Annex 1

A Review of Significant Changes in the Sphere of Fiscal Regulation and Civil Legislation in 2009[1]

Year 2009 has become no exception from the perspective of continuation of the reform of the tax legislation. Annually, the tax legislation undergoes some changes: throughout the year there were introduced amendments to all articles of the second part of the Tax Code of the Russian Federation. In this survey we will review only the most significant changes related to the switching from the unified social tax (UST) to insurance contributions to the Pension Fund, Social Insurance Fund, Federal and Territorial Compulsory Medical Insurance Funds.

Besides, there will be also noted the significant changes in the civil legislation.

1. Major Changes Introduced to the RF Tax Code (second part)

1.1. Value added tax (VAT)

Article 21 of the RF Tax Code was supplemented with the provisions envisaging the use of an application based procedure as concerned the VAT refund[2].

According to the newly introduced rule set forth by article 176.1 of the RF Tax Code, the amount of tax claimed to be refunded in a tax declaration (the positive difference between the amount of tax deductions and the amount of the assessed tax) can be refunded to the taxpayer prior to the completion of an in-office tax audit.

The right to use such a procedure governing the refund of the tax was granted to the corporate taxpayers, whose aggregate amount of VAT, excise taxes, corporate profit tax, and mineral extraction tax (with the exception of certain amounts of taxes) paid over last three calendar years made not less than Rb 10 billion and also the taxpayers, who provided bankers' bonds (envisaging the bank's obligation to pay to the budget the excess of the amount of tax refunded (credited) to the taxpayer in the case it was required by the tax authorities) together with the tax declarations indicating the amounts of VAT to be refunded. Such bonds could be provided by the banks the RF Finance Ministry had included in the list of the banks meeting the applicable requirements.

The right to refund the VAT can be exercised via the submission of an application, where there should be indicated the particulars of the bank account for the transfer of the respective funds. Within 5 days since the date the application was submitted, the respective tax authority should check if the taxpayer complied with the applicable requirements and take a decision either to refund the amount of the tax or reject the application.

Provisions of article 176.1 of the RF Tax Code thoroughly regulate the procedures governing the refund of the amount of tax to a taxpayer, offsets against taxpayers' arrears related to mandatory payments, and the return of the excessive amounts of tax refund received by the

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[1] This section has been prepared with the use of the legal system KonsultantPlus.

[2] See Federal law No. 318 FZ of December 17, 2009, "On the introduction of amendments to the first and second parts of the Tax Code of the Russian Federation in relation to the introduction of the application based procedure as concerns the value added tax refund".

taxpayer under the application based procedures. The new rules governing the refund of VAT amounts should be applied to tax declarations, which cover tax periods starting from the first quarter of 2010.

Changes have been also introduced in a number of other articles of the RF Tax Code. Thus, there was developed a new version of item 2 of article 169 of the RF Tax Code; according to this provision errors occurring in commercial invoices should be used as a reason for rejection of applications for VAT refund only in the case such errors prevent tax authorities to identify the seller, the buyer, the description and cost of goods (works, services), property rights, the rate and the amount of the tax.

There have been introduced new VAT allowances granted to management companies, condominium partnerships, and housing construction cooperatives[1].

Thus, according to sub-item 29 of item 3 of article 149 of the RF Tax Code, the provision of communal services should be exempted from VAT, whereas according to sub-item 30 of item 3 of article 149 of the RF Tax Code the services related to the maintenance of common property in apartment buildings and repairs of such property should be not subjected to VAT. Earlier, the RF Supreme Arbitration Court has stated the same position with respect to condominium partnerships. According to the newly introduced amendments, the use of this tax privilege is granted to management companies, condominium partnerships, housing construction, housing, or other specialized consumer cooperatives founded to meet the housing needs of citizens and responsible for the maintenance of internal utility systems used to provide communal services.

It should be noted that this tax allowance[2] can be used on two conditions:

- only the organizations listed in this provision of the RF Tax Code should provide the indicated services, i.e. in the case the communal services are directly provided to residents by a supply or operating entity, such entity should have no right to use this tax allowance;
- these services should be purchased by the companies indicated above directly from the organizations of the public utilities complex, electrical power suppliers, organizations engaged in supply of natural gas, and the companies and businesspersons directly providing services related to the maintenance of common property in apartment buildings and carrying out repair works.

There has been also introduced new item 3 of article 162 of the RF Tax Code, in accordance to which the funds received by the organizations indicated above for the purposes of formation of a reserve for carrying out the running and major repairs of the common property in apartment buildings should not be included in the VAT base.

An important amendment is related to the VAT taxation of property received by noncommercial organizations on the gratis basis to be used for the purposes of conduct of the activities listed in their charters[3]. Thus, no VAT should be imposed on the services related to the transfer of public or municipal assets not assigned to public or municipal enterprises and agencies and comprising the state treasury of the Russian Federation, a RF subject, or municipal treasury to

[1] See Federal law No. 287 FZ of November 28, 2009, "On the introduction of amendments to articles 149 and 162 of the second part of the Tax Code of the Russian Federation".

[2] Taxpayers have the right to waive the use of these privileges under a procedure envisaged by item 5 of article 149 of the RF Tax Code.

[3] See Federal law No. 281 FZ of November 25, 2009, "On the introduction of amendments to the first and second parts of the Tax Code of the Russian Federation and certain legislative acts of the Russian Federation".

noncommercial organizations on conditions of gratis use for the purposes of conduct of the activities listed in their charters (see sub-item 10 of item 2 of article 146 of the RF Tax Code).

1.2. Profit tax

From now on, payments for medical services provided to insured employees should be singled out in the composition of expenditures for remuneration of labor similarly to the contributions made on the basis of contracts for voluntary personal insurance. Agreements with medical organizations should be made for a period not less than a year, whereas such organizations should have licenses for provision of medical services. In order to be recognized, the general cap on such expenditures (contributions related to insurance contracts and direct payments to medical organizations) has been left at the same level and makes no more than 6 per cent of the total amount of expenditures for remuneration of labor (paragraph 9, item 16 of article 255 of the RF Tax Code).

The changes introduced in item 2 of article 254 and sub-item 2 of item 1 of article 268 of the RF Tax Code have conferred on the companies the right to reduce their incomes derived from the sales of property discovered in the course of inventory, which is not subject to depreciation, by the cost of such property. Prior to January 1, 2010, according to the rules set forth in sub-item 2 of item 1 of article 268 of the RF Tax Code, the income derived from the sales of "other" (not subject for depreciation) property could be reduced by its purchasing price or creation, which was absent in the case of property discovered in the course of inventory. Now, this provision is formulated more precisely: the income should be also reduced by the amount of expenditures indicated in paragraph 2 of item 2 of article 254 of the RF Tax Code.

An important amendment is related to the taxation of profits derived by noncommercial organizations as concerns the receipt of property on condition of gratis use for the purposes of conduct of the activities listed in their charters[1]. In the case the governmental or municipal bodies take decisions to transfer state or municipal property to noncommercial organizations to enable them to conduct the activities listed in their charters, such noncommercial organizations derive no profits in terms of ownership rights received on gratis basis (see sub-item 16 of item 2 of article 251 of the RF Tax Code).

The RF Ministry of Economic Development[2] also plans to introduce other changes in article 251 of the RF Tax Code in 2010: to expand the notion of grants; include voluntary asset contributions received by foundations and autonomous noncommercial organizations from the founders at the moment of creation of such organizations; incomes in the form of works carried out for, services provided to, and ownership rights transferred to noncommercial organizations on the gratis basis for the purposes of conduct of the activities listed in the charters of such organizations engaged in science, culture, arts, physical culture and sports with the exception of professional sports, education, public health, protection of human and civil rights and freedoms, social and legal support and protection of citizens provided on the gratis and preferential basis, assistance to protection of citizens in emergency situations, environment and wild life protection, as well as organizations engaged in other types of charitable activities, alongside with a number of other changes.

[1] See Federal law No. 281 FZ of November 25, 2009, "On the introduction of amendments to the first and second parts of the Tax Code of the Russian Federation and certain legislative acts of the Russian Federation".
[2] http://www.economy.gov.ru/

Turning back to the already adopted amendments, it should be noted that there has been changed the procedure of taxation of securities trading.

Thus, there have been more precisely formulated the conditions, on which securities should be recognized as those circulating in the organized securities market (hereinafter referred to as the OSM). One of these conditions is that for these securities there should be calculated market quotations in the cases it is required by the respective national legislation (sub-item 3 of item 3 of article 280 of the RF Tax Code). Now, paragraph 5 of item 3 of article 280 of the RF Tax Code envisages that in the case it is impossible to determine in what country's territory the securities transaction was made outside the OSM (including the transactions made via electronic communications networks), an organization should have the right to choose such a state at its own discretion depending on the location of the seller or buyer of securities. The mechanism of such choice should be a part of the accounting policy for the purposes of taxation.

There has been also more precisely formulated the notion of the market quotation of securities. It should be the volume weighted average price of the transactions made within one trade day via a Russian trade organizer in the securities market (hereinafter referred to as SM), including stock exchanges, as concerns the securities admitted to trade by such a trade organizer in the SM and such stock exchanges. In the case securities are admitted to trade at a foreign stock exchange, the market quotation should be defined as the closing price of the security calculated by the foreign stock exchange with relation to transactions made within a trading day via such a stock exchange (item 4 of article 280 of the RF Tax Code).

There have been amplified the rules governing the determination of the market price as concerns the securities traded in the OSM. Now, it is directly envisaged that in the case securities are sold at a price above the maximum price in the OSM, the financial performance is determined exactly on the basis of the maximum price of a transaction made in the OSM (see paragraph 5, item 5, article 280 of the RF Tax Code). Earlier, article 280 of the RF Tax Code contained no such a provision; therefore, the RF Finance Ministry had an opportunity to put forward a requirement to include in the incomes not the maximum, but the actual price, at which securities were sold[1].

There were somewhat streamlined and changed the rules governing the determination of the selling price of the securities circulating outside the OSM (see item 6 of article 280 of the RF Tax Code). For taxation purposes, there is recognized the actual price of a transaction in the case it is within the range between the minimum and maximum prices determined proceeding from the estimated price of a security and the extreme deviation of prices (which is set at 20 per cent above or below the estimated price). In the case the selling price of a security is below the minimal price or above the maximum price, there is taken into account either the maximum or minimum price (set as proceeding from the estimated price and the extreme deviation of prices).

The procedure governing the determination of the estimated prices of securities not traded in the OSM should be set forth by the Russia's Federal Financial Markets Service (FFMS) as approved by the RF Finance Ministry (see paragraph 4 of item 6, article 280 of the RF Tax Code).

[1] See, for instance, letters issued by the RF Finance Ministry: No. 03-02-07/1-452 of November 23, 2007, No. 03-03-06/2/74 of April 17, 2007, and No. 03-03-04/1/269 of March 21, 2006.

1.3. Unified social tax (UST)[1]

Since January 1, 2010, Federal law No. 212 FZ of July 24, 2009, is in force (with the exception of its certain provisions). This law regulates the relations concerning the calculation and payment of insurance contributions[2], whereas article 24 of the RF Tax Code "Unified Social Tax" ceased to be in force (see part 2 of article 24 of Federal law No. 213 FZ of July 24, 2009). Thus, the law envisaged the replacement of UST by insurance contributions to the RF Pension Fund (hereinafter referred to as the RF PF), the RF Social Insurance Fund (hereinafter referred to as the RF SIF), and compulsory medical insurance funds (hereinafter referred to as the FCMIF and TCMIF). In other words, we see the situation existing prior to the adoption of article 24 of the RF Tax Code. Essentially, the provisions of the Law on insurance contribution repeat the provisions contained in the first part of the RF Tax Code and peculiarly article 24 of the RF Tax Code.

In sum, since year 2010 the UST is replaced with insurance contributions to public social funds. Tax authorities will have no control over the payment of contributions, since this control over the calculation and payment of contributions to the RF PF and medical insurance funds is passed to the RF Pension Fund; at the same time, the RF Social Insurance Fund should control the social insurance contributions as before.

Self-employed entrepreneurs, notaries, and lawyers should pay not only defined contributions to the RF PF, but also contributions to medical funds.

As concerns the payment of contributions, taxpayers should have the same amounts of rights and obligations, as those set by the RF Tax Code. Since the beginning of the year, all payers of insurance contributions will have to register with the RF Pension Fund. At present, the procedure governing the registration is not determined yet and should be approved by the RF government.

Since 2010, reporting forms should be submitted to each fund separately, what is obviously inconvenient for taxpayers. The payers of insurance contributions should, alongside with the previously existing submission of their calculations to the RF SIF, also every quarter of the year present to the territorial agencies of the RF Pension Fund estimates of the charged and made compulsory pension insurance payments due to the RF Pension Fund and compulsory medical insurance contributions to the Federal Compulsory Medical Insurance Fund in accordance with a reporting form approved by the respective federal executive authority performing the functions related to the development of state policy and normative regulation in the sphere of social insurance, which also has not been approved yet. The terms of submission of calculations to the RF SIF remain as before – prior to the 15th day of the month following the quarter

[1] See Federal laws No. 212 FZ of July 24, 2009, "On insurance contributions to the Pension Fund of the Russian Federation, the Social Insurance Fund of the Russian Federation, the Federal Compulsory Medical Insurance Fund, and territorial compulsory medical insurance funds" and No. 213 FZ of July 24, 2009, "On the introduction of amendments to certain legislative acts of the Russian Federation and on repealing of certain legislative acts (provisions of legislative acts) of the Russian Federation in relation to the adoption of the Federal law "On insurance contributions to the Pension Fund of the Russian Federation, the Social Insurance Fund of the Russian Federation, the Federal Compulsory Medical Insurance Fund, and territorial compulsory medical insurance funds".

[2] The new law does not concern the contributions related to the compulsory industrial injury insurance and occupational diseases, as well as compulsory medical insurance of the economically inactive population, since special federal laws regulate the respective contributions.

under review; whereas the RF Pension Fund and the CMIF should receive such reports prior to the 1st day of the second calendar month of the respective year.

The payers of contributions do not have to submit annual reports. In the first quarter of the year they should present reports related only to the data for the fourth quarter of the preceding year.

Prior to March 30, 2010, the payers should present declarations concerning compulsory pension insurance contributions for year 2009 in accordance with the form approved by the RF Finance Ministry. After a comparative check, the tax authorities should pass these reports to the agencies of the RF Pension Fund.

Nothing is reported about a transition period as concerns the payment of the UST for year 2009. Since January 1, 2010, article 24 of the RF Tax Code, which set forth the obligation to pay the UST, is not in force; at the same time, Federal law No. 212 FZ of July 7, 2009, which entered into force on January 1, 2010, also envisages no respective obligation.

As before, the objects of insurance contributions differ depending on the payer. The payers making payments to the benefit of individuals should make contributions on the basis of payments and other remunerations awarded in relation to labor and civil law contracts, which concern the delivery of works and provision of services, as well as the commissioning agreements, agreements on the alienation of the exclusive rights in works of science, literature and arts, publishing license contracts, license contracts concerning the rights to use works of science, literature and arts. The notion of the "insurance contributions objects" was somewhat expanded: authors' contracts were replaced with commissioning agreements.

In 2010, the rates for employers remained at the level set in 2009: 20 per cent are due to the RF PF, 2.9 per cent – to the RF SIF, 1.1 per cent – to the FCMIF, and 2.0 per cent – to the TCMIF. However, there has been changed the amount of contributions transferred to the RF PF for financing of the insurance and funded components: as concerns persons born in 1966 and earlier, the financing of the insurance component makes 20 per cent, and as concerns persons born in 1967 and later, the financing of the insurance component makes 14 per cent, whereas the financing of the funded component makes 6 per cent.

There was significantly changed the system of calculation of contributions (a regressive scale of calculation of contributions). There was set forth a limit as concerned the charging of insurance contributions: no insurance contributions should be charged on the payments and other remunerations to the benefit of individuals[1] after the progressive total of such payments and remunerations exceeds Rb 415 thousand after the beginning of the period under review. Since 2010, the marginal amount of the base used for the charging of insurance contributions will be annually indexed as determined by the RF government in accordance with the growth in the average wage.

The new law on the payment of insurance contributions also concerns both self-employed entrepreneurs, and taxpayers operating under the simplified taxation system (STS) and using the unified tax on imputed income (UTII). It should be noted that the option to pay no UST was among the advantages related to the use of special taxation regimes. Although no insurance payments to the RF SIF should be made in 2010, there should be paid not only fixed con-

[1] Contributions should be charged on payments made to individuals not depending on the fact if these payments should be used for a reduction of the profit tax or not.

tributions to the RF Pension Fund, but also contributions to the compulsory medical insurance funds.

As concerns the organizations and self-employed entrepreneurs engaged in agriculture production or having the status of residents of technology development special economic zones, the respective insurance contributions tariffs should remain at the level registered in 2009, a lower tariff should be used as concerns the organizations and self-employed entrepreneurs operating under the STS or paying the UTII, as well as the persons using labor of invalids. Such persons should pay insurance contributions to the RF Pension Fund at the rate of 14 per cent dividing the contributions into the insurance and funded components: as concerns the persons born in 1966 and earlier 14 per cent are paid for the financing of the insurance component of the work pension, whereas for the persons born in 1967 and later 8 per cent are transferred for the financing of the insurance component and 6 per cent for the financing of the funded component.

Organizations and self-employed entrepreneurs using the unified agricultural tax (UAT) should pay 10.3 per cent to the RF PF dividing the contributions into the insurance and funded components: as concerns the persons born in 1966 and earlier 10.3 per cent are paid for the financing of the insurance component of the work pension, whereas for the persons born in 1967 and later 4.3 per cent are transferred for the financing of the insurance component and 6 per cent for the financing of the funded component.

Tariffs for self-employed entrepreneurs, lawyers, and notaries, engaged in private practices (the payers not making payments to the benefit of individuals) should be determined as the product of the minimum wage, as set for the beginning of a financial year, on the tariff due to the respective fund, i.e.: for the RF PF – minimum wage x 20 per cent x 12; the FCMIF – the minimum wage x 1.1 per cent x 12; the TCMIF – the minimum wage x 2 per cent x 12. Basing on the resulting sum and not the actual profit, self-employed entrepreneurs should pay monthly insurance contributions. This category of taxpayers is not required to make contributions to the RF SIF.

The payments made to the benefit of foreigners employed abroad or temporarily staying in Russia should be excluded from contributions. Some incomes, earlier not subject to insurance contributions payments, i.e. compensations for carry-over vacations at the time of dismissal, compensations for hard work, harmful and (or) hazardous working conditions (without milk compensation, etc.) have been excluded form the provision governing the non-taxable payments related to insurance contributions. These incomes should be subject to the payment of contributions similarly to other incomes. However, the financial benefits related to child birth (up to Rb 50 thousand) is excluded from the payment of insurance contributions, but only in the case these benefits are provided during the first year after the birth of a child.

From 2010, the enterprises should be not concerned with the fact, if their profit tax base is diminishing or increasing as relates to the social benefits granted to their employees. The provision of item 3 of article 236 of the RF Tax Code permitting the organization to choose between the reduction of the profit tax or the UST was repealed since January 1, 2010.

Besides, certain payments should be excluded from insurance contributions, for instance:

– financial aid in the amounts up to Rb 4 thousand (earlier, this amount made up to Rb 3 thousand) should be excluded from the payment of insurance contributions;

- payment for education as concerns basic and additional professional educational programs, including professional training and retraining of employees, as well as the compensations of such expenses to employees;
- financial aid in the amounts up to Rb 50 thousand paid in relation with the birth (adoption) of a child within the first year after the birth (adoption);
- payments for the medical treatment of employees under voluntary personal insurance contracts made with the insurers and under the contracts for provision of medical services to employees made for the periods exceeding 1 year;
- payment of insurance contributions by employers made in accordance with Federal law No. 56 FZ of April 30, 2008, "On the additional insurance contributions to the funded component of the labor pensions and the state support of the formation of pension savings" not exceeding Rb 12 thousand a year;
- compensations of expenses borne in relation to loans (credits) for the purchase and (or) construction of residential premises.

There has changed the amount of benefits in case of temporary incapacity to work and maternity pay. The respective calculation should be made proceeding from the newly set maximum of the daily pay. In 2010, the maximum average daily pay should make Rb 415 000[1] / 365 = Rb 1 136.99. However, in the case an organization wishes to pay an allowance taking into account the real average wage received by an employee, which may exceed the amount indicated above, the said additional payments should not be included in the composition of expenditures reducing the profit tax paid by such an organization (item 15, article 255 of the RF Tax Code). As concerns the nursing allowances, the maximum amount of such payments will also be changed; in 2010 it will make Rb 415 000 / 12 x 40 per cent = Rb 13 833.33.

It should be noted that the situation of taxpayers will deteriorate because of the introduction of the provision envisaging that in the case an error relating to the transfer of contributions is made as concerns the budgetary classification code (BCC), such contribution is considered as not paid even in the case it is transferred to the correct fund.

As concerns inspections, the RF PF is granted the right to carry out field inspections, in the course of which it can check not only the accuracy of the calculation of contributions and promptness of payments thereof, but the provision of identifying data[2]. Field inspections should be carried not more often than once in 3 years[3].

A positive development is that there were repealed inadequate penalties for the failure to submit calculations to the RF SIF. From year 2010, the penalties are set in the terms of the percentage of the contributions to be paid, but in the amounts not less than Rb 100 for up to 180 days delay and Rb 1000 after 180 days delay. Therefore, there will be no more payments of Rb 1000 to the RF SIF in the case the delay makes just several days.

Below, there are discussed some changes the payers should expect in year 2011.

Thus, to the quarterly report on the charged and paid insurance contributions there will be added the quarterly identifying report submitted to the RF PF. It should be noted that the in-

[1] In 2010, the marginal size of the base subject to insurance contributions makes Rb 415 thousand (see item 4 of article 8 of Federal law No. 212 FZ of July 24, 2009).

[2] As concerns the identifying data, in 2010 the reporting periods for the provision of such information should be 6 months and a calendar year. Accordingly, the insurers should present the respective data prior to August 1, 2010 and prior to February 1, 2011.

[3] A repeat inspection may be carried out only in the case the payer is liquidated or reorganized.

surers employing on the average more than 50 persons in the preceding calendar year are obliged to submit their reports only in the electronic format and with electronic digital signature.

In 2011, it is planned to increase contribution rates up to 34 per cent with the exception of certain categories of insurers. There will also be increased the rates of fixed payments as concerns self-employed entrepreneurs.

As concerns employers, operating under the general taxation system, the insurance contributions tariffs will be as follows (see *Table 1*):

Table 1

Insurance contributions tariffs, in %

Fund	2010	2011 and beyond
RF PF	20	26
SIF	2.9	2.9
FCMIF	1.1	2.1
TCMIF	2	3
Total:	26	34

The taxpayers, operating under the STS or using the unified tax on imputed income (UTII), since year 2011 should be granted the same status as the taxpayers operating under the general taxation system. Accordingly, the rate of taxation for such payers will make 34 per cent.

In 2011 through 2014, reduced insurance contributions tariffs (see *Table 2*) should be in force only for agricultural producers, payers of the UAT, communities of indigenous peoples, residents of technology development special economic zones, organizations of handicapped persons and the enterprises using labor of handicapped persons.

Table 2

Reduced insurance contributions tariffs, in %

Fund	2011–2012	2013–2014
RF PF	16	21
SIF	1.9	2.4
FCMIF	1.1	1.6
TCMIF	2.1	2.1
Total:	20.2	27.1

Therefore, this category of taxpayers should transfer to the RF PF 16 per cent in 2001 and 2012, and 21 per cent in 2013 and 2014, dividing the contributions into the insurance and funded components: as concerns persons born in 1966 and earlier, the financing of the insurance component makes 16 per cent and 21 per cent respectively for the periods indicated above, and as concerns persons born in 1967 and later, the financing of the insurance component makes 10 per cent and 15 per cent respectively, whereas the financing of the funded component makes 6 per cent (up to year 2014).

Since year 2015, no reduced rates will remain. All insurers will pay contributions at the unified rate of 34 per cent.

1.4. Excise duties[1]

Since January 1, 2010, there entered into force the amendments to article 193 of the RF Tax Code envisaging an increase in excise duties on certain types of excisable goods.

Thus, for instance, the rate of excise duty on ethyl alcohol produced from all types of raw materials (including crude ethyl alcohol produced from all types of raw materials) made Rb 30.5 per one liter of anhydrous ethyl alcohol (earlier this rate made Rb 27.7). On the average, the rates of excise duties on the alcoholic beverages, where alcohol by volume makes up to 9 per cent inclusively, grew by 20 per cent. There were significantly raised rates of excise duties on beer containing volume concentration of alcohol from 0.5 per cent to 8.6 per cent (almost by 3 times). There were also increased the rates of excise duties on tobacco products, cars, motor oils and directly distilled gasoline. In particular, the rates of excise duties on tobacco, cigars and cigarillos grew by 40 per cent. There has been also changed the fixed part of the tax rate on cigarettes and mouthpiece cigarettes.

There was also set a more precise procedure governing the calculation of the amount of the excise duty on alcoholic beverages, where alcohol by volume exceeds 9 per cent.

There was introduced an amendment to item 2 of article 200 of the RF Tax Code, which limited the deduction of the excise duty on the production of alcoholic beverages containing more than 9 per cent of ethyl alcohol: the deduction should be calculated within the amount of the excise duty on ethyl alcohol (notwithstanding what type of raw materials was used to produce strong alcoholic beverages).

According to item 3 of article 204 of the RF Tax Code, the excise duty on the sale (transfer) of produced excisable goods should be paid in equal installments not later than on the 25th day of the first month and not later than on the 15th day of the second month following the tax period to date. Since January 1, 2010, the excise duty should be paid in full not later than on the 25th day of the month following the tax period up to date.

1.5. Personal income tax (PIT)[2]

Since January 1, 2010, taxpayers should have the right to use the property related tax deduction envisaged by sub-item 2 of item 1 of article 220 of the RF Tax Code as concerns the purchase of a residential building (or a share therein) with a plot of land, or a plot of land to be used for the construction of such a building. In this case, the deduction is granted only on the condition the respective individual has the documents confirming that person's title to the plot of land or a share therein, as well as a certificate of ownership of a building (see paragraphs 5 and 23 of sub-item 2 of item 1 of article 220 of the RF Tax Code). It should be noted that prior to the date indicated above, the property related tax deduction could be granted only in the case there were purchased apartments, houses, rooms (and shares therein)[3].

[1] See Federal law No. 282 FZ of November 28, 2009, "On the introduction of amendments to articles 22 and 28 of the second part of the Tax Code of the Russian Federation."

[2] See Federal law No. 202 FZ of July 19, 2009, Federal law No. 281 FZ of November 25, 2009, and Federal law No. 368 FZ of December 27, 2009.

[3] The commentaries presented by the supervisory authorities it has been noted that the list of objects entitled for deduction for purchase (construction) is a closed list, and the expenditures related to the purchase of a plot of land are not included in this list; therefore, in the case of such purchase, there arises no right for deduction. See, for instance, letters by the RF Finance Ministry No. 03-05-01-04/243 of August 8, 2006, by the Admini-

From year 2010, the property related tax deduction should be also used as concerns the expenditures borne in relation to targeted loans (credits) received and spent for the purchase of the plots of land with houses (or shares therein). Since January 1, 2010, the respective amendment to sub-item 2 of item 1 of article 220 of the RF Tax Code has entered into force. In the case the taxpayer has used the targeted loan (credit) for the purposes of new construction or purchase of a plot of land with a house (or a share therein), the amount of the tax related to the repayment of the interest on such loans should not be included in the total amount of the property related tax deduction, which is limited to Rb 2 million, but should be totally refunded (see paragraph 18 of sub-item 2 of item 1 of article 220 of the RF Tax Code).

Paragraph 19 was included in sub-item 2 of item 1 of article 220 of the RF Tax Code. In accordance to this paragraph, the total amount of the property related tax reduction may be used in the case of the interest on bank credits provided for the purposes of refinancing of the loans used for construction of purchase of new residential buildings, apartments, rooms or shares therein, plots of land to be used for the construction of such buildings and plots of land with houses (or shares therein). Prior to January 1, 2010, the expenditures for the development of the design and estimate documentation have been taken into account as concerned the property related tax deductions only if a residential building (share therein) was constructed or purchased, whereas no such right was envisaged as concerned the finishing of purchased apartments (rooms).

The property related tax deduction related to the amounts obtained due to the sale of property (with the exception of residential buildings, apartments, country houses, garden cottages or plots of land and shares in the said property), which had been in ownership of the taxpayer for not less than 3 years, was increased exactly by two times (see sub-item 1 of item 1 of article 220 of the RF Tax Code).

There was expanded the list of incomes exempt from the PIT taxation (article 217 of the RF Tax Code). Thus, in this list there were included the financial aid to the members of families paid in relation to the death of the former employee, who retired. Besides, former employers should withhold no PIT from the financial aid provided to the former employee, who retired, in the case a member of the family of such an employee dies (see paragraph 3 of item 8 of article 217 of the RF Tax Code). Prior to January 1, 2010, the court practice related to such cases more often than not supported the tax authorities as courts ruled that the amounts of financial aid provided to the members of families in relation to the deaths of former employees should be subject to the PIT.

Prior to the introduction of changes concerning the sale of residential premises, country houses, garden cottages and plots of land (shares in the said properties), other properties (with the exception of securities and the property used for business purposes), being in the ownership of the taxpayer for more than 3 years, the individuals being tax residents of the Russian Federation had the right to use the property related tax deduction envisaged in sub-item 1 of item 1 of article 220 of the RF Tax Code as concerned the amount of incomes. From 2010, the said incomes are included in the list of incomes exempt from the PIT (item 17.1 of article 217 and sub-item 1 of item 1 of article 220 of the RF Tax Code); therefore, in this case taxpayers do not have to submit the PIT declaration to the tax authorities[1].

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stration of the Federal Tax Service for the city of Moscow No. 28-10/076950 of August 13, 2008, and No. 28-10/172132 of March 6, 2006.

[1] These changes concern the legal relations arising since January 1, 2009.

Since January of year 2010, individuals have been granted the right to turn to their employees in order to obtain social deductions as concerns agreements on non-state retirement benefits or voluntary pension insurance contracts (item 2 of article 219 of the RF Tax Code). The following conditions should be met:

– it is necessary to present documents confirming the actual expenditures borne by taxpayers in accordance with sub-item 4 of item 1 of article 219 of the RF Tax Code;
– contributions pertaining to such agreement should be withheld by employers and transferred to the respective funds[1].

There are also expected other changes: within this year the RF Ministry of Economic Development and Trade is planning to introduce amendments to article 219 of the RF Tax Code covering social tax deductions. For instance, at present in accordance to item 3 of article 210 of the RF Tax Code as concerns the determination of the size of the tax base taxpayers are entitled to social tax deductions amounting to the incomes transferred by such taxpayers for charity purposes in the form of financial aid provided to the organizations operating in the spheres of science, culture, education, health care and social security, *partially or in full financed from the funds of the respective budgets*, as well as the organizations engaged in physical culture and sports, educational and preschool institutions as concerns the needs related to the physical training of citizens and maintenance of teams, and also in the amount of donations transferred (made) by taxpayers to religious organizations to be used for the purposes of conduct of the activities listed in their charters. The deductions should amount to the actual sums of the respective expenditures; however, the total amount of deductions should not exceed 25 per cent of the amount of incomes gained over the respective tax period.

It is planned to eliminate the connection with the partial or full financing of the said organizations from budgets and additionally include in this provision other incomes subject to the deductions indicated above, i.e.: taxpayers should be entitled to social tax deductions "in the amount of incomes transferred by the taxpayer in the form of financial aid to charity organizations for charity purposes; incomes amounting to donations transferred by the taxpayer in the form of financial aid to noncommercial organizations operating in the sphere of science, culture, physical culture and sports, with the exception of professional sports, education, enlightenment, health care, protection of human and civil rights and liberties, social and legal support and protection of citizens provided on gratuitous and favorable terms, assistance in the protection of citizens against emergencies, protection of the environment and wildlife, as well as in the amount of donations transferred (made) by taxpayers to religious organizations to be used for the purposes of conduct of the activities listed in their charters and to noncommercial organizations for the purposes of formation and replenishment of endowments carried out in accordance with the procedures established by the Federal law "On the procedures governing the formation and utilization of endowments of noncommercial organizations". The deductions should amount to the actual sums of the respective expenditures; however, the total amount of deductions should not exceed 25 per cent of the amount of incomes gained over the respective tax period[2].

[1] This provision concerns the legal relations arising since January 1, 2009. Therefore, the employees being parties of agreements on non-state retirement benefits and (or) voluntary pension insurance contracts, have the right to obtain social deductions from their employers as concerns such expenditures borne in 2009, or submit the PIT declaration and the respective confirming documents to the tax inspections they are registered with.

[2] See http://www.economy.gov.ru/

Turning back to the already adopted amendments, it should be noted that there has been also introduced amendments to a number of other articles; as a result, submitting the PIT declarations to tax authorities after the end of respective tax periods taxpayers are not obliged to supplement such declarations with separate written applications in order to receive:

– standard deductions, which were not granted to taxpayers, or granted in the insufficient amounts (a change in item 4 of article 218 of the RF Tax Code);
– social tax deductions (a change in item 2 of article 219 of the RF Tax Code);
– property related tax deductions (a change in item 2 of article 220 of the RF Tax Code);
– professional tax deductions. However, in order to be granted these deductions by fiscal agents, taxpayers need to submit written applications (item 3 of article 221 of the RF Tax Code).

Besides, in the PIT declarations taxpayers may indicate no incomes exempt from taxation, as well as the incomes, the full amounts of tax on which were withheld by fiscal agents (item 4 of article 229 of the RF Tax Code).

Since January 1, 2010, there has entered into force a new version of article 214.1 of the RF Tax Code, which regulates the specifics of taxation of securities and financial futures (FF) trading. These rules were expanded and presented in more detail. The major development was the introduction of an option to carry losses borne in the course of trading with securities and financial futures traded in the organized securities market forward. The procedure governing the carry forward of losses was set in item 16 of article 214.1 and article 220.1 of the RF Tax Code. In particular, the amounts of losses carried forward to future periods may reduce the tax base only as concerns similar operations. This carry forward is conducted within 10 years following the year the loss was borne. Losses borne over past years reduce the tax base via the granting of tax deductions (see article 220.1 of the RF Tax Code). In order to be granted the respective tax deductions, there should be submitted documents confirming the amount of the loss for the whole period the tax base of the current period was reduced by the amount of losses borne earlier (item 4 of article 220.1 of the RF Tax Code). The deductions are granted on the basis of a written application submitted by the taxpayer together with the tax declaration related to the respective year (item 5 of article 220.1 of the RF Tax Code). The carry forward concerns only the losses borne since year 2010.

1.6. Transport tax[1]

There have been introduced amendments to the procedure governing the determination of the transport tax. In accordance to article 361 of the RF Tax Code currently in force, the rates of the transport tax should be approved by the laws adopted by the RF subjects within the interval envisaged by the RF Tax Code. At the same time, the regional authorities should have the right to increase of reduce the rates set by the RF Tax Code, but by no more than 5 times[2].

[1] See Federal law No. 282 FZ of November 28, 2009, "On the introduction of amendments to articles 22 and 28 of the second part of the Tax Code of the Russian Federation."

[2] In letter of the RF Finance Ministry No. 03-05-06-04/401 of December 3, 2009, it was explained that the amendments introduced to article 361 of the RF Tax Code by Federal law No. 282 FZ of November 28, 2009, did not automatically entail an increase in the tax rates, but expanded the range of options available to RF subjects authorities in the process of making the decisions concerning the determination of transport tax rates. Indeed, the introduced amendments did not change the rates indicated in item 1 of article 361 of the RF Tax

It should be noted that the draft law envisaged an increase in the rates of the tax indicated in item 1 of article 361 of the RF Tax Code; whereas the regions were granted the right to raise the rates by no more than 5 times and reduce the rates by no more than 10 times. However, the RF Federation Council defeated that version of the draft law. The Conciliatory Commission of the RF State Duma and the Federation Council adopted a decision concerning the law "On the introduction of amendments to articles 22 and 28 of the second part of the Tax Code of the Russian Federation": as concerned the transport tax, it was decided to return the previous base rate, whereas the corridor of possible changes in this rate the regions could make was expanded allowing changes by 10 times as concerned both the increase in and reduction of the rates.

In accordance with item 3 of article 361 of the RF Tax Code, the transport tax rate may be differentiated depending on the category and the useful service life of vehicles. Such a basis of differentiation of the rates as the useful service life of vehicles should be excluded. However, since January 1, 2010, the RF subjects should have the right to adopt the laws setting different rates of the tax on vehicles depending on the year of production and emission class thereof.

According to item 4 of article 57 of the RF Tax Code, in the case the calculation of the transport tax base is carried out by the inspection, the obligation to pay this tax should not arise prior to the date the respective notification is received. Basing on the changes introduced to item 3 of article 363 of the RF Tax Code, the inspection may send to the taxpayer notifications concerning the payment of the transport tax only for three tax periods preceding the calendar year, in which such notifications are sent. There was also set the obligation of such individuals to pay the transport tax for no more than three tax periods preceding the year, in which the notifications were sent. It should be noted that as concerns the transport tax the tax period is a calendar year.

1.7. State duty

The amounts of almost all types of state duties have been increased by more than two times (see article 25.3 of the RF Tax Code). The increased tariffs are in force since January 30, 2010[1].

There have been introduced new benefits related to the payment of the state duty. From now on, the state duty should not be paid:

- for the state registration of the right of the permanent (indefinite) use of land plots being in the state or municipal ownership (see sub-item 4.3 of item 3 of article 333.35 of the RF Tax Code);
- for the introduction of changes in the Unified State Register of Rights in Immovable Property and Transactions Involving Such Property in the case the RF legislation is amended (sub-item 4.4. of item 3 of article 333.35 of the RF Tax Code);
- for the introduction of changes in the Unified State Register of Rights in Immovable Property and Transactions Involving Such Property in the case of submission of verified data concerning the items of immovable property (see sub-item 4.5 of item 3 of article 333.35 of the RF Tax Code);

Code; since that time, the regions may use their new right to raise rates within the interval approved by the RF Tax Code.

[1] See item 1 of article 28 of Federal law No. 374 FZ of December 27, 2009.

- for the state registration of the cancellation of the seizure of immovable property (the new version of sub-item 5 of item 3 of article 333.35 of the RF Tax Code);
- for the state registration of the termination of rights in relation to the liquidation of the item of immovable property, renunciation of the right in an item of immovable property, transfer of ownership to a new possessor of rights, transformation (reconstruction) of an item of immovable property (see sub-item 8.1 of item 3 of article 333.35 of the RF Tax Code);
- for the state registration of the cancellation of limitations (encumbrances) related to immovable property (sub-item 8.2 of item 3 of article 333.35 of the RF Tax Code);
- for the attachment of apostil to the documents concerning the registration of the acts of civil status and certificates issued by the archive agencies in answer to requests of individuals residing outside Russia in the case it was required by diplomatic missions and consular offices of the Russian Federation (sub-item 12 of item 3 of article 333.35 of the RF Tax Code).

As concerns foreign citizens and persons without citizenship, the state duty for the issuance, extension of the validity, and renewal of visas may be paid in foreign currency (item 5 of article 333.29 of the RF Tax Code).

The issuance of copies of documents is not recognized as a legally significant act requiring the payment of the state duty (item 1, article 333.16, sub-item 4, item 1, article 333.18 of the RF Tax Code).

1.8. Simplified taxation system (STS) and Unified tax on imputed income (UTII)

One of the conditions of the use of the simplified taxation system is the compliance with the marginal amount of income received as a result of 9 months of the year, in which an organization submits the application to switch to the said special taxation regime. Since January 1, 2010, this cap should make not Rb 15 million, but Rb 45 million (see item 2.1 of article 346.12 of the RF Tax Code). Exactly this amount indicated above needs to be used as the guide as concerns the submission of the applications for switching to the STS after October 1, 2009. This cap should be used until October 1, 20121. Also, there was increased the amount of incomes, exceeding which the taxpayer ceases to be entitled for the use of the STS (from Rb 20 million to Rb 60 million) (see item 4.1 of article 346.13 of the RF Tax Code). This new cap should be used from January 1, 2010, to December 31, 20122. At the same time, since July 22, 2009, and until January 1, 2013, there is suspended paragraph 2 of item 2 of article 346.12 of the RF Tax Code, in accordance to which the marginal amounts of incomes should be multiplied by deflator coefficients.

Since year 2011, organizations and self-employed entrepreneurs operating under the STS should make contributions pertaining to compulsory pension insurance, compulsory insurance in relation to temporary incapacity to work and maternity, compulsory medical insurance, compulsory insurance of industrial injury and occupational diseases.

Since the beginning of 2010, there are in force the changes introduced in the RF Tax Code, which concern the taking into account the said contributions in the course of the calculation of

[1] See item 1 of article 2, item 3 of article 4 of Federal law No. 204 FZ of July 19, 2009.
[2] See item 3 of article 2, item 4 of article 4 of Federal law No. 204 FZ of July 19, 2009.

the unified tax as relates to the use of the STS. In the case the taxpayer uses the STS in relation to the object of taxation "incomes minus expenditures", such a taxpayer should have the right to include the amounts of insurance contributions in the composition of expenditures (sub-item 7 of item 1 of article 346.16 of the RF Tax Code). The taxpayers using the STS in relation to the object of taxation "incomes" may also reduce the amount of the unified tax (advance payments) on both amounts of pension contributions and temporary incapacity to work allowances, and other insurance contributions indicated above. However, the cap on reduction remains the same and makes no more than 5 per cent (see paragraph 2 of item 3 of article 346.21 of the RF Tax Code). These amounts may also be used to reduce the remaining cost of the patent in the case the STS is used on the basis of patents (item 10, article 346.25.1 of the RF Tax Code).

Nevertheless, in 2010 the payers of insurance contributions operating under the STS should have a privilege – they transfer only a contribution to the RF PF and have the right to take this contribution into account as concerns the calculation of the unified tax paid under the STS.

The payers of the UTII should also have the right to reduce the amount of the unified tax (advance payments) by the contributions made for the compulsory pension insurance, compulsory social insurance in relation to temporary incapacity to work and maternity, compulsory medical insurance, compulsory insurance of industrial injury and occupational diseases. The cap on such a reduction remains the same and makes no more than 50 per cent (item 2 of article 346.32 of the RF Tax Code).

2. Certain Changes in the Sphere of Civil Legislation

2.1. Changes in the legislation concerning the activities of limited liability companies[1]

The changes concerning the regulation of the activities carried out by limited liability companies have been introduced in the RF Tax Code and a number of legislative acts.

The major change related to the fact that before January 1, 2010, all limited liability companies needed to bring their foundation documents in accordance with the RF Tax Code and the law on limited liability companies. In other words, it is envisaged that the charters of companies founded prior to July 1, 2009, (i.e. prior to date the Federal law of December 30, 2008, entered into force) should be harmonized with the version of the first part of the RF Tax Code and the Federal law on limited liability companies currently in force before January 1, 2010. The substance of the issue will be discussed below.

Charters and articles of incorporation of the companies created prior to the date the said law entered into force should be used as far as they agree with the said legislative acts. From this provision, it follows that the failure to harmonize charters of limited liability companies with the Federal law of December 30, 2008, should not result in the invalidity of the charters

[1] Federal law No. 312 FZ of December 30, 2008, "On the introduction of amendments to the first part of the Tax Code of the Russian Federation and certain legislative acts of the Russian Federation", Federal law No. 205 FZ of July 19, 2009, "On the introduction of amendments to certain legislative acts of the Russian Federation". The majority of amendments introduced by Federal law No. 312 of December 30, 2008, entered into force on July 1, 2009. Some provisions introduced by Federal law No. 205 of July 19, 2009, entered into force since the date of promulgation (on July 22, 2009), other provisions entered into force after 90 days since the date of its promulgation.

after January 1, 2010. In the case a charter is not reregistered, its provisions not contradicting the new requirements set by the legislation should remain valid[1].

The RF Ministry of Economic Development adheres to the same position as concerns this problem: "the failure to harmonize the charter of a limited liability company with the Federal law of December 30, 2008, should not result in the invalidation of the charter and should not be the basis of the liquidation of the company by a court ruling (item 2 of article 61 of the RF Civil Code) on the condition that the company did not commit other major or repeated violations of normative legislative acts. In the case an authorized governmental authority or a local government turns to a court requesting the liquidation of a limited liability company, the court should be provided with the specific evidence relating to such major or repeated violations of the RF legislation." [2]

So, it does not follow from the provisions of Federal law No. 312 FZ of December 30, 2008, that after the indicated deadline limited liability companies should have no right to continue their activities or introduce necessary changes in their charters. In the case the charter is not harmonized with the said Federal law, it will not result in the withdrawal of the company from the Unified State Register of Legal Entities (USRLE). The registering authorities will carry out registration of changes in limited liability companies' charters for the purpose of harmonization thereof with this law even after January 1, 2010.

At the same time, there has been developed a draft law[3] aimed at the abolition of the requirement concerning the compulsory re-registration of limited liability companies. It was planned that the draft law should envisage that limited liability companies needed to re-register in the case they change their charters without setting any deadlines. Federal law No. 310 FZ of December 17, 2009, abolished this deadline. Now, limited liability companies have the right to harmonize their charters with the current requirements at the moment any changes are introduced in their charters.

As concerns the changes in the civil legislation as such (due to which the companies will have to introduce amendments to their charters in the case they contravene the new provisions[4]), the following developments should be noted:

There were partially changed the terms used in article 4 of the RF Civil Code and the law on limited liability companies. Earlier, as concerned limited liability companies, alongside with the notion of the "share in the authorized capital" there was used the notion of "contributions of

[1] The Federal law of December 30, 2008, sets a cap on the time limited liability companies' charters should be harmonized with the new legislation; however, no penalties for the failure to meet this requirement is envisaged.

[2] See Letter No. D06-2639 of September 11, 2009.

[3] Draft Federal law No. 280513-5 "On the introduction of amendments to article 5 of the Federal law "On the introduction of amendments to the first part of the Civil Code of the Russian Federation and certain legislative acts of the Russian Federation" (as concerns the extension of the time of re-registration of foundation documents of limited liability companies). It is planned that this draft law should be approved in three readings at once. The Chamber of Commerce and Industry, "Opora Rossii", a non-governmental organization of small and medium sized businesses, the State Legal Directorate (SLD), and the RF Ministry of Finance positively assessed this draft law.

[4] First of all, it concerns such new rules as the new procedure governing the alienation of shares in favor of other participants and third parties; the new procedure governing the retirement of participants; the new obligation of the company to keep a register of participants; the new procedure governing the management of the company.

the participants". From now on, in accordance with the amendments made to the said acts, the term "contributions of the participants" was excluded from the provisions concerning the creation of limited liability companies.

A new provision is the exclusion of the articles of incorporation from the composition of the foundation documents of limited liability companies. Thus, according to article 89 of the RF Civil Code, the only foundation document of a limited liability company should be a charter. A similar provision is contained in item 5 of article 11 of the law on limited liability companies. Surely, the exclusion of articles of incorporation from the composition of foundation documents does not mean that the founders should not sign the articles of incorporation (see item 1 of article 89 of the RF Civil Code). It means only that from now on this is not an obligation, but a right of founders of limited liability companies. At present, it is not required any more to indicate the composition of participants, the procedures governing the distribution of profits among the participants, and the procedure governing the retirement from the company.

Earlier, the provisions of the law on limited liability companies concerning the contents of the articles of incorporation envisaged an option to indicate in the articles the responsibility for the violation of the founders' obligation to make their contributions. However, these provisions failed to explain the specific of such a responsibility. Changes introduced in article 16 of the law on limited liability companies set forth that the articles of incorporation may include a clause envisaging the recovery of damages (fine, penalty) for the failure to pay shares in the authorized capital of a limited liability company.

As concerns charters, this provision has also undergone some changes. Thus, from now on the requirement that the charter should contain information on the amount and face value of the shares of each participant of the company is only an option. Earlier, the limited liability company has been required to introduce the respective amendments to its charter and articles of incorporation and consequently into the register (USRLE) each time the amounts of the shares of participants changed; now it is not necessary in the case the limited liability company's carter contains no information on shares.

Besides, the data on the procedure and consequences of the retirement of participants from the company are reflected by the charter only in the case the right to leave the company is envisaged by the charter.

Since July 1, 2009, in accordance with item 3 of article 8 of the law on limited liability companies the founders (participants) of limited liability companies should have the right to make agreements on the exercise of rights of participants of the company; according to such an agreement the participants undertake to exercise their rights in a certain way and (or) abstain from exercise thereof. According to item 3 of article 8 of the law on limited liability companies, the participants thereof should have the right to regulate the exercise of their rights, in particular:

- to determine the voting procedure as concerns the general meetings of the participants of such companies;
- to agree their voting with other participants of companies;
- to agree the terms of the sale of their shares and set the selling prices of shares among the participants of companies.

The list indicated in item 3 of article 8 of the law on limited liability companies is not an exhaustive one, what permits the participants of limited liability companies to independently regulate the exercise of their rights.

There is envisaged a new procedure governing the alienation of shares in favor of other participants or third parties.

From now on, the sale of alienation of shares in favor of third parties is permitted only on the condition that the following requirements set forth by the law and companies' charters are met: participants of companies and companies as such should have the preferential right to purchase shares alienated in favor of third parties. The previous version of article 93 of the RF Civil Code and article 21 of the law on limited liability companies it was indicated that the sale or other transfer of shares (parts of shares) owned by participants was permitted in the case it was not prohibited by the company's charter. The term "transfer" was replaced with the term "alienate".

There were set forth additional requirements concerning the form of transactions aimed at the alienation of shares. Whereas earlier such transactions were made in a simple written form, since July 1, 2009, they should be subject of certification by a notary. Therefore, the failure to comply with this requirement should result in the invalidity of such a transaction. As concerns shares, the moment of transfer of ownership was defined differently: ownership is considered to be transferred to the buyer after the purchase transaction is certified by a notary[1], and not after the company is notified about the fact of transfer.

There were also expanded the provisions of article 22 of the law on limited liability companies concerning the issues of pledge of shares in the authorized capitals of limited liability companies. In particular, the agreements on the pledge of shares in the authorized capitals of limited liability companies or parts thereof are also subject to the certification by a notary[2]. The USRLE record about an encumbrance with a pledge of a share in the authorized capital of a

[1] Notaries are required to check if the person alienating a share has the power to dispose of such shares. Notaries should have the right to request the seller to present the documents pertaining to the purchase of the respective share by the seller, as well as a statement from the USRLE. Notaries' responsibilities also include the submission to the registering authority of an application for the introduction of the respective changes in the state register signed by the participant of a limited liability company alienating the share and supplemented with the documents certifying the grounds of transfer of ownership of a share of a part thereof within three days since the certification of the transaction aimed at the alienation of the share. Alongside with forwarding the documents to the registering authority, notaries are required to send copies of such documents to the company within three days since the certification of the transaction in the case they are vested with such a function. Otherwise, according to the agreement between the parties of the transaction they on their own account notify the company, what, in turn, releases notaries from responsibility for the failure to notify the limited liability company.

[2] In this case, notaries certifying such transactions should also be responsible to submit within three days since the date of the certification of the agreement on the pledge of a share in the authorized capital of a company or a part thereof to the authority carrying out the registration of legal entities an application for the introduction of the respective changes in the USRLE, signed by the participant of a limited liability company making the pledge, indicating the type of the encumbrance (pledge) of a share or a part thereof and the term, for which such an encumbrance exists, or the procedure governing the determination of such a term. Besides, the initial version of the law established that in accordance with paragraph 2 of item 3 of article 22 of the law on limited liability companies the notary should be responsible to forward to the company, a share in the authorized capital of which or a part thereof was pledged, a copy of such an application supplemented with a copy of the pledge agreement concerning this share of a part thereof. Later, Federal law No. 205 FZ of July 19, 2009, introduced an amendment, which excluded the responsibility of notaries to forward to the limited liability companies copies of agreements on pledge of shares or parts thereof (these changes came into force on July 22, 2009). Therefore, at present notaries are responsible only for the notification of the registering authority about the pledge of shares or parts thereof.

limited liability company or a part thereof should be cancelled on the basis of a mutual statement of the person making the pledge and the pledge holder, or the final judgment of a court.

As concerns the retirement of participants from a company, certain amendments were made to the respective provisions too. A participant of a company should have the right to retire only in the case it is envisaged by the charter (see article 26 of the law on limited liability companies). The preceding version of this article stipulated that a participant of a company should have the right to retire at any time not depending on the consent on the part of other participants or the company as such. This right could not be restricted by provisions of the charter. Besides, the new version of the article does not permit the retirement of a participant (participants) from the company in the case it results in the fact than no participants remain in the company.

The amendments (paragraph 2 of item 6.1 of article 23 of the law on limited liability companies) also stipulate that the company should pay the actual value of the share owned by the retiring participant; the respective value should be determined on the basis of the company's financial statements covering the last reporting period preceding the date, on which such a participant submitted the application for the retirement from the company, or, with consent of this participant, to transfer to this participant property in kind of the same value, or, in the case this participant failed to pay the share in the authorized capital of the company in full, to transfer to such a participant the actual value of the paid part of the share. The previous version of the law on limited liability companies the real value of the share should be paid within 6 months since the end of the financial year, in which the participant applied for the retirement from the company. Now, the term of payment makes 3 months since the date the respective responsibility arose (unless otherwise stipulated by the charter).

Article 31.1, which set forth the responsibility of companies to keep a list of their participants, was added to the law on limited liability companies. This provision is similar to the respective requirement to joint stock companies[1]. It should be noted that the list of participants of companies has no such a legal significance as a register of shareholders, an extract from which confirms the right for shares. As concerns extracts from the lists of company's participants may be a document not confirming the rights for shares, since according to item 5 of article 31.1 of the law on limited liability companies in the case the data indicated in the list of participants in the company disagrees with the information contained in the USRLE, the right to own the share is established on the basis of the data provided by the USRLE.

The provisions determining the limited liability companies' management procedures have been also significantly changed.

Prior to the introduction of amendments to article 33 of the law on limited liability companies, the issues pertaining to the transfer of powers from the sole executive body of a company to a commercial organization or a self-employed entrepreneur (hereinafter referred to as the manager), approval of such a manager, and the terms of the contract concluded with such a manager were classified as the reserved matters of the general meeting of participants. However, earlier item 3 of article 91 of the RF Civil Code had not classified the settlement of such issues to the reserved matters of the general meeting of participants. After the amendments had been made to sub-item 2 of item 3 of article 91 of the RF Civil Code and sub-item 4 of item 2 of article 33 of the law on limited liability companies, the differences between the provisions

[1] See article 44 of Federal law No. 208 FZ of December 26, 1995, "On joint stock companies".

were accommodated; now the provisions contain a stipulation, in accordance to which the formation of the executive bodies of companies and early termination of their powers, as well as the taking of decisions on transfer of powers of the sole executive bodies of companies to managers, approval of such managers and terms of contracts concluded with such managers should fall within the terms of reference of the general meetings of participants in the case the settlement of the said issues does not come within the terms of reference of the boards of directors (supervisory councils) of companies.

Sub-item 13 of item 2 of article 33 of the law on limited liability companies was amended; according to the respective changes, alongside with the issues set forth in item 2 of article 33 of the law on limited liability companies, other issues may also come within the terms of reference of the general meetings of participants in the case it is envisaged not only by the law on limited liability companies, but also by charters of companies.

It should be noted that according to paragraph 2 of item 2 of article 33 of the law on limited liability companies, there are listed the issues, which charters of companies can not set within the terms of reference of other managing bodies of limited liability companies, i.e. [1]:

- introduction of changes in charters of companies, including those changing the amount of authorized capitals thereof;
- election and early termination of powers of audit commissions (auditors) of companies;
- approval of annual reports and annual accounting balance sheets;
- adoption of decisions concerning the distribution of net profits earned by companies among their participants;
- adoption of decisions on reorganization or liquidation of companies;
- appointment of liquidation commissions and approval of liquidation balance sheets.

Item 2.1 of article 32 of the law on limited liability companies sets a list of issues the charters may set within the terms of reference of the boards of directors: the issues relating to the formation of executive bodies of companies, early termination of their powers, make major transactions and related party transactions, issues related to the preparation, calling, and holding of general meetings of companies' participants. Charters may also set within the terms of reference of the boards of directors other issues not pertaining to the terms of reference of general meetings of participants of companies or executive bodies of companies.

The previous version of the law on limited liability companies contained an option to set within the terms of reference of the boards of directors (supervisory councils) the issue of formation of executive bodies of companies. At the same time, the formation of executive bodies and early termination of powers thereof was a reserved matter of the general meetings of participants. Besides, item 1 of article 40 of the law on limited liability companies stipulated that the sole executive body of a company (the general director, the president and others) should be elected by the general meeting of participants of the company.

At present, these provisions are amended. According to the amendments, the sole executive body of the company (the general director, the president, and so on) should be elected by the general meeting of participants of the company for a term determined by the charter in the case the charter does not set these issues within the terms of reference of the board of directors (supervisory council). In other words, the election of the company's sole executive body may be

[1] The said changes entered into force on July 22, 2009.

carried out by the board of directors (supervisory council) in the case the carter sets the settlement of this issue within the terms of reference of these bodies.

In a similar way there was settled the issue concerning the formation of collegial executive bodies of companies and early termination of the powers thereof. Thus, according to item 1 of article 41 of the law on limited liability companies the formation of the collegial executive body and early termination of its powers may fall within the terms of reference of the board of directors (supervisory council) of a company.

Article 42 of the law on limited liability companies envisaging the transfer of powers of the sole executive body of a company to a manager was amended. According to the respective amendments, such a transfer does not require any more a direct provision of the charter concerning this issue. Besides, there was determined the person, who should sign the contract with the manager on behalf of the company in the case this issue falls within the terms of reference of the board of directors (supervisory council) of the company. In this case the contract should be signed by the Chairman of the board of directors (supervisory council), or a person authorized to sign such contracts by a decision of the board of directors (supervisory council).

New provisions concerning the appeal against decisions taken by managing bodies of limited liability companies were added to the law on limited liability companies.

In particular, for the contesting of decisions taken by all managing bodies of companies there was set a two months period starting on the date such a decision and the circumstances providing the grounds to hold it invalid came, or should come to the knowledge of a participant in the company. This period should not be extended if expired, with the exception of the cases, where participants failed to submit appeals because of possible violence or threats.

It was also stipulated that the declaration of decisions taken by general meetings of participants of companies, or boards of directors (supervisory councils) with respect to the approval of major transactions and related party transactions invalid, in the case such decisions are appealed against separately from the contesting such transactions, should not result in the holding of the respective transactions invalid.

Besides, there is envisaged a new procedure, which governs the making and contesting of the transactions on the part of companies. The new provisions of the law on limited liability companies concerning related party transactions and major transactions are practically similar to the provisions regulating related party transactions and major transactions relating to joint stock companies.

There were also changed the stipulations concerning the record management and provision of access to the records for participants of companies, as well as the provisions regulating reorganization of limited liability companies.

2.2. Planned changes of the legislation concerning the activities of organizations engaged in the noncommercial sphere

The RF Ministry of Economic Development is preparing massive changes in the sphere of activities of the noncommercial sector. The expert community has taken part in the discussion of the planned changes[1]. First of all, there should be noted the amendments made to the law on charity[1]. It is planned to expand the purposes of charitable work at the expense of:

[1] Lawyers and experts in the sphere of noncommercial activities working with the Commission on charity, beneficence, and volunteering of the RF Public Chamber, the International Center for noncommercial law, the noncommercial partnership “Lawyers for Civil Society”, “Donors’ Forum”, CAF Russia (Charities and Founda-

- social rehabilitation of street children, orphans, and children without parental support;
- provision of gratuitous legal assistance to citizens and noncommercial organizations, and legal education of the population;
- assistance to voluntary activities;
- prevention of socially dangerous forms of behavior of the population;
- assistance to the development of scientific, technological, and artistic creativity of children and young people;
- assistance to the patriotic upbringing, spiritual and moral education of children and young people, as well as support of youth initiatives, projects, children and youth movements and organizations;
- independent activities carried out on the gratuitous basis in the spheres of education, science, culture, arts, enlightenment, personal spiritual advancement, protective treatment and health care, encouragement of health lifestyle, improvement of the moral and psychological state of the citizens, physical culture and mass sports, production and dissimilation of public service advertising.

There will be determined the legal grounds needed for the volunteers to carry out charitable activities. Volunteers carry out charitable activities on the basis of civil law contracts made by them in their own names; the scope of such contracts may be the work carried out for and services provided to the benefit recipients by volunteers on the gratuitous basis. There will be determined the terms of such contracts, introduced the option to receive compensation of expenditures borne in the process of carrying out such activities.

It is planned to significantly expand the law on endowments[2]. It is envisaged that endowments could be formed not only at the expense of financial resources, but immovable property and securities transferred to endowments as donations. It is planned to expand the list of activities presented above, which could be financed from endowments, and include in this list the activities relating to the protection of environment. Changes should be also introduced in other provisions of the law, such as the notion of endowment, the rights of donors, the requirements to noncommercial organizations being the owners of endowments, the reporting of noncommercial organizations being the owners of endowments, the procedures governing the utilization of incomes from endowments and so on[3].

tion, office in Russia), the Institute for the Economy in Transition, and so on took part in this discussion. The RF Ministry of Economic Development presented the results of the work on this issue and a draft document on changes at the 4th All-Russian Conference "Social Partnership and Development of Civil Society Institutions. Experience of Regions and Municipalities", which took place on December 11, 2009.

[1] Draft Federal law "On the introduction of amendments to the Federal law "On charitable work and charity organizations" and the Federal law "On insurance contributions to the Pension Fund of the Russian Federation, the Social Insurance Fund of the Russian Federation, the Federal Compulsory Medical Insurance Fund, and territorial compulsory medical insurance funds" published at the web site of the RF Ministry of Economic Development and Trade http://www.economy.gov.ru/

[2] See draft law No. 306882-5 "On the introduction of amendments to the Federal law "On the procedures governing the formation and utilization of endowments of noncommercial organizations" and the second part of the Tax Code of the Russian Federation" (as concerns the issue of formation and replenishment of endowments of noncommercial organizations) introduced by the RF government to the RF State Duma in December of 2009.

[3] In more detail, see http://www.iet.ru/

Annex 2

Major Trends of Amendments to Legislation Applicable to the Procedure of Tax Abuse Investigations in 2008–2009

During 2008-2009 a number of measures aimed at streamlining the tax administration were taken. Although not all "problematic" provisions of the RF Tax Code and the Administrative Code of Russia were covered by the legislators, there were many changes in relations between the taxpayers and the state.

In particular, in 2009, there came into force on the Federal Law No.293-FZ of December 26, 2008 "On Amendments to some Legislative Acts of the Russian Federation in terms of cancelling the procedural rights of the Russian Federal agencies of internal affairs, involved in tax audits of business entities", as well as the Federal Law No.294-FZ of December 26, 2008 "On protection of rights of legal entities and individual entrepreneurs in the exercising the state control (supervision) and municipal control."

Federal law No. 293-FZ has introduced a number of amendments aimed at limiting the administrative burden on business, namely:

– It deprived law enforcement agencies of the right to conduct independent tax audit (canceled Subitem 35 Art. 11 of the Law "On militia");
– the law obliged enforcement agencies to participate in joint audits carried out at the request of tax authorities and with their participation, solely in the manner prescribed by the tax law (amended in Sub-Item 33 of Art. 11 of the Law "On militia"). This means that the audits carried out with the police, from 2009 is applicable to all restrictions imposed on the frequency, duration and recurrence of tax control measures. Due to this amendment, the functions of law enforcement agencies involved in joint audits are largely limited to ensure safety of tax authorities and ensure their access to the territory of the taxpayer;
– it prohibited the law enforcement agencies, even when there is suspicion that a legal entity has committed an administrative or a criminal offense, to conduct audits of business activities or demand such audit performance, as well as to inspect the premises and vehicles belonging to the organization, to examine its documents, to seize samples of raw materials, products and goods for examination (for this purpose Sub-Item 25 of Art. 11 of the Law "On militia" was removed);
– the Law clarified that police staff should use their rights not for the purpose of "performance their duties, but only "in the process" of implementation thereof" (Article 11 of the Law "On militia"). Thus the legislator has stressed that the actions of the law enforcement officers non-complying with the procedural order, can not be recognized as legal.

These restrictions were largely designed to help to protect businesses during tax audits. However, in practice, those restrictions were not as effective as originally anticipated by the legislators. To the effective restrictions one can attribute primarily prohibition for the law enforcement agencies to conduct independent field audits of the taxpayers. Until 2008 they had the right to carry out the repeated audits for unlimited number of times. Herewith, while the provisions of the Tax Code (Article 89 of the RF Tax Code) clearly indicate that the taxpayer can not be held responsible if the violations are identified by the tax authorities on the basis of

repeated audit, the criminal law does not impose such restrictions. Thus, the violations identified by law enforcement agencies in repeated audit could be used as evidence against the taxpayer.

However, the prohibition to conduct audits (inspections) of organizations as such, including the inspection of premises, vehicles and to seize documents was virtually useless. The fact that law enforcement authorities retained the right to "enter freely into residential and other premises of citizens, to belonging to their land areas, sites and premises occupied by the organizations, and examining them with the aim of prosecution of persons suspected in crimes, or if there is sufficient information for believing that there is a committed or a planned a crime, accident, and also to protect the personal safety of citizens and public safety during natural disasters, catastrophes, accidents, epidemics, epizootics and mass disorders." The condition of the legality of such an access for the law-enforcement authorities is a notification to the Prosecutor, issued within 24 hours (Su-item 18 of Art.. 11 of the Law "On Militia").

In addition, law enforcement agencies were not deprived of a number of "other than procedural" rights under the RF Administrative Code and the RF Code of Criminal Procedure. For example, under the RF Administrative Code and the Code of Criminal Procedure, the law enforcement agencies have the right to:

- seize the items and documents that are the evidence in the case of administrative violation, as well as objects and documents, “discovered in carrying out the inspection of the entity owned territories, premises and the goods, vehicles and other property, as well as the relevant documents" (Article 27.10 of the RF Code of Administrative Offenses);
- seize the goods, vehicles and other items (Article 27.14 of the RF Administrative Code);
- inspect premises (Art. 176 of the RF Administrative Code);
- seize any property items (Article 176 and Art. 183 of the RF Criminal Code), etc.

In both of the above amendments to the Code, symmetrical changes made to the Law "On militia" have not been introduced. Moreover, the possibility of restrictions listed in those acts on militia is not obvious, since all the listed in regard to the RF Code of Administrative Offenses, and particularly those made to the RF Code of Criminal Procedure can be used by law enforcement agencies during the exercising of the powers provided to them under the already quoted by us above Sub-Item 18 of Art. 11 of the Law "On militia".

Therefore, a comprehensive interpretation of the new version of the Law "On militia», provisions of the RF Administrative Code and the RF Code of Criminal Procedure allow us to conclude that:

1. Prohibition of business entities audit is applied only to cases of suspicion of committing "administrative" offense. Herewith, police retains the right to exercise control in respect of organizations suspected of having committed "crimes".

2. It is impossible totally to prohibit law enforcement agencies an access to the organizations, because such a prohibition would impede the performance of their duties. However, the opportunity to conduct field audits of the organization can ultimately bring it to administrative liability. An examination can be motivated by the presence of information about the threat of a crime. If in the course of its conduct a crime will not be revealed, but an administrative offense will be identified, the law enforcement agencies will be able to bring the entity to legal responsibility. The probability of such spontaneous inspection is even higher, since many of the administrative violations and crimes in the economic sphere differ only by the harm to the State, organizations and citizens.

3. The practice of the new edition of the Law "On militia" application in 2009 showed that there was no real decline in the administrative burden on taxpayers. This was directly noted by deputies B.V. Gryzlov, U.V. Vasilyev, E.A.Fedorov, P.V. Krasheninnikov, V.N. Pligin, V.M. Resnick, G.Ya. Chorus, A.M. Makarov, in a memorandum to the draft Federal Law "On Amendments to Part One of the RF Tax Code and some legislative acts of the Russian Federation (on amendments to the terms of criminal prosecution for tax offenses)" No. 224549-5.

4. Limiting law enforcement powers, in practice, did not result in the need to harmonize the operational-search activities undertaken by the authorities of the Ministry of Internal Affairs in respect the taxpayer, with the tax authorities conducting the audit. During 2009, like before, the vast majority of criminal cases brought against the taxpayers were initiated by the police without the participation of tax offices. According to the law firm of "Pepeliaev, Goltsblat and Partners", according to the results of tax audits, i.e., as per result of interaction of the FTS and the Ministry of Internal Affairs of Russia, only 5% of proceedings were initiated, while the remaining 95% of criminal prosecution of taxpayers cases are not related to tax audits[1].

In June 2007, a draft Federal Law "On Amendments to Part One of the RF Tax Code and some legislative acts of Russia was submitted to the State Duma of Russia of the RF Federal Assembly (to modify the terms of criminal prosecution for tax crimes), basing on which the Federal Law No. 383-FZ of December 29, 2009 was adopted.

Relevance of the new act was motivated by its authors as follows:

"legislation regulating tax relations, as well as law enforcement historically have a significant bias towards the criminal suppression, and the threat of criminal prosecution is regarded as perhaps the most effective way of the government "dialogue" with a taxpayer ...";

"complexity of legal structures used by the legislators, cross-references to Articles from various chapters of the Tax Code make the task of establishing the will of the legislator is extremely difficult ..." (and hence complicate the process of proving the guilt of the offender);

"solving the issue of legal responsibility, the state is not interested in more taxpayers to be subject to criminal liability and be imprisoned, but in as many taxpayers as possible to be compliant and fulfill their liabilities conscientiously, and where tax law violation still occurred, the taxpayer should recover the losses to the government... ";

"the state is interested in systematically generating revenue in the form of tax payments from taxpayers, and not in one-time receipt of fines or other sanctions, which often involve the cessation of the taxpayer business."

At the stage of the law discussion it did not meet strong objections neither from the RF Government nor from the RF Supreme Court, which gave the overall approval on the draft law, and as a result, it was accepted with minor amendments.

The purpose of the law adoption was designated as "decriminalization of tax relations and establishment of the legislative level, the legal milestones of the tax system, which were repeatedly designated by country leadership - namely, to stop "tax terror" and to stop " to threaten the business"", etc.[2]

However, it should be immediately mentioned that the law does not imply full decriminalization of tax offenses and does not mean complete renunciation of the practice of bringing to justice the taxpayers. In fact, it implies the change in the terms and conditions of its occurrence.

[1] http://www.vedomosti.ru/newspaper/article/2009/11/20/219356
[2] See Explanatory Note to the draft law http://asozd.duma.gov.ru/

In particular, the new law has introduced the following amendments to the Tax Code, to the Criminal and Procedural Codes:

1. Refinement of the procedure of the information transfer on tax offenses containing elements of the crime, from the tax authorities to law enforcement bodies. To this end, amendments were made to Item 3, Article 32 of the Tax Code. Before the new law adoption, the tax authority was supposed to pass information on all major tax arrears, which are not repaid by the taxpayer within two months from the date of expiry of the deadline for complying with the requirement to pay taxes and fees. This is a 10-days term from the moment of the requirements (Article 69 of the Tax Code).

The new version of Item 3, Article. 32 of the Tax Code is presented in the following wording: "If, within two months from the date of expiry of the execution term of tax (duty) requirement sent to the taxpayer (payer of the duty) as a result of the tax audit, the taxpayer (the payer of the duty) has not redeemed the arrears, the amount of which, as well as the amount of fines and penalties in full implies the criminal breach of legislation on taxes and levies, the tax authorities shall, within 10 days of identifying those circumstances, to send the materials to the bodies of the Internal affairs to make a decision in initiation of criminal proceedings."

A new point in comparison with the current version is the requirement that the arrears should be identified during the audit, whereas previously allowed to inform law enforcement of arrears identified without audit activities. For example, such arrears can arise when the taxpayer has declared, but failed to pay tax on time.

The authors of the law proceeded from the implication that the very fact of large arrears existence (formal indicator of a crime) to pass information to law enforcement agencies is not enough. In their view, in case of detection of large arrears, tax authority should perform tax audit, and only on its results make a decision about the presence or absence of the taxpayer incompliance and therefore evidence of crime in his actions. That is, the tax authorities are supposed to assess the taxpayer's actions on the basis of evidence collected during the tax audit. Unfortunately, their ability to gather evidence is limited, because the tax authorities are not empowered to implement the operational-investigative activity. They practically do not work with the testimony, they do not perform test purchases, not explore the personal correspondence and records of the taxpayer (drafts, records of mobile phones, notebooks, etc.). This means that the conclusions of the tax authority of the presence / absence of direct intent in the actions of the audited entity are likely to be very rough and it is hardly reasonable to neglect tax investigation on the basis thereof.

In general, one should agree with the amendments to Item 3, Article 32 of the Tax Code. However, the question arises of how to deal with those taxpayers who is not available at the site of their residence and not actually carrying out any activities. It is impossible to conduct a full-scale tax audit in regard to this category of persons, but initiation of criminal procedures against their business leaders may be necessary.

Furthermore, the proposed refinement in general does not imply the development of new procedural guarantees for taxpayers. Since the evaluation of presence / absence of the intent in the actions of the taxpayer by the tax authorities can only be very rough, there are still ample opportunities for free discretion on whether to pass the information about the offense to the law enforcement authorities, and hence, for corruption.

2. The amendments proposed in the Art. 108 of the RF Tax Code, in fact repeat the logic of the amendments made by the authors of the law to Items 3, Article 32 of the RF Tax Code. It

is stated in Art. 108 of the RF Tax Code that the reason for holding a person responsible for the violation of legislation on taxes and levies is the fact of the violation established by the tax authority and confirmed by the decision, which came into force.

In this case, however, Art. 101 of the RF Tax Code is supplemented by Item 15.1, according to which the transfer of materials to law enforcement agencies the Head of the tax authority should suspend the initiation of proceedings against physical entity. At the same time the limitation period is suspended in respect of this decision.

One should agree with this amendment, because it allows excluding the dual prosecution of the same person.

3. Item 15.1 of Art. 101 of the RF Tax Code has stipulated the obligation for law enforcement authorities to sent to the tax authorities notifications of the results investigation of materials submitted by the tax authorities no later than the day following the day of decision. Copies of the decision are also sent to the entity or its representative, against whom the relevant decision, with the receipt confirmation.

4. The Law has non-recurrently enlarged the rate of "large" and "very large" amount of tax arrears, which gives grounds for criminal prosecution. If earlier the "threshold", which allowed to distinguish between the criminal offense of administrative offenses was Rb 100 thousand for individual entrepreneurs and Rb 500 thousand - for legal entities (provided that the amount of arrears accumulated over 3 years in a row on all types of taxes, is not less than 10% of the total obligations of the taxpayer), the new law, this amount is increased to Rb 1.8 million and Rb 2 million, respectively.

Since the value of debts, established in Art. 198-199.2 of the RF Criminal Code was not adjusted according to index in the past six years, this step is considered to be feasible. Herewith, the law, unfortunately, does not establish the order of further indexing the "threshold" values. This means that the solution to their gradual decline is temporary, and after 2-3 years due to inflation the issue of unreasonably low threshold of criminal responsibility will once again be relevant. It should be noted that there is a number of ways of regular indexation of the "threshold" values to be estimated by the tax, administrative and criminal legislation. This is the application of a rate-deflator, annually adjusted by the Ministry of Economic Development (applied to the "threshold" values, giving grounds to the simplified taxation system) and the establishment of a "threshold" values in the annually indexed conventional tax units (there is no such practice in Russia until now), and their annual revision in the budget law, and other methods. It seems that simultaneously with a one-time increase in "large" and "very large" amount of arrears there would also be appropriate to establish procedures for its further adjustment for inflation.

5. Article 108 of the Criminal Procedural Code of the Russian Federation has been supplemented by Item 1.1, which indicated that according to the general rule in regard to the entities, suspected or accused of committing crimes, responsibility for which is provided under the Art. 198-199.2 of the RF Criminal Code, a confinement under guard is not applied a preventive measure.

Exceptions are defined in Art. 108 of the RF Criminal Procedural Code, where:

1) the suspect or the accused has no permanent place of residence in the territory of Russia;
2) the suspect is not unidentified;
3) the suspect violated the previously chosen a preventive measure;
4) He escaped from the preliminary investigation or the court.

This amendment is of major importance, since it is the detention is often used by corrupt law enforcement officers for unlawful pressure on employers.

6. Criminal law finally secured the notion of the taxpayers' as "active repentance", for which purpose it was proposed to amend Art. 198-199.1 of the Criminal Code, as well as in the Criminal Procedural Code. The new law has supplemented Art. 198 and 199.1 of the RF Criminal Code with the notes, which stated: "the person who first called to criminal responsibility for crimes under this article shall be exempt from criminal liability if that person or organization, which is called for tax evasion and (or) fees charged with this person, until the end of the preliminary investigation of the case is fully paid the amount of the arrears and penalties, as well as the amount of penalty in the amount determined in accordance with the RF Tax Code."

This change, in our opinion, is essential. It also represents the greatest difficulty as from a practical point of view and from the standpoint of the theory of law.

From the standpoint of the theory of law, criminal liability should occur because of the crime, the main guarantee of the effectiveness of criminal responsibility is its inevitability. Criminal law comes from the fact that the perpetrator should be punished. When it avoids sanctions under the so-called "active repentance" is an exception, largely inconsistent with the general rule.

This shortcoming of the proposed amendments to the Criminal Code is aggravated by the fact that the RF Code of Administrative Offenses, which establishes administrative liability for a tax crime for officials of organizations, generally do not contain any sanctions for tax evasion, breach of duties of a tax agent and concealment of property from taxation. It is responsible for the violation of the term registration with the tax authority, the violation of the deadline for submission of information on opening and closing bank accounts and other procedural violations of tax laws. However, similarly to Art. 122, 123 and 125 of the Tax Code there are no (as well as unique art. 198-199.2 of the Criminal Code) violations in the Code of Administrative Offenses.

This means that the head of the organization, to evade criminal liability for tax evasion or failure to perform duties of a tax agent, no personal liability shall not be at all. This means that the head of the organization who escaped criminal responsibility for tax evasion or failure to comply with tax agent is not criminally liable at all.

From a practical point of view, the possibility of "active repentance" for tax crimes seriously discourages fiscal discipline. When the taxpayer is confident that he will not be held criminally liable in case of detection of large arrears in force of «active repentance", tax evasion is preferable for him. In our opinion, the possibility of involving the tax liability in the absence of risk of criminal or even administrative penalties does not create sufficient incentives for the payment of taxes, since the probability of detection of the arrears was relatively small, and the maximum amount of tax penalties makes only 40% of the amount in arrears

It should be noted that the negative practice of using “active repentance" in Russia is already available. In the form in which the authors of this Article draft propose to enter this legal

act, it has already been used in criminal legislation from 1998[1] to 2003[2], after which the legislators have rejected it.

From 1998 to 2003, Art. 198 of the RF Criminal Code contained a note 2, which indicated that the person who committed a crime under this Article, as well as Art. 194 or 199[3] shall be exempt from liability, provided that it "helped to solve the crime and fully repair the damage caused. It applies both to "tax" and to "customs" of crimes.

Other Articles of the RF Criminal Code describe under the "contribution to the exposure" crime a voluntary cessation of a continuing offense and active promotion of the investigation in its disclosure. However, given that in the Art. 198 the notion of "contribution to the exposure" crimes are not revealed, it allows exemption from criminal responsibility not only to individuals who voluntarily declared that they have committed tax crimes, but also those whose tax crimes were uncovered in the course of a field tax audit.

In practice, application of this provision has led to the fact that only those taxpayers who could not repay the arrears, additionally accrued as a result of verification of tax payments. Thus, at the expense of "active repentance", criminal liability under tax Articles of the RF Criminal Code was used not only for the actual punishment of the taxpayer, but to collect tax debts. i.e., essentially played the role of the Institute of Tax Administration. The practice of this rule application has shown that it stimulates serious tax crimes, since the risk of punishment for these acts is minimal.

The negative impact of this rule on the conduct of the taxpayer is exacerbated by the fact that it could be applied as a relapse. While the Article included a disclaimer that it applies only to the entities who "committed a tax crime for the first time", in fact it could be used an unlimited number of times, as a matter of law, a person who has no criminal record, is considered to be the first prosecuted.

This lack of 'old' practice of "active repentance" is fully repeated in the new law, adopted in late 2009. It uses the wording that copies the entire logic of the RF Criminal Code of 1998: "The entity, who first called to criminal responsibility for crimes covered by this Article, as well as Art. 199.1 of this Code, shall be exempt from criminal liability, if it is to the end of the preliminary investigation of the case has fully paid the amount in arrears and the corresponding penalties, as well as the amount of penalty in the amount determined in accordance with the RF Tax Code."

However, despite all the shortcomings of the Institute of "active repentance", the amendments made to the RF Code and the Code and RF Criminal Procedure, have one significant advantage - they bring criminal law into line with the logic of tax law.

The RF Tax Code has actually recognized the possibility of "actual repentance" from 2006. If before 2006, Item 3, Article 32 of the RF Tax Code required the tax authority to report to law enforcement agencies of all identified major arrears, whether paid or not, after the amend-

[1] Art. 199 "Evasion from taxes or insurance premiums to the state budget and Non-Governmental Funds" and Art. 194 of the Criminal Code "Evasion from Customs Duties" (in the version of Federal Act No.92-FZ of June 25, 1998).

[2] Art. 199 "Evasion from taxes or insurance premiums to the state budget and Non-Governmental Funds" (in the version of Federal Act No.162-FZ of December 8, 2003).

[3] Art. 199 "Evasion from taxes or insurance premiums to the state budget and Non-Governmental Funds" and Art. 194 of the Criminal Code "Evasion from Customs Duties" (in the version of Federal Act No.92-FZ of June 25, 1998).

ments made by the Federal law No. 137-FZ of July 27, 2006, the tax authorities are required to report only on the major outstanding arrears.

The possibility of non-disclosure to law enforcement agencies the information about major redeemed arrears created conditions for a taxpayer to avoid criminal responsibility by itself, regardless of how it was formulated in criminal legal provisions.

Given the above, one can make the following *conclusions.*

The idea of decriminalization of tax crimes is in itself worth of serious attention. In the circumstances where the results of tax audits revealed large arrears of more than 90% of the taxpayers[1], criminal liability can not be total. This means that the principle of inevitability of criminal liability in respect of tax crimes under the existing system of sanctions involving the deprivation of liberty can not be realized in practice.

Analysis of the practice of the "tax" Articles of the RF Criminal Code indicates that the main type of sanctions applied by the courts in relation to the entities who have committed tax crimes are fines and conditional sentences. That is, the only practical difference between the criminal liability from the administration responsibility in most cases is the fact of conviction, rather than the nature of the sanctions applied to it[2]. This situation, no doubt, reveals the relevance of the reform in terms of criminal responsibility for tax evasion.

Unfortunately, the attempt to "decriminalize" tax crimes, undertaken by the authors of the new law is not consistent and contains a number of "old" legal errors that previously led to the abandonment of the use "of repentance" of the taxpayer.

In our opinion, there are two options to address the issue related to the reform of the system of liability for tax crimes.

The first option is based on the finalization of the adopted law and preservation of "active repentance" of the taxpayer set forth by the new law. As shown above, the new law has many advantages, because it improves the existing legislation by bringing into line the rules of the RF Criminal Code and the RF Tax Code. Previously, Item 3, Article. 32 of the RF Tax Code, was in contrast to the logic of the RF Criminal Code, based on the principle of inevitability of punishment.

Also, major improvements are the waiver of detention of persons suspected of committing tax offenses, custody and detailed procedural order of execution of decisions about their involvement in tax liability.

At the same time maintaining a principle approach to the issue of "decriminalization" of tax evasion can make any number of a technical amendments.

In particular, it is reasonable to:

- establish a system of annual indexation of "large" and "very large" amount of tax arrears. For this purpose, one can be use, for example, an index-deflator, used to index the "threshold" values of the transition to special tax regimes;
- make symmetrical changes to the Art. 194 of the RF Criminal Code, establishing responsibility for "evasion of customs duties levied on an organization or individual" It should be noted that the RF Customs Code includes in the customs duties VAT and excise duties

[1] See official data on the results of tax audits http://www.nalog.ru/index.php?topic=nal_statistik

[2] For details, see: A.Zolotareva,A. Kireev, N.Kornienko - Tax Administration. The main outcomes of the reform, Ed. S.G. Sinelnikova-Muryleva and I.V. Trunina. In 3 vols. Institute for Economy in Transition. Moscow: IET, 2008.

paid by importers. Therefore, in the current situation, a taxpayer who has paid arrears on VAT and excise tax not related with the import of goods should be exempted from criminal responsibility, and the taxpayer-importer in a similar situation should be sentenced under Art. 194 of the Criminal Code. It looks illogical;

- establish administrative penalties for officials of organizations which are exempt from criminal liability in connection with the repayment of arrears, penalties and fines

Replacement of criminal responsibility for the administrative tax evasion charges would make it possible to apply at least the material sanctions (without incurring a criminal record) in relation to persons convicted of tax evasion.

At the same time bringing those guilty in tax evasion to administrative charges will make law enforcement authorities free from proving the direct intent to commit a violation, because the RF Administrative Code requires no form of guilt. The difficulty of establishing direct intent to commit tax crime is the main argument in favor of moving the offence to the category of administrative offenses.

However, this option has several disadvantages. Thus, the replacement of the prosecution of tax evaders, the administrative penalty may, as "active repentance", discourage fiscal discipline.

In addition, the denial of criminal responsibility for tax crimes is contrary to international practice.

Another most appropriate option, in our opinion, is to abandon the practice of "active repentance" as such. Accordingly, the amendments made by the new law to the Criminal Code and the Code of Criminal Procedure of the introduction of "active repentance" of the taxpayer should be abandoned. Instead, in order to humanize the criminal penalties for tax crimes should be replaced with all kinds of sanctions set forth in Art. 198-199.2 of the Criminal Code, fines.

Such a solution to the question has several advantages, including:

- criminal responsibility for "tax evasion / avoidance of responsibilities tax agent / concealment of property from taxation" will be maintained The actual replacement of those offenses by the "evasion of payment of debts" does not occur;
- responsibility for tax crimes would be consistent with the principle of inevitability of criminal punishment for their crimes, as the possibility of release will be excluded;
- sanctions system based on fines, will sharply limit the pressure on the business on the part of law enforcement and judicial corruption (currently there is too much discretion in the courts on the issue of what sanctions should be applied if the person is guilty of tax evasion, penalties range from minor fines to six years' imprisonment);
- the use of penalties not involving deprivation of liberty, is fully consistent with the policy to humanize the criminal prosecution system, as well as "unloading" of prisons.

Virtually the only drawback of this option is a low probability of its political implementation. Since the legislators chose the "active repentance" of the taxpayer, it is unlikely in the near future they will change this approach to the opposite.