation to introduce a mechanism of self accrual of property taxes[2] should be approached cautiously. What is meant here is that tax authorities still have to send property and transport tax notices to individuals, but in case of a non-receipt of such notices people will be obligated to inform tax inspectors of the property and motor vehicles owned by them and, probably, calculate and pay taxes until the end of the year following the tax year. It is a highly risky initiative, particularly, in the period of a switch-over to payment of a property tax (so far, it is property and land alone) on the basis of the cadastre estimate which exceeds many times over the state assessment. In case of untimely or incomplete payment of increased taxes people may face higher fines and penalties, while volumes of tax violations, as well as the number of tax-dodgers may increase immediately (because households' incomes do not change).

Officially, the Federal Tax Service of Russia (FTS of Russia) intends to separate the responsibility as regards payment of taxes from the existing responsibility of the FTS of Russia to preliminary prepare and send notices with the updated data on the value of the taxed property to taxpayers. According to the concept of the FSN of Russia, taxpayers are obligated to submit to tax authorities documents of entitlement (or copies thereof with details, that is, the number, date and the name of the issuing authority), while tax authorities send them for reconciliation with the data of those entities through which deals are executed and upon the receipt of an official reply from the above entities they prepare a tax notice. Under the above scheme, tax authorities are not pressed for time (a verification becomes a subsequent one, rather than a preliminary one as in case of payment on the basis of a tax notice), nor are squeezed by the responsibility to ensure a timely and complete formation of the revenue base of regional and local budgets (tax authorities receive their pay and funding out of the federal budget).

It is to be reminded, however, that for solution of the issue of timely and complete formation of revenues of regional and local budgets the federal executive authority (that is the FTS of Russia) was entrusted once with responsibility to prepare and send to taxpayers notices on the amount of payments to regional and local budgets. Such a decision was taken in order to prevent establishment of duplicate regional tax authorities which report to regional authorities. Existence of duplicate tax authorities would result (as one can easily imagine) in a conflict of interests in tax issues between the Federation and the regions, so, the federal government entrusted tax authorities with a responsibility to ensure formation of revenues of regional and local budgets in accordance with the existing legislation. In our view, the proposal of the FTS of Russia that waives direct responsibility of the FTS of Russia for formation of revenues of regional and local budgets requires further development considering the fact that in the Russian Federation there are two state levels – the federal level and the regional level – and it is to be noted that state authorities at the level of a region and local government authorities do not have powers yet to collect such taxes, carry out tax audits and accrue and charge fines and penalties at the expense of taxpayers' cash funds and property.

One should not ignore another aspect of the above problem. When speaking at the Gaidar Forum[3] about the factors behind the proposal to introduce the practice of self-accrual of a portion of the individual income tax the Head of the Federal Tax Service of Russia points to the fact that in calculation of payments the information of registration authorities (the Rosreestr, the State Traffic Safety Inspectorate (STSI) and other) – which information "is not always correct" – is used, a question arises how the networking

ciation of Employers and the Government of the Russian Federation for the 2014–2016 period. It is unclear why in conditions of stagnation the Government of the Russian Federation agreed to ease the guaranties of federal budget revenues from the main tax source, that is, VAT.

1 Cl.4.12 of the General Agreement.

2 T. Grishina and V. Visloguzov. People will be Switched Over to Tax Self-Service. The FTS Intends to Change the Mechanism of Payment of Property Taxes, Kommtrsant.ry/doc/2384757 of January 16, 2014.

3 Ibid.

between federal agencies was organized to prevent such instances?

The tax authorities have officially recognized that they have no reliable data on the property of individuals, so, they probably hesitate about sending tax notices. The information on new property and changing of owners is to be provided to them by notaries, the Rosreestr and the STSI. Though notaries maintain a unified updated database on titles to property, it covers only persons who applied to them in re-issuing of documents on property. After 15 years of operation, the data of the Rosreestr remains unreconciled with the data of the FTS of Russia. Until recently, one could have personal motor vehicles registered not only at the place of residence of the owner, but also at the place of use by the owner (for example, motor vehicles could be sold on the basis of a power of attorney) and other. The FTS of Russia, the Rosreestr and the STSI are federal agencies, while notaries are united into the Federal Notary Association. It easy to understand why it is difficult for tax authorities to establish an updated database on actual owners and the value of their property – they are at the same managerial level with other federal departments and agencies which have to provide them with the information. If such information is not provided timely, the tax authorities cannot send them instructions with deadlines specified, so, networking is carried out via the Government of the Russian Federation. In addition to the above, inaccuracy of the databases is probably caused by the fact that notaries, the STSI and the Rosreestr have their own data coding systems and do not use the taxpayer identification number (TIN) and the taxpayer classification code (TCC) for grouping of the information. Tax authorities and the Government of the Russian Federation have to solve urgently the issue of reconciliation of codes of databases of different federal agencies to ensure an automated collection of the information on the basis of taxpayers' TIN and TCC.

As regards the possibility to receive the updated information from taxpayers within the frameworks of "personal offices", such form of cooperation should be promoted and encouraged by all means. Availability of "personal offices" is a big achievement of the FTS of Russia. It permitted the tax authorities to identify discrepancies in the existing databases because a large number of people got an on-line access to the information on their property in registers of the FTS of Russia. However, "personal offices" permit only to identify the facts of invalid data in databases, but do not solve the issue of automated collection of the valid data from other authorized federal agencies which data is required for calculation of taxpayers' current obligations as regards payments to regional and local budgets.

5. As expected, after the status of a mega-regulator was assigned to the Central Bank of Russia the priority measures it developed included among other things amendment of the rules of determination of tax responsibilities as applied to operations on the securities market, financial instruments of forward deals (FIFD), depositary receipts and other. What is meant here is Federal Law No.420-FZ of December 28, 2013 by which serious amendments were introduced into a few chapters of the Tax Code of the Russian Federation (TC RF). Generally, the Law is a fairly good document and deals with settlement and specification of many stock market tax issues which have arisen of late due to both more active presence of Russian issuers and investors on international stock markets and introduction of additional privileges and easing of requirements. By amendments to the Tax Code of the Russian Federation, the specifics of taxation of the VAT, individual income tax and corporate income tax has been determined in respect of operations with depositary receipts, securities, FIFD, REPO operations with securities, as well as operations with an individual investment account. The Law is oriented at harmonization of rules of operations with different types of securities and FIFD on the Russian and international markets with or without engagement of Russian or foreign professional participants for carrying out such activities.

At the same time, in our view rather controversial innovations – which may result in big problems for the economy as a whole – failed to be avoided. It is to be stated that in technical terms the level of development of amendments is incoherent, too. The most typical mistake is a refusal to find a general solution of the issue: in the text of the special tax chapters of the Tax Code of the Russian Federation new terms and mechanisms were introduced without any system; the above terms and mechanisms should be of general nature and without any reference to the rules of application of those terms and mechanisms within the frameworks of other tax systems. The above will result in numerous litigations.

As regards VAT. If realization of financial instruments of forward deals was exempted from payment of VAT, operations on assignment (reassignment) of titles (claims) to those instruments is now exempted from VAT, too. A VAT privilege was granted in respect of services related to trust management of pension savings funds, payable reserve funds and pension saving funds of insured persons to whom a termed pension payment is granted and some operations carried out within the frameworks of clearing activities.

The procedure for attribution of VAT amounts to costs related to production and sale of goods (jobs and services) by entities which carry out operations both ex-

empted from VAT payment and not (Article 170 (4) of the Tax Code of the Russian Federation) was adjusted to a great extent. However, the amendments introduced are questionable. The newly established procedure for accounting in costs or acceptance for deduction of a portion of input VAT on purchased goods, jobs and services, including capital assets, intangible assets and property rights used in production of goods (jobs and services) suggests division of the input VAT in proportion to taxed and untaxed volumes of goods (jobs and services) sold during the period under review. The taxpayer will be obligated now to carry out separate accounting of the input tax on purchased goods (jobs and services), including capital assets and intangible assets and property rights used for carrying out of taxed and untaxed (exempted from taxation) operations.

If the taxpayer does not maintain separate accounting of VAT on purchased goods (jobs and services), VAT is not subject to deduction, nor is included in expenditures accepted for deduction in calculation of the corporate profit tax, that is, it is attributed in full to the taxpayer's profit.

The VAT paid as a part of indirect costs (mainly administrative and management expenses) is usually distributed completely within a month when such expenses were made in proportion to volumes of taxed and untaxed turnovers. It is an absolutely logical decision as indirect costs are related to the entire production. As regards the input VAT on the purchased capital assets and intangible costs (which will be attributed to manufacturing costs by installments during a long period of time) it can be supposed that in that situation the same principle of distribution of the input VAT as in respect of indirect costs will be applied because the Tax Code of the Russian Federation does not provide individual explanations. A non-routine situation may arise where the input VAT corresponding to the share of depreciation of capital assets purchased, for example, for manufacturing of glasses and the accrued one (depreciation) in the period under review when glasses were not produced at all will be included in full in the costs related to issuing of securities whose issue was realized particularly in that reporting period when glasses were not produced. It is still unclear whether the judge will agree on such an approach to distribution of the input VAT. Other schemes of distribution of the input VAT on capital assets and intangible assets can hardly be utilized as they suggest introduction of individual accounting by each inventory number in section of time periods when depreciation was accrued with distribution of the share of the input VAT applicable to the relevant period in proportion to the taxed and untaxed turnover and other.

As regard the individual income tax. Within the frameworks of text of the chapter on the individual income tax[1], an important issue dealing with determination of the taxation base in realization of securities of Russian issuers, which securities were purchased earlier with utilization of depositary receipts of Russian issuers or those of foreign issuers issued in respect of titles to securities of Russian issuers or received during free of payment privatization was settled. Depositary receipts under the taxation scheme are made equal to derivative instruments of forward deals (derivative financial instruments), that is, expenditures related to purchasing of a depositary receipt are qualified as expenditures on purchasing of a security in respect of which a depositary receipt was issued by Russian or foreign issuer of a depositary receipt. Expenditures of issuers of depositary receipts on purchasing of securities (as grounds for a subsequent issue of a depositary receipt) are attributed to expenditures on purchasing of the depositary receipt proper. Such a scheme permits to indemnify the expenditures in full to the seller of a security and at the same time distribute fairly the tax base between the budgets of different countries if securities of Russian issuers were purchased partially with use of depositary receipts and partially realized by owners who received them free of charge in the course of privatization[2].

Due to utilization of an investment account, in his work on a stock market it has become possible for an ordinary investor to diversify the scheme of investment tax deduction. The following fairly economically reasonable scheme has been proposed: the funds deposited by an individual into an individual investment account (but no more than Rb 400,000 a year) do not participate in determination of the size of a standard investment tax deduction. It is quite a reasonable approach as the funds are withdrawn from individual's personal consumption and invested into the stock market. A tax deduction on the individual investment account (maximum Rb 400,00 a year) is granted to the taxpayer provided that within the term of the agreement on maintenance of the individual investment account (minimum three years) the taxpayer does not conclude other agreements on maintenance of individual investment accounts except for cases of termination of the agreement with a transfer of all the assets accounted for in the individual investment account to

1 That is the issue which was pointed out when it was said that general terms were included by technical amendments into special chapters on specific taxes. The above situation will complicate application of unified approaches to taxation of the same instruments and deals. It seems the authors of amendments are not quite good at arrangement of norms in the Tax Code of the Russian Federation.

2 See Article 214.1 (6.1) of the Tax Code of the Russian Federation.

another individual investment account opened to the same individual.

A standard investment tax deduction in the form of income from realization (redemption) of securities owned by the taxpayer for over three years (except the ones separated in the individual investment account) is now transformed into a calculation formula which determines the share of income from realization of securities owned by the taxpayer for over three years in the flow of securities realized (redeemed) in the reporting period (beyond the investment account).

The ultimate size of that standard investment tax deduction in the tax period is determined as product of *Ktsb* ratio (which determines the share of securities owned by the taxpayer for over three years) and the amount equal to Rb 3m.

Instead of a tax deduction on deposits to the individual investment account (Rb 400,000 each in the tax period), the taxpayer may receive a tax deduction in the form of exemption from taxation of income received at closing of the agreement on individual investment account, but on condition that that taxpayer during the entire term of the agreement never used a tax deduction in respect of funds deposited to the account.

As regards the profit tax. Amendments to Article 251 (1) (4) provide for withdrawal from profit tax the amounts of the returned property and property rights within the limits of the participant's deposit (contribution) in case of reduction of the charter capital in accordance with the legislation, exit by the participant from the business entity or distribution of the property of liquidated business entities between participants. It is to be reminded that the issue of exemption of individuals from payment of individual income tax in case of their exit from an open-end joint-stock company and receipt of the property within the limits of the deposit (contribution) to the charter capital is a matter of legal disputes. It is believed that within the frameworks of a single law (that is the Tax Code of the Russian Federation) in accordance with the principles declared in the Tax Code of the Russian Federation the same schemes of taxation should be applied to identical deals, but those should be general decisions, rather than amendments to special chapters on taxes.

The approved wording of Article 265 (1) (3.1) of the Tax Code of the Russian Federation is fairly controversial. According to it, expenditures on repayment by the issuer of its own debt securities in the organized securities market in the amount of the difference between the sum of their redemption and their par value are accounted for in the non-operating income for the purpose of taxation of the issuer's profit. A conflict arises between the norms of the Tax Code of the Russian Federation as the wording of Cl. 3.1 does not take into account the fact that the specified difference can be a discount, that is, a sort of interests and, thus, is subject to thin capitalization under which a portion of the interests is qualified as dividends for taxation purposes and is not included in expenditures with the payer. In the article in question, there is no relevant reference.

By amendments to Article 266 (1) (2) the amount of the borrower's overdue interest debt which arose after January 1, 2015 on any debt obligations is recognized as a doubtful debt, that is, attributed to the bank's expenditures which reduce the tax base "if that debt was not repaid within the time-limits set by the agreement regardless of the existence of a collateral, surety and bank guarantee". The above norm appears rather controversial as it is aimed at protection of the interests of banks with a latent (concealed) insolvency due to existence of "bad debts". The state should not encourage concealment of such information from potential depositors and creditors by tax methods. It is equal to shifting of losses to a third person (potential depositors and creditors). Such a financial policy may produce rather negative consequences for the entire banking sector of the Russian Federation. Let us explain our position.

The approved norm means that banks are actually permitted to accumulated penalty interests in reserves and attribute them to reduction of the taxable profit. Earlier, banks had an opportunity to attribute only unpaid debts and short-received contract interests to losses accounted for the purpose of taxation of profit. Penalty interests were to be paid at the expense of the bank's own profit (that is, after-tax profit). If officially the bank had profit, but in reality it was a profit tax defaulter, tax authorities would promptly identify that situation and the bank would be transferred under the management of the Deposit Insurance Agency (DIA). At present, the interests accrued to the debtor for a delay in payment is interpreted without any limitations as the bank's ordinary expenditures. Such a decision is highly dangerous in economic terms as it stimulates emergence of phantom-banks which have bad debts instead of assets; such banks will neither restructure themselves timely, nor go bankrupt, but look like a financially stable institution which is entitled to carry on its business. Earlier, emergence of phantom-banks was controlled by supervising bodies of the Central Bank of Russia and the Federal Tax Service of Russia. At present, the FTS of Russia is excluded from that work.

The new wording of Article 269 of the Tax Code of the Russian Federation (on thin capitalization) largely expands the classification of the types of debt obligations and differentiates the ultimate values of interests for such obligations (instead of the earlier applied two types of ultimate values of interests attributed to ex-

penditures on ruble and foreign currency obligations); for banks the rates on controlled deals in rubles are set at 75% to 180% and 75% to 125% of the rate of refinancing of the Central Bank of Russia in 2015 and the one effective from January 1, 2016, respectively; individual rates are set on obligations in euro, yuan, Swiss francs and other. The above measures are probably aimed at elimination of the effect of fluctuation of exchange rates of different currencies and conditions of attraction of foreign currency loans in different foreign markets on the size of tax obligations in utilization of the mechanism of thin capitalization.

By amendments to Article 271, Article 272 and Article 280, the notion of "realization" has been expanded (redemption of securities, termination of obligations by a setoff, termination of obligations due to liquidation of the issuer and other). The dates of recognition of the income and expenditures from realization have been specified in respect of securities depending on a specific type of the deal; the rules of distribution of income of expenditures by taxable periods if the agreement was in effect for a few years were specified, as well. It is stated that redemption of depositary receipts in obtaining of securities and assignment of securities in placement of depositary receipts which certify the title to securities are not recognized as realization or replacement of securities.

Article 280 set the procedure for determination of the market value of securities listed at Russian or foreign stock exchanges. In case of realization of marketable securities at a price which is below the minimum price of a deal on the organized securities market, the minimum price of the deal on the organized securities market is accepted in determination of the financial result. In case of a purchase of marketable securities at a price which is higher than the maximum price of the deal on the organized securities market, the maximum price of the deal on the organized securities market is accepted in determination of the financial result. As regards equities which are not marketable on the organized market, the market value within a 20% fluctuation from the estimated price of a security is accepted. The procedure for determination of the estimated price of a non-marketable security is set by the Central Bank of the Russian Federation by agreement with the Ministry of Finance of Russia. The mechanism of calculation of the market price on unit shares of different types of investment trusts is outlined in detail. Similarly, the market price on non-marketable financial instruments of forward deals is determined (with a 20% fluctuation taken into account) in accordance with Article 305 as amended of the Tax Code of the Russian Federation[1].

1 See Article 219.1 of the Tax Code of the Russian Federation and cl. 9.1 sit. 226.1.

The general rule of separate accounting of the financial results as regards marketable and non-marketable securities and FIFD in the taxable period has been preserved. Losses on non-marketable securities and FIFD should not reduce the income from operations with marketable securities and FIFD on the organized market. On the other side, revenues from non-marketable securities and FIFD may reduce losses which are accounted for in determination of the general tax base.

In Article 279, in determination of the tax base in case of assignment of claims limitations have been included as regards acceptance for deduction of interests with taking into account the new rules of determination of the ultimate amount of the recognized interests set in Article 269 dealing with the thin capitalization.

The procedure for determination of incomes and expenditures on REPO deals, including in case of undue fulfillment or termination of the deal (Article 282 as amended) has been specified; it is to be noted that the deadlines within which the deal is not considered as unduly fulfilled for tax purposes have been legislatively increased (that is, within 10 days as regards the first part of the deal to 30 days as regards the other part of the REPO deal).

Article 283 as amended provides for additional privileges to educational and medical establishments, agricultural organizations, the Central Bank of Russia and Skolkovo residents – the above entities (unlike other taxpayers) are allowed to carry forward losses occurred in the period of application of the zero tax rate to reduction of the profit in subsequent periods in accordance with the general loss-carry forward procedure. The above privilege is extended to losses incurred by a taxpayer from realization or other replacement of Russian entities' securities (participating interests in the charter capital) specified in Article 284.2 of the Tax Code of the Russian Federation.

In Article 304, the wording was defined more precisely of the specifics of determination of income and expenses on swap-contracts and option contracts which are not marketable on the organized market if the party to the deal is the central counteragent which carries out activities in accordance with the legislation of clearing activities. Article 305 as amended sets the rules of determination of the market price of non-marketable swap-contracts and option contracts. It was specified that if deals were made with participation of the counteragent which carried out activities in accordance with the legislation on clearing activities the actual price of the deal is recognized as a market price.

Article 5 of Federal Law No.420 sets the procedure for carrying forward losses – which arose before January 1, 2014 – on operations with securities and FIFD.

Ordinary investors (non-professional participants) are permitted to write off losses by 20% annually until 2025 separately on marketable and non-marketable securities and FIFD.

In case of professional participants, losses on non-marketable securities and FIFD can be attributed to the total tax base starting from January 1, 2015 in accordance with the procedure set in the new wording of Article 283 of the Tax Code.

As regards REPO operations which remain outstanding till January 1, 2015, the procedure for determination of the tax base and carrying forward of losses – which procedure was earlier in effect – is applied.

Among other regulatory documents, it is worth pointing out the following:

1. Federal Law No. 428-FZ of December 28, 2013 specifies the terms of application of reduced tariffs of insurance contributions to state social extra-budgetary funds for entities which carry out their activities in the field of information technologies in the 2011–2019 period. For application of such tariffs, the threshold of the average number of workers is reduced from 30 persons to 7 persons, while the index of the share of "profile" income in the total volume of income is adjusted to the difference in the rates for comparison with the established criterion.

2. By Decision No.VAS-13048/13 of December 4, 2013 of the Supreme Arbitration Court of the Russian Federation, the position of taxpayers who applied for recognition of Letter No. 03-03-06/1/630 of December 6, 2012 of the Ministry of Finance of the Russian Federation as null and void due to its noncompliance with the norms of Article 265 (2) (5) of the Tax Code of the Russian Federation was supported. In accordance with the above letter, the fact of absence of the guilty party in case of theft of goods at self-service stores should be confirmed in a written form by an authorized state authority. The Court came to a conclusion that a shortfall which was identified during inventory auditing at self-service entities cannot be attributed to the guilty party because they cannot be determined. In addition to that, according to the expert's conclusion in such a situation it is impossible to initiate criminal proceedings because the amount of the shortfall is formed as a result of unrecorded thefts committed by an uncertain set of people in uncertain time.

According to the Ministry of Finance of the Russian Federation, if the case was not initiated expenditures and losses incurred due to the facts of theft are not accepted for deduction from the tax base. In that situation, the Court decided that the requirement to provide a decision on initiation of criminal proceedings was needless, while the one to provide a resolution on suspension (termination) of the preliminary investigation, impossible.

At the same time, the issue that the input VAT on stolen goods should apparently not be accepted for deduction (setoff) remains unexplained.

3. Establishment of economic responsibility of a self-serving entity (SSE) for quality of services rendered to its members in the field of power-supply is a highly important trend. It is amendments introduced by Federal Law No. 399-FZ into the Federal Law on Power Saving and Upgrading of Power Efficiency in the Russian Federation that are meant here.

Joint responsibility of SSE and a person who carries out energy investigation is established for losses caused to consumers due to substandard quality of services. Joint professional responsibility permits to switch over services of natural monopolies from a tariff scheme where risks are set off by growth in the individual monopoly tariff to the field of market relations where SSE establish joint compensation funds or insurance funds (with the size of minimum Rb 2 million), while availability of a large number of SSE participants permits to set tariffs on a competitive basis.

4. Application of concessionary forms of provision of such services is no less subtle solution of the issue of replacement of monopoly prices by market prices in payment of state services. A concession agreement can be concluded if the state by virtue of economic factors is not prepared to render (fully or partially) one or another service, while SSE do not exist in that field.

The scheme of utilization of a concession agreement for rendering paid state and municipal services to third persons consists in the fact that in case of a failure by the concessionaire to comply with the terms of provision of service the agreement is terminated and the concessionaire is paid for the services actually rendered with the minimum norm-based profitability, while the right to further rendering of paid services is placed again through a tender for a certain period with a condition that technical requirements are complied with and payment for services is charged at reasonable tariffs.

By Federal Law No. 438-FZ of December 28, 2013, amendments were introduced into federal laws on concession agreements and road activities. The above amendments provide for vesting in the Government of the Russian Federation, regional authorities and municipal authorities the right to develop the methods of determination of fares for paid motorways of respective levels.