Automotive News

July 2019 года

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Government support initiatives
Government support initiatives

**SPIC 2.0 package passes first reading**

The bills propose:

- supplementing Federal Law No. 488-FZ of 31 December 2014 "On Russian Industrial Policy" with a separate chapter regulating the scope, parties, content of SPICs and the procedures for executing, amending and terminating them, as well as liability for non-compliance.

- setting forth that SPICs are signed to develop and/or implement state-of-the-art technologies with the ultimate objective of fostering domestic production of globally competitive industrial or other unique products (with the qualifying technologies to be approved by the Government).

- providing for a competitive selection process for federal SPIC participants through open and closed tenders.

- the bills do not contain the previously discussed division of SPICs into federal and regional, but requires the simultaneous participation of all levels of government (federal, regional and municipal) as party to the SPIC.

- extending the maximum SPIC term to up to 15 years for projects worth RUB 1 billion to RUB 50 billion and up to 20 years for projects worth more than RUB 50 billion.

- a SPIC must set forth a list of investor support measures, which will cease once the total spending of budgets at all levels exceeds 50% of capital investment.

- cancelling the 2025 deadline for granting tax benefits to SPICs.

- securing unchanged business conditions for project-running organisations, only if it is provided for by the applicable regulations that govern the relevant relations as at the time of SPIC execution.

- the commencement of grandfathering provisions was formalised: so these provisions will only start having an effect on profit tax after the hard launch of manufacturing or construction projects envisioned by SPIC.

- enabling communication between the authorities and other SPIC participants via special information systems, including to control the performance of SPIC obligations.

- setting the procedure for regulating the liabilities of the parties.

SPICs effective at the time of the laws enter into force will remain valid. SPICs can be signed until 31 December 2030.

Furthermore, Bill No. 689130-7 changing the tax treatment of SPIC parties is pending consideration by the State Duma.

The bill provides for the following changes:

- members of consolidated taxpayer groups, residents of special economic zones, advanced development territories, regional investment projects and users of special economic regimes will not qualify as SPIC taxpayers.

- SPIC taxpayer status will be assumed as of inclusion of a particular SPIC in the federal register.
Government support initiatives

• the tax treatment of SPIC participants will be regulated by special provisions (SPICs are now treated as equal to RIPs)

• taxpayers will be able to choose from two options of applying federal income tax benefits (the chosen option options must be formalised in the taxpayer’s accounting policy and remain subject to no changes):
  o to the entire tax base, provided that the revenues from the SPIC’s products account for at least 90 percent of the total
  o to separately recorded SPIC’s profits

• beneficial profit tax rates will apply starting from the tax period when a company became a party to a SPIC and until it loses this status or the total tax and non-tax SPIC expenditures of all budgets have exceeded 50 percent of total capital investment. The benefits will not apply in the periods when the company fails to deliver on its SPIC commitments)

• the document also sets forth the tax payment rules for a SPIC that has been terminated by a court decision due to a material breach of contractual obligations by a party.

New localisation rules for car manufacturers

Russian Government Resolution No. 661 of 25 May 2019 introduced changes to the rules effected by the previous Resolution No. 719 of 17 July 2015. Points will be awarded for each localised operation (e.g. 400 points for body welding or 200 points for each 0.5 percent of revenue spent on R&D). Points for completed localization operations will be added to points for investor commitments made in the SPIC and for engaging entities to perform certain operations.

Eligible subsidy recipients will have to meet the following criteria:

• for competitiveness improvement programmes: from 1 January 2019, the production of at least 70 percent of each auto product must include operations that score at least 900 points, from 1 January 2022 – 1,200 points, and from 1 January 2025 – 1,400 points

• for public procurement: in 2019−2020, the manufacture of each auto product must include operations that score at least 2,000 points for passenger vehicles, LCVs and trucks, and 1,700 points for buses, with a further increases planned

• for SPICs signed after 1 July 2019, the manufacture of least 90 percent of wheeled vehicles in any calendar year within the SPIC’s term must score at least 7,000 points

• for other areas, the required number points will be set by specific regulations.

Official website of the Russian State Du
Government support initiatives

The Russian Government amends automotive industry strategy until 2025

The strategy was updated with a list of new high-tech products, such as hybrid, electric, connected and unmanned cars, whose localisation will be critical in the medium term.

Official Internet Portal for Legal Information

Government allocates funds to boost automotive demand

Prime Minister Dmitry Medvedev held a meeting with Industry and Trade Minister, Denis Manturov, to discuss the extension of preferential car loan and leasing programmes.

They decided to allocate an extra RUB 10 bln for special-purpose programmes to boost demand for vehicles (from first-time and family buyers, small businesses, etc.) and extend the programme from 1 July 2019.

The Ministry of Industry and Trade clamps down on export support measures: companies will now have to sign long-term export growth commitments to qualify for low-interest loans and transportation cost compensation. The Ministry of Industry and Trade plans to cut government support for auto manufacturers

The Ministry of Industry and Trade is proposing to simultaneously tighten, and balance transportation cost compensation rules across industries. The subsidies will now be a part of the “International Cooperation and Export” project and, starting from 2020, offer preferences to the companies running corporate competitiveness programmes with long-term export growth commitments. Corporate competitiveness programmes are also a prerequisite for obtaining low-interest loans. Companies with short-term export commitments will be able to apply for subsidies from whatever funds remain.

According to the new rules, 48 percent of subsidies will be allocated to engineering and 45 percent to manufacturing industries. Annual subsidies to a single company will be capped at 1/16 of the programme’s budget, but no more than RUB 700 mln.
## Government support initiatives

### Government support of car manufacturing

The International Cooperation and Export project provides for federal allocations for 2019-2024 totaling:

<table>
<thead>
<tr>
<th>Project</th>
<th>RUB bln</th>
</tr>
</thead>
<tbody>
<tr>
<td>International Cooperation and Export</td>
<td>956</td>
</tr>
<tr>
<td>• Industrial Exports</td>
<td></td>
</tr>
<tr>
<td>– Subsidised Financing</td>
<td>422</td>
</tr>
<tr>
<td>– Compensation of Transportation Costs</td>
<td>361</td>
</tr>
<tr>
<td>– Export Support Infrastructure, including the One-Stop-Shop mechanism</td>
<td>15</td>
</tr>
<tr>
<td>– Specialised projects and programmes</td>
<td>21</td>
</tr>
<tr>
<td>• Agricultural Exports</td>
<td>407</td>
</tr>
<tr>
<td>• Systemic Export Development Measures</td>
<td>99</td>
</tr>
<tr>
<td>• Global Commerce Logistics</td>
<td>22</td>
</tr>
<tr>
<td>• Service Exports</td>
<td>6</td>
</tr>
</tbody>
</table>
Government support initiatives

The following budget allocations are planned in 2019:

<table>
<thead>
<tr>
<th>Project</th>
<th>RUB bln</th>
</tr>
</thead>
<tbody>
<tr>
<td>Partial compensation of workplace expenses to Russian car manufacturers</td>
<td>51.5</td>
</tr>
<tr>
<td>Partial compensation of energy costs to energy-intensive car manufacturers</td>
<td>5</td>
</tr>
<tr>
<td>Partial compensation of R&amp;D costs to investors into priority industry sectors</td>
<td>5</td>
</tr>
<tr>
<td>Partial compensation of manufacture and warranty service costs to Russian manufacturers of Euro-4 and Euro-5 vehicles</td>
<td>111</td>
</tr>
<tr>
<td>Preferential leasing rates</td>
<td>8 900</td>
</tr>
<tr>
<td>Low-interest car loans</td>
<td>9 000</td>
</tr>
<tr>
<td>Partial compensation of natural gas (NG) vehicle costs</td>
<td>2 500</td>
</tr>
<tr>
<td>Subsidised procurement of public electric vehicles</td>
<td>1 500</td>
</tr>
</tbody>
</table>

- Increase vs. 2018
- Unchanged vs. 2018
- Decrease vs. 2018
Prime Minister Dmitry Medvedev signs off amendments to Government Resolution No. 667 developed by the Ministry of Industry and Trade

The Resolution aims to foster the use of natural gas vehicles (NGVs) and boost the refueling/gas station infrastructure for these vehicles. “The document stipulates the manufacture of at least 2,500 NGVs with RUB 2.5 bln of federal subsidies. This will help upgrade the municipal fleet with environmentally friendly vehicles and give additional impetus to the use of NGVs.

Government approves rules for reimbursement of import duties

In accordance with the document, Russian car makers will be partially subsidised for the costs of producing wheeled vehicles and associated components until 2020. The subsidies compensate for up to 90 percent of the cost of knock-down kits for the subsequent assembly of wheeled vehicles purchased from suppliers or imported into Russia as of 1 January 2018.

Official web portal of legal information
Government support initiatives

The Ministry of Industry and Trade approved a number of SPIC requests and signed several SPICs with car manufacturers

Official website of the Ministry of Industry and Trade

Avtovaz (involving LADA Izhevsk automobile plant, Renault Russia, Nissan Manufacturing Rus, Mitsubishi Motors Rus)

**SPIC value:** RUB 70 bln
**Qualifying operations:** Localised manufacture of automatic transmissions and advanced engines, including turbocharged and compressed natural gas engines

GAZ Group

**SPIC value:** RUB 20 billion
**Qualifying operations:** Localisation of a modern light diesel engines for LCVs, engines, gearboxes and control systems

Avtotor

**SPIC value:** Value not disclosed
**Qualifying operations:** Full production of entire line-up using welding and body painting operations

Volkswagen Group Rus

**SPIC value:** RUB 13.7 bln
**Qualifying operations:** Localised production of turbo engines (1.4 l) and increased production of 1.6-liter engines

GM-AvtoVAZ

**SPIC value:** Value not disclosed
**Qualifying operations:** Chevrolet Niva line-up expansion

Toyota Motor

**SPIC value:** RUB 20 billion
**Qualifying operations:** Localised production of electric windows, airbags, fuel tanks, exhaust systems

Peugeot Citroen Rus

**SPIC value:** Value not disclosed
**Qualifying operations:** Production, assembly and machining of engines, casting and forging of key elements: cylinder heads, cylinder blocks and crankshafts

Volvo Vostok

**SPIC value:** Value not disclosed
**Qualifying operations:** Production of automatic transmissions, shafts and gears; purchase of components for automatic transmissions from Russian suppliers, production of gas-powered trucks
Regional development
Kaliningrad Region may host motor parts production cluster

The initiative supported by Deputy Prime Minister Dmitry Kozak and now being considered by the federal government was put forward by the region’s government and the Avtotor car assembly plant.

To attract investors, the state may co-finance up to RUB 1 bln, but no more than 10-20 percent of the total project budget.

Kommersant
Release of a bill adding certain non-tax payments to the Russian Tax Code

The bill proposes supplementing the Russian Tax Code with Chapter 25.6 "Recycling Fee" that will replace the existing environmental and recycling fees.

A key benefit of the new version is that it allows for the self-recycling of waste, thus incentivising waste recycling discipline among companies. However, the problem of targeted fund allocation has not been addressed. Previously, recycling fees were collected in a separate account and used specifically for environmental projects. After their inclusion in the Tax Code, they will become a part of the general budget. The updated version introduces a number of material amendments, yet fails to close certain regulatory gaps.

The unification of the environmental and recycling fees may create additional ambiguities for the payors as both have their own calculation, reporting and payment specifics.

It should be noted that the current version contains no practical guidance as to how imported vehicles sold for export can be exempted from the recycling fee.

Key provisions regulating the payors, what the fees apply to, rates as well as the calculation and payment rules and deadlines correlate with the existing laws.

Tax audits and penalties

The bill enables the involvement of Rosprirodnadzor in desk and field tax audits.

All desk and field tax audit procedures will also apply to the environmental tax and the recycling fee.

The underpayment penalties will be charged at 10 percent of the outstanding environmental tax/recycling fee amount.

The new rules will apply from 1 January 2020 through 31 December 2029.
The EAEU Code and customs issues
The EAEU Code and customs issues

**Updated rules for authorised economic operator (AEO)**

The transition period for companies that have received authorized economic operator status under the former rules (before 1 January 2018) is coming to an end.

With the enactment of the EAEU Customs Code on 1 January 2018, new rules were set for authorised economic operators: special entities engaged in import/export activity and enjoying customs preferences enabling the optimisation of supply chain and cost cutting. The new Code establishes three different types of operators, each with different preferences, and new status criteria. The list of preferences was also updated, one of the key changes is the automatic assignment of a low-risk level to companies with AEO status.

For companies that received the status prior to the enactment of the new regulations, a two-year transition period was set until 31 December 2019. Given that the process of obtaining the status may take some time, we recommend operators start the registration process under the new rules as soon as possible.
Track & trace and electronic document management

General labelling rules approved by Government Resolution No. 515 of 26 April 2019 entered into force on 14 May 2019. The Resolution establishes the labelling rules for goods subject to mandatory labelling and regulates the creation of a federal track & trace database for these goods. These provisions will apply unless otherwise established by government resolutions regulating the labelling of specific categories of goods.

For example, the labelling of tyres must be regulated by the Labelling Rules for Tyres that is to be considered by the government in November 2019.

Prior to that, the government plans to pilot the labelling of tyres. The pilot will be voluntary and will run from 20 June to 30 November 2019.

The labelling of these products will become mandatory from 1 December 2019, as required by Government Resolution of 792-r of 28 April 2018.

[Offical Internet Portal for Legal Information]
Other federal legislation news
Federal Tax Service: further clarifications of VAT treatment of electronic services starting from 1 January 2019

On 24 April 2019, the Russian Federal Tax Service (FTS) issued comments on the VAT-isation of electronic services starting from 1 January 2019.

Since the publication of Federal Law No. 335-FZ of 27 November 2017, Russian and foreign companies have had multiple questions regarding the implementation of the provisions that have fundamentally changed existing business practices.

In its Letter No. SD-4-3/7937@, the FTS declared its position on certain issues, which was more moderate than those expressed by the Finance Ministry in numerous letters, so taxpayers navigating through this uncertainty can only hope that the tax authorities will adhere to the FTS’s opinion.
Court precedents
Court precedents

The taxpayer (investor) applied a regional property tax exemption to its qualifying real estate. According to the regional laws, having the real estate leased (in full or in part), used for free, transferred to a trust or otherwise placed under management prevents taxpayers from claiming tax privileges.

According to the tax inspectorate, the taxpayer was not eligible for benefits since it has leased non-residential property that was part of the exempt real estate. The court supported the taxpayer citing that the lease of separate premises in a building cannot be treated as leasing, hence did not deprive the investor of the tax benefits for the building as a whole.

Key arguments:
- The floor area of leased premises was clearly disproportionate to the area of tax-exempt facilities;
- Property tax benefits were granted to support investors running regional investment projects;
- All property facilities built under investment agreements are used by the taxpayer for qualifying purposes.

The appellate court resolved in favour of the tax authority citing that the ban on leasing property is a mandatory prerequisite of the tax exemption.

However, the allowable lease threshold was set only in 2016 and does not apply to the period under review. The argument that the property lease was aimed at boosting business performance and ultimately is an element of the relationship with an exclusive construction machinery dealer was not accepted by the court.

According to the court, when setting the lease restrictions, the lawmakers did not differentiate between the lease purposes.

The court of cassation dismissed the appeal and upheld the appellate court's decision.
The tax authorities challenged the recovery of VAT on parts used in warranty repairs. According to tax audit findings, the taxpayer, having expensed the cost of parts used in VAT-exempt warranty repairs, failed to reinstate VAT reclaimed on the purchase of such parts. In the tax inspectorate’s opinion, when calculating the share of exempt and VATable operations, the taxpayer did not take into account the operations subject to the unified tax on imputed income. Consequently, the expenses attributable to VAT-exempt operations were below five percent; and the taxpayer had not reinstate VAT on the sale of exempt goods (works, services) in accordance with Para 4, Article 170 of the Russian Tax Code.

The tax inspectorate’s position was challenged by the taxpayer. In the opinion of the latter, expenses attributable to the operations subject to the unified tax on imputed income, must not be included in the expenses from VAT-exempt operations in accordance with Article 170 of the Russian Tax Code.

Having considered the positions of the parties, the court supported the tax inspectorate in that the five-percent expense threshold could not be calculated separately for each VAT-exempt operation. Therefore, since the company had previously reclaimed VAT attributable to the warranty repairs (a VAT-exempt operation), it should have reinstated the tax in the respective tax period. The appellate court reversed the judgment and adopted a new ruling.
The tax inspectorate disallowed the deduction of non-operating expenses to compensate for losses from cargo damage as a result of a road accident and cargo loss due to ship flooding.

According to the tax authority, the losses arose from the sea carrier’s failure to diligently fulfill its contractual obligations of safely carrying the cargo within the deadlines set. Therefore, compensatory expenses cannot be deducted as non-operating emergency recovery costs.

The court resolved in favour of the tax authorities citing the following:

• the company failed to prove the fact that the flooding resulted from a natural disaster and/or another emergency
• in its final report, the Container Ship Safety Committee established that the lower part of the ships casing was damaged before the flooding, which is why the ship, being overloaded, ultimately broke and was flooded
• the Container Ship Safety Committee did not establish any natural disasters that might have caused the ship’s flooding
• the Company is entitled to have its losses duly compensated by the at-fault party, i.e. the carrier.

As regards the losses from the road accident, the court held that the transported cargo was damaged due to the driver’s speeding, i.e. a breach of traffic rules, and not as a result of an accident or a force majeure.

The court noted that the Company was entitled to deduct the expenses as non-operating costs in the period in which they are acknowledged by the at-fault party or when a court order awarding the losses to the Company enters into force. The appellate and cassation courts rejected the appeals and upheld the adjudication of the first instance court.
Court precedents

The taxpayer engaged in both VATable and exempt activities and has erroneously failed to maintain separate accounts for input VAT.

VAT wrongfully reclaimed in the past periods was reinstated. The taxpayer and the tax inspectorate disagreed regarding the expensing of such VAT for profit tax purposes: the taxpayer, citing the provisions of Article 54 of the Russian Tax Code, expensed VAT in the period when the error had been detected, while the tax inspectorate insisted on filing amended tax returns.

The tax authorities' position was supported by three court instances.

The Supreme Court righted a wrong and held that past years’ expenses could be deducted from the current period’s tax base citing as follows:

- Article 54 of the Russian Tax Code entitles taxpayers to correct errors in the period, in which they were discovered only if such errors had led to tax overpayment
- the erroneous tax base/tax assessment that had led to the tax overpayment did not lead to budgetary losses, therefore, could be corrected by entering accurate data in the current period’s tax return instead of filing an amended one
- by the time of correction (tax return filing) a three-year period established by Article 78 of the Russian Tax for overpayment refunds must not have passed

- the situation where the expenses were not deducted in the period of occurrence was in itself evidence of a tax computation error, i.e. an underestimation of expenses leading to an overestimation of the tax base, i.e. tax overpayment
- to ensure a balance of private and public interests, the taxpayer must be permitted to prove expenses of past periods, while the tax authority shall be entitled to audit if the expenses were substantiated, even though such expenses were incurred in earlier periods not covered by the field tax audit.

Considering the lower courts’ failure to examine whether a three-year period established for error corrections had expired, the Supreme Court sent the case for retrial.
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- Legislative Tracking in Focus, a weekly review of the key global tax and legal news.
- Tax Incentives News, an overview of the regional and federal legislative developments related to the government support of investment activities in Russia.

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