

Russia

Significant Changes to Promote Secured Real Estate Lending

State duties cut

Federal Law No. 104-FZ "On Amendments to Article 4 of the Russian Federation Law 'On State Duties'", dated August 20, 2004 (the "Federal Law"), comes into force on September 26, 2004. It will significantly reduce the transactional costs associated with secured real estate lending and its effect will be to promote the use of mortgage financing.

The changes made under the Federal Law to Article 4 of Russian Law No. 2005-1 "On State Duties" provide for a substantial cut in the notarial fees for certifying mortgage contracts, i.e. pledge agreements for real estate or rights to it. The single rate previously in effect – 1.5% of the value of the mortgaged property – has been significantly lowered and now stands (depending on the subject matter of the mortgage contract being notarized) at:

- ! a fixed RUR 200 (approx. USD 7) in the case of mortgage contracts for residential premises pledged to secure the repayment of a loan or credit facility obtained to buy or build a home – whether a cottage or an apartment; or
- ! 0.3% of the value of the mortgaged property, but no more than RUR 3,000 (approx. USD 100) in the case of mortgage contracts for any other real estate.

The Federal Law has also deleted provisions which previously fixed state duties for the state registration of mortgage contracts, for the issue of related documents, and for the provision of an extract from the unified state register of rights to and transactions with real estate to confirm the state registration of a mortgage contract. (The deleted provisions were contained in paragraphs 4 and 5 of Article 4 of the Russian Law No. 2005-1 "On State Duties".)

All mortgage contracts must be notarized and then state-registered in order to come into force. With the Federal Law taking effect, the maximum fee charged for the notarial certification and state registration of a mortgage contract, regardless of the value of the property involved, will not exceed RUR 3,000 (approx. USD 100). Previously, the aggregate amount of such charges would for example have added up to almost USD 150,000 where an office building worth USD 10 million was being mortgaged.

The Federal Law was one of a package of eight laws approved by the Federation Council last August

which are intended to promote an affordable housing market. These also include a number of amendments to the Tax Code. Most significant among the latter for the emerging land market are amendments introduced to article 146 of the Tax Code providing that from January 1, 2005 sales of land plots on the secondary market will no longer be subject to VAT. In a welcome spin-off, the measures in question, including those already enacted (among them the Federal Law) and others still in the pipeline, should have a positive effect not only on the residential market but also on the commercial market and on the availability and affordability of mortgage crediting in general.

Baker & McKenzie

General Legislation

Order No. 217 of the RF Ministry of Economic Development, On the Procedure in Bankruptcy Cases and Bankruptcy Proceedings for the Authorized Body to Defer Submission of the Petition to Declare a Debtor Bankrupt to the Arbitration Court, dated 2 August 2004 (Ministry of Justice Registration No. 6020 of 13 September 2004)

[Note: The procedure determines the conditions under which the authorized body in bankruptcy cases and bankruptcy proceedings can decide to defer for a period of up to two months the deadline for submitting a petition to declare a debtor bankrupt to the arbitration court].

Tax Legislation

Federal Law No.124-FZ, On the Introduction of an Amendment to Article 277 of Part Two of the RF Tax Code, signed 4 October 2004, effective: from 6 November 2004

[Note: The title of article 277 of chapter 25 of part two of the Tax Code has been changed to: "Specifics of Determination of the Tax Base for Income Received from the Transfer of Property to the Charter (Joint) Capital (Fund, Property of the Fund) of an Organization". The law will apply to legal relations arising from 1 January 2003].

Resolution of the RF Government, On the List of Property Allocated to Public Railroads, Federal Public Highways, Major Pipelines, Electricity Lines,

and Equipment that is an Integral Technical Component of These Objects, in Relation to Which Organizations are Exempt from Corporate Property Tax, dated 30 September 2004

[Note: *The list of property allocated to public railroads, federal public highways, mainline pipelines, electricity lines, and equipment that is an integral technical component of these objects in relation to which organizations are exempt from corporate property tax has been approved.*]

Resolution No. 530 of the RF Government, On the Approval of the Regulations on the Federal Tax Service, dated 30 September 2004

[Note: *The Regulations approve the functions, authority and rights of the Federal Tax Service (RF FTS): control over compliance with tax and currency legislation (within the limits of the authority of the RF FTS) and the accuracy of the calculation and payment of taxes; state registration of legal entities and individual entrepreneurs; informing taxpayers on effective taxes and duties, legislation on taxes and duties, and the regulatory legal acts adopted in accordance therewith; refunds and offsets of excess amounts of taxes, duties, penalties and fines paid (collected); decisions on changing the deadlines for payment of taxes; application of the measures stipulated by Russian legislation against legal entities or individuals in the event of violation of such legislation; and other issues.*]

Letter No. 07-02-14/160 of the RF Ministry of Finance, On the Liability of Taxpayers for Overstatement of the Tax Base, dated 1 July 2004

[Note: *An explanation of the procedure for applying point 1 of article 120 of the RF Tax Code to taxpayers that have committed gross violations of the rules for accounting for income (expenses) and taxable items. In particular, taxpayers may be held liable for overstating the tax base if the tax service discovers the improper presentation in accounting and financial statements of business operations, monetary funds, tangible assets, intangible assets and financial investments of a taxpayer. Accordingly, the fact that a taxpayer has overpaid taxes cannot serve as grounds for exemption from the liability stipulated by the RF Tax Code.*]

Letter No. 07-05-14/199 of the RF Ministry of Finance, Accrual of Amortization of Intangible Assets, dated 29 July 2004

[Note: *Amortization charged on an intangible asset in the form of an exclusive right to an organization's trademark cannot be included in expenses for profits tax purposes if the trademark is not used in the production or sale of goods (work, services).*]

Letter No. 23-10/1/56741 of the Moscow Department of the RF Ministry of Taxes and Duties, On the Procedure for Paying Corporate Property Tax, dated 2.09.04

[Note: *The following are not included in real estate items for which the tax base is calculated separately and corporate property tax is paid: items accounted for as separate inventory items; fixed assets that do not require assembly, may be used separately to the real estate item, may be disassembled without rendering them irreparably unsuitable for their intended purpose and/or the functional purpose of which is not an integral part of the functioning of the real estate item as a single separate complex (computers, tables, vehicles, video surveillance equipment, etc.).*]

Letter No. 03-1-08/819/16 of the RF Ministry of Taxes and Duties, On the Procedure for Determining the VAT Tax Base, dated 24 March 2004

[Note: *When determining the tax base for the purpose of calculating the amount of VAT on construction and assembly work completed for internal needs, the fees for contracting work charged to the client by contracting organizations are not taken into account.*]

Letter No. 03-02-05/5/9 of the RF Ministry of Finance, On the Accounting for Expenses when Selling an Equity Share in the Charter Capital of a Limited-Liability Company, dated 17 June 2004

[Note: *When a participant in a limited-liability company (LLC) sells its share in the LLC's pooled capital to third parties, only expenses associated with the performance of the transaction (expenses for registration of documents, etc.) are deductible for profits tax purposes.*]

Currency Legislation

Information Letter No. 29 of the Bank of Russia, Issues Regarding the Application of Bank of Russia Instructions No. 113-I of 28 April 2004 "On the Procedure for Opening, Closing and Organizing the Work of Currency Exchange Offices and the Procedure for Authorized Banks to Perform Certain Types of Banking Operations and Other Transactions with Foreign Currency and Russian Roubles, Cheques (Including Traveler's Cheques) the Nominal Value of Which is Denominated in a Foreign Currency, with the Participation of Individuals", dated 31 August 2004

[Note: *An explanation of the procedure for currency control over transfers of foreign currency out of the Russian Federation by resident individuals from their accounts held with authorized banks; the procedure for a resident individual to*

transfer foreign currency or Russian roubles out of the Russian Federation without opening a bank account; as well as other issues].

Customs Legislation

Resolution No. 478 of the RF Government, On the Approval of the Rate of Export Customs Duty on Crude Oil and Primary Oil Products Obtained from Bituminous Rock, Exported from the Russian Federation outside the Member-States of the Customs Union, dated 14 September 2004

[Note: A new rate for the export customs duty on oil and oil products exported from the Russian Fe-

deration outside the member states of the Customs Union has been approved from 1 October 2004 in the amount of USD 87.90 per tonne].

Resolution No. 450 of the RF Government, On the Approval of the Rates of Export Customs Duties on Goods to be Exported from the Russian Federation outside the Member States of the Customs Union, dated 3 September 2004

[Note: Establishes the list of specific types of goods (seafood, ores, timber, etc.) that can be exported duty-free from the Russian Federation. The Resolution shall enter into force one month after the date of its official publication].

KPMG