

Concepts and Technical Specifications Pertaining to Elaboration of Draft Federal Laws Discussed by the RF Government at its Meeting of February 26, 2004

E. Bolshakova (Institute for the Economy in Transaction)

At the meeting of the RF Government held on February 26, 2004, there were discussed concepts and technical specifications pertaining to elaboration of draft federal laws with respect to such issues as amendments to certain chapters of the RF Tax Code relating to improvement of taxation of small businesses, draft federal law "On special economic zones in the Russian Federation," the concept and technical specifications pertaining to elaboration of the draft federal law "On amendments to the federal law "On audit" and some other draft federal laws.

Most interesting are the concept and draft technical specifications pertaining to elaboration of the draft federal law "On amendment of chapters 26.2 and 26.3 of the RF Tax Code as concerns the improvement of taxation of small businesses," as well as the concept and draft technical specifications pertaining to elaboration of the draft law "On special economic zones in the Russian Federation."

The elaboration of the draft federal law "On amendment of chapters 26.2 and 26.3 of the RF Tax Code as concerns the improvement of taxation of small businesses" was caused by the necessity to take measures aimed at simplification of the system of registration of the objects of taxation and settlement of a number of problems not regulated by the tax legislation currently in force.

In order to enhance the efficiency of application of the simplified system of taxation, it is proposed to more clearly define provisions of chapter 26.2 of the RF Tax Code:

! Introduce the provision allowing to make annual changes (increase) the level of taxpayers' earnings (in the situation of growing GDP and consumer prices of goods, works, and services) making them eligible for simplified system of taxation;

! More clearly define the eligibility requirements pertaining to the simplified system with respect to individual categories of taxpayers;

! Grant taxpayers the right to change the chosen object of taxation as concerns the taxpayers, who have switched to the simplified system since January 1, 2003, choosing earnings as the object of taxation (in relation to amendment of article 346¹⁶ making it possible to include the cost of goods purchased for resale in the composition of expenditures (diminished by the amount of VAT on purchased goods, works, services);

! More clearly define the mechanism of determination of the tax base in the process of switching from the general tax treatment to the simplified system of taxation and from the simplified system of taxation to the general tax treatment;

! More clearly define the procedures governing VAT taxation in the simplified taxation system, the procedure governing offset of input VAT;

! More clearly define the composition of earnings pertaining to entrepreneurial activities taken by individual entrepreneurs into account in the course of determination of the objects of taxation.

In order to settle the issues not regulated by the current version of chapter 26³ of the Code, it is proposed to make the following amendments.

Provisions of chapter 26³ of the Code stipulate that the system of taxation in the form of the single tax on imputed earnings with respect to certain activities may be applied, for instance, as concerns such type of entrepreneurial activity as public catering on premises less than 150 square meters. At the same time, there develops public catering carried out via organizations having no special premises for servicing clients. In this connection, it is proposed to introduce necessary amend-

ments to in chapter 26³ of the Code, which determine the physical indicator and base profitability of public catering carried out via organizations having no special premises for servicing clients. Besides, it is proposed to more clearly define mechanisms permitting to ensure separate registration of property, obligations, and economic operations of taxpayers, who, alongside with activities subject to single tax on imputed earnings are engaged in other types of entrepreneurial activities, as well as more clearly define the procedure of calculation of the adjustment coefficient of base profitability K_1 and the procedure of changing of the adjustment coefficient of base profitability K_2 .

It is also envisaged to more clearly define certain provisions concerning the terms used for purposes of chapter 26³ of the Code.

From our point of view, the introduction of indexation of the level of taxpayers' earnings in the situation of growing GDP and consumer prices of goods, works, and services is not dangerous, however, granting of the right to change the chosen object of taxation to individual categories of taxpayers is not always desirable.

We believe that any change concerning objects of taxation should be limited, since this right provides possibilities for manipulations and abuses, for instance, for medium sized enterprises. However, taking into account changing circumstances (adoption of the provision permitting to include the cost of goods purchased for resale in the composition of expenditures) the persons indicated in the law should be granted the right to make such a choice once in a strictly limited period of time.

No doubt, that it was necessary to take the step to more clear definition of the mechanism of determination of the tax base in the process of switching from the general tax treatment to the simplified system of taxation and from the simplified system of taxation to the general tax treatment. Besides, we find it necessary to more clearly define the procedure of calculation of the adjustment coefficient of base profitability K_1 and the procedure of changing of the adjustment coefficient of base profitability K_2 .

Besides, at the meeting of the RF Government there was discussed the concept and draft technical specifications pertaining to elaboration of the draft law **"On special economic zones in the Russian Federation."**

The basic concept of the draft federal law "On special economic zones in the Russian Federation" is to create favorable conditions for development

of the economic and scientific potential of the country, attraction of investment in the national economy via creation and functioning of special economic zones (hereinafter referred as SEZ).

The law defines special economic zones as a part of the RF territory, where in accordance with the federal law "On special economic zones in the Russian Federation" and other legislative acts of the RF there is established a special regime for carrying out of entrepreneurial and investment activities, and where there is introduced the regime of a free customs zone.

The draft federal law envisages creation of two types of SEZ:

- ! industrial and manufacturing zones;
- ! technological zones (intended for introduction of new technologies).

As concerns the **creation** of SEZ, there should be observed the principle of limited territory. At the same time, SEZ territories should not coincide with territories of administrative and territorial entities. However, SEZ territory may overlap territories of several such entities, including territories of two and more RF subjects.

Decisions on creation of SEZ should be taken by the RF Government taking into account such factors as the needs of the national economy concerning respective products, organization and development of production of the given type, sufficient resource potential of the respective territory, the degree of urbanization of the territory allocated for SEZ, etc. The decision on creation of SEZ should be made in the form of a resolution of the RF Government simultaneously with the approval of the agreement on creation of SEZ made between the RF government, the executive authorities of the RF subject, and local governments of municipal entities.

The agreement on creation of SEZ made between the RF government, the executive authorities of the RF subject, and local governments of municipal entities on the territory of which it is planned to create the SEZ should determine sources of financing for creation of the respective infrastructure indicating shares of different budgets, the package of measures aimed to ensure development and adequate material and technical equipment of SEZ, obligations of federal, regional, and municipal authorities pertaining to their participation in establishment of the regime of carrying out entrepreneurial and investment activities on the territory of SEZ, rights and obligations of the parties engaged in the SEZ functioning.

By the time the RF Government takes the decision to create a SEZ in the territory of a RF subject, there should be no objects (with the exception of objects in the state and / or municipal ownership) owned by legal entities and individuals on the territory allocated for creation of SEZ.

The RF Government and the RF subject, on the territory of which the SEZ is created, should have the right to initiate the creation of SEZ. The RF subject should submit an application to the RF Government, which should organize tenders in the case there are several applications requesting creation of SEZ of the same type.

In the case private investment is attracted to create SEZ infrastructure, the private investor should be a party in the said agreement. In this case, the agreement should indicate the terms and forms of the distribution of earnings derived from the use of the SEZ infrastructure aimed to compensate the private investor for capital expenditures and ensure that such an investor derives profits.

The decision to terminate SEZ should be taken by the RF Government in the form of a resolution of the RF Government.

The general management of SEZ situated in the RF territory should be vested with a federal executive authority specifically authorized to elaborate and implement the unified state policy in the sphere of creation and functioning of SEZ.

SEZ Directorate, should be a territorial body managing SEZ and in the majority of cases acting as the joint representative of the state and municipal entities as concerns the relations with SEZ residents pertaining to carrying out of activities in the SEZ territory.

SEZ Directorate should register legal entities as SEZ residents, in certain cases annul registration of legal entities as SEZ residents, keep the register of SEZ residents, issue certificates of SEZ residents, manage the land plot, where the SEZ is located, perform other functions.

Special regime of activities on the SEZ territory should be applied to Russian and foreign legal entities properly registered as SEZ residents.

Residents of SEZ should be the legal entities registered in the SEZ territory and having an investment agreement with the SEZ Directorate. The legal entity should be granted the status of SEZ resident since the day the SEZ Directorate enters the registration in the special register and issues the certificate of SEZ residency. The status of SEZ resident should lose this status only basing on a court ruling.

Residents of SEZ should have the rights and bear obligations necessary only for carrying out entrepreneurial and / or investment activities in the SEZ territory in accordance with the purposes and objectives of the SEZ. SEZ residents should have no right to be a founder (participant) of organizations, including SEZ residents; participate in the managing bodies of organizations, including SEZ residents; maintain separate units outside the SEZ territory. Besides, residents of technological zones should have no right for grants, subsidies, and subventions from the federal budget.

Amount of capital investments (with the exception of intangible assets) envisaged by the investment project intended for implementation in the territory of an industrial zone should exceed the Ruble denominated amount equal to Euro 10 million calculated in accordance with the exchange rate set by the CB RF on the date of agreement on such a project.

The draft law envisages **stabilization clauses** to the effect that it should be prohibited to apply any regulatory and legal acts of the Russian Federation deteriorating the legal and /or economic situation of SEZ residents in comparison with their situation before the adoption of such laws and other regulatory and legal acts for a 10 year term. However, the regulatory and legal acts of the RF adopted for protection of the Constitutional system, morals, health, rights and lawful interests of other persons, national defense, and state security should be applicable.

In order to create incentives for investment activity of SEZ residents, the draft law envisages specifics of tax treatment of SEZ residents, administrative regime, use of land, sets the regime of free customs zone.

Administrative regime in SEZ territory

The special administrative regime established in the SEZ territory envisages that:

- ! State control authorities should have the right to inspect SEZ residents only in the course of complex inspections and in compliance with the federal law "On protection of rights of legal entities and individual entrepreneurs in the course of state control (supervision)" with the exception of customs and tax control carried out by officers of the customs and tax authorities of the RF;
- ! Complex inspections should be performed not less frequently than once in three years over the period not exceeding two weeks on the ini-

tiative of the SEZ Directorate by the control authorities supervising the activities of SEZ residents;

In the case in the course of complex inspections performed by officers of state control authorities there are revealed violations of the RF legislation currently in force and mandatory requirements to SEZ residents set in the SEZ territory, the violator should be subjected to the special inspection performed with the purpose to control the compliance with the order to eliminate the revealed violations. In the case it is established that the SEZ resident failed to comply with the order to eliminate the revealed violations within next two months, as revealed in the course of the special inspection, the SEZ Directorate should annul registration of such a SEZ resident.

Tax treatment of SEZ residents

The special tax treatment of SEZ residents should be introduced by RF subjects and local governments within their terms of reference. The laws of RF subjects and regulatory and legal acts of local authorities may exempt SEZ residents from the tax on property of organizations, land tax, and the profit tax as concerns the share of the tax assigned to the regional and local budgets. Organizations not granted the status of SEZ resident, but carrying out their activities in SEZ territory should pay taxes and fees in the framework of the general treatment set forth by the RF legislation on taxes and fees.

Customs treatment

The customs regime introduced in the SEZ territory (free customs zone) should be established at the moment the RF Government takes its decision on creation of the SEZ.

Free customs zone is a customs regime introduced in the SEZ territory envisaging that imported equipment and materials necessary for implementation of the investment project are located and used within the respective territorial boundaries or premises (localities) without payment of customs duties, taxes, and bans and restrictions set in accordance with the RF legislation concerning state regulation of external economic activities, while domestic goods are located and used on conditions applicable to exports under procedures determined by the RF customs legislation.

The customs regime of free customs zone can not be applied to certain types of goods, for instance, imported to the SEZ territory but not necessary for the implementation of investment projects on the part of SEZ residents, goods imported to the SEZ territory

by persons not granted the status of SEZ residents, which are used by production or other economic activities by persons not being SEZ residents, etc.

Imports to the SEZ territory and exports from the SEZ territory should be within the competence of RF customs authorities and may be permitted only on condition of compliance with the respective customs regime and terms set forth by this federal law and other RF legal acts. RF customs authorities should have the right at any time inspect goods located in the special economic zone guiding by the procedures of the respective customs regime.

Regime of land use in the SEZ territory

Land plots within the SEZ territory should be leased to SEZ residents by the SEZ Directorate basing on its authority to manage the land transferred to the SEZ Directorate in accordance with the agreement concluded in the course of creation of SEZ between the RF Government, the authorities of the respective RF subject, and respective local authorities.

In the case the SEZ resident loses the respective status in accordance with the procedures set forth by the investment agreement within a certain period (less than the period of SEZ functioning), it should result in the termination of the respective lease agreement and forced withdrawal of immovable property located on such a land plot by selling the said property via public auction. Other SEZ residents and the persons indicating their intent to become SEZ residents should have the right to participate in such an auction.

In order to implement the provisions of the draft law, it would be necessary to amend the RF Tax Code and the RF Civil Code, to work out and adopt a number of bylaws, which are intended to concretize individual stipulations of the draft law concerning the process of creation and functioning of special economic zones.

According to the RF Government, creation of a network of special economic zones in a number of regions will accelerate Russia's integration in the world economy and will allow to redistribute world flows of goods and capitals in the interests of the Russian Federation. The functioning of SEZ will allow to moderate the negative impact of such factors as the lack of confidence in the authorities and decisions taken by the authorities, insufficient development of business infrastructure, high level of administrative and bureaucratic burden on business on the business and investment activity in the Russian Federation. □