

## ON THE DIRECTIONS OF IMPROVING THE LEGAL MECHANISM OF THE PROFESSIONAL INCOME TAX

**Karina A. Ponomareva<sup>1,2</sup>, Aleksei A. Batarin<sup>1,3</sup>, Nadezhda G. Vishnevskaya<sup>1</sup>**

<sup>1</sup> *Financial Research Institute of the Ministry of Finance of the Russian Federation, Moscow, Russia*

<sup>2</sup> *The Russian Presidential Academy of National Economy and Public Administration, Moscow, Russia*

<sup>3</sup> *Federal Tax Service of Russia, Moscow, Russia*

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**Subject.** The article examines the practice of applying a special tax regime "Tax on professional income". The authors have identified four directions of optimizing and improving the functioning of the tax on professional income regime: increasing the attractiveness of the tax on professional income, anti-avoidance measures, simplification of tax control, as well as increasing the stability of the tax on professional income.

**The purpose of the study.** The purpose of the article is to develop proposals for improving tax legislation in terms of taxation of income of individuals, in which they do not have an employer and do not hire employees. It is planned to develop these proposals on the basis of the use of best practices.

**Methodology.** The formal legal method, as well as philological and systematic methods of interpreting current legal norms have been used in the course of the study.

**Conclusions.** In the course of the research the authors have prepared a set of proposals to improve the legal mechanism of the tax on professional income regime; the amendments to the federal law have been formulated.

## 1. Introduction

The emergence and development of new business models, including digital ones, raises many questions about the rules of their state regulation, for example, about differentiated tax regimes in order to protect the tax base. The difference between special tax regimes and other preferential tax regimes consists "in the presence of a special (single) tax as an exclusive payment, the obligation to pay which arises only after switching to one or another special tax regime and is paid instead of a set of taxes provided for by the general tax regime" [1, p. 4]. According to O.A. Nogina, "the special tax regime, as originally established by the legislator as a tax regime of a preferential nature for taxpayers, assumes, in the actual conduct of business activities, obtaining legitimate tax savings in paying taxes not only in connection with reducing the tax burden, but also with simplifying tax reporting or complete exemption from doing so, as well as with a reduction in the administrative costs of taxpayers when interacting with tax authorities" [2, p. 80]. A special tax regime applied to the taxation of the activities of individuals, including on digital platforms and in other modern business formats, is the special tax regime "Tax on professional income" (hereinafter – TPI, TPI regime).

The legal regulation of the TPI is carried out on the basis of the Federal Law of November 27 2018 No. 422-FZ "On conducting an experiment to establish a special tax regime "Professional income tax"<sup>1</sup> (hereinafter referred to as Law No. 422–FZ), the Tax Code (hereinafter referred to as the Tax Code) of the Russian Federation, and also, in established cases, on the basis of the laws of the subjects of the Russian Federation.

The purpose of this article is to prepare proposals for improving the legal regulation of

TPIS. However, before we formulate them, we will outline the achievements following the results of the first five years of operation of this special tax regime.

## 2. Professional income tax regime: achievements

It is noted in the literature that, according to the number of registered self-employed, the experiment can be considered more than successful [3, p. 10]. National project "Small and medium-sized entrepreneurship and support for individual entrepreneurial initiative"<sup>2</sup> provided for the achievement by 2024 of the indicator of registered TPI payers – 2.1 million people. This figure was exceeded already in the spring of 2021: as of April 30, 2021, there were 2,250,005 registered self-employed people<sup>3</sup>.

The positive results of the experiment on the application of the special tax regime of the TPI created the prerequisites for the formation of a separate federal project to create conditions for the development of self-employed citizens<sup>4</sup>. By the end of 2021, the number of registered self-employed exceeded 3.86 million people, by the end of 2022 - 6.561 million people, by the end of July 2023 - 8.069 million people, as of June 30 By 2024, the number of self-employed amounted to 10.7

<sup>2</sup> Passport of the national project "National project "Small and medium-sized entrepreneurship and support for individual entrepreneurial initiative". URL: [https://economy.gov.ru/material/directions/nacionalnyy\\_proekt\\_maloe\\_i\\_srednee\\_predprinimatelstvo\\_i\\_podderzhka\\_individualnoy\\_predprinimatelskoy\\_iniciativy/](https://economy.gov.ru/material/directions/nacionalnyy_proekt_maloe_i_srednee_predprinimatelstvo_i_podderzhka_individualnoy_predprinimatelskoy_iniciativy/) (date of access: 07/17/2024).

<sup>3</sup> Statistics for the national project "Small and medium-sized entrepreneurship and support for individual entrepreneurial initiative". URL: <https://rmsp.nalog.ru/statistics2.html?t=1698678913109> (date of application: 07/17/2024).

<sup>4</sup> Support for the self-employed. URL: [https://economy.gov.ru/material/directions/nacionalnyy\\_proekt\\_maloe\\_i\\_srednee\\_predprinimatelstvo\\_i\\_podderzhka\\_individualnoy\\_predprinimatelskoy\\_iniciativy/podderzhka\\_s\\_amozyatyh/](https://economy.gov.ru/material/directions/nacionalnyy_proekt_maloe_i_srednee_predprinimatelstvo_i_podderzhka_individualnoy_predprinimatelskoy_iniciativy/podderzhka_s_amozyatyh/) (accessed 17.07.2024).

<sup>1</sup> Collection of legislation of the Russian Federation. 2018. No. 49. St. 7494.

million people<sup>5</sup>.

The TPI regime is the subject of a large number of scientific papers, which also confirms the high relevance of the research of this institute [4-11].

Despite the convenience of the regime in question, which is confirmed by the number of citizens using it, it, like any legal mechanism, needs constant assessment and improvement. This article identifies groups of problems that arise in practice that can be resolved by amending Law No. 422-FZ.

### **3. Directions for improving the special tax regime "Professional income tax"**

Of the variety of directions in which it is possible to pave the way for optimizing and improving the functioning of the TPI regime, the authors identify four groups: increasing the attractiveness of the TPI (1), curbing abuse (2), simplifying tax control (3), increasing the stability of the TPI (4).

1. As the first area of improvement, we designate proposals for adjustment of the provisions of Law No. 422-FZ, which are aimed at improving individual elements the legal mechanism of the TPI regime, which will give an additional incentive to individuals and individual entrepreneurs to become self-employed.

1.1. According to Part 1 of Article 5 of Law No. 422-FZ, individuals, including individual entrepreneurs, who have expressed a desire to switch to a special tax regime, are required to register with the tax authority as a taxpayer. At the same time, according to paragraph 7 of Part 2 of Article 4 of Law No. 422-FZ, persons applying the TPI regime are not entitled to apply other special tax regimes or conduct business, income from which is subject to personal income tax, except for the

cases provided for in Part 4 of Article 15 of Law No. 422-FZ. An individual must, within one month from the date of registration as a payer of the TPI, send it to the tax authority at the place of residence (at the place of business) notification of the termination of the simplified taxation system (hereinafter – STS) and the unified agricultural tax (hereinafter – UAT). In this case, the taxpayer is considered to have stopped using the STS, UAT from the date of registration as a payer of the TPI<sup>6</sup>. The TPI payer also does not have the right to combine this special tax regime and the general taxation system (hereinafter referred to as GTS)<sup>7</sup>.

Despite the recognized simplicity of the transition to the TPI regime [12; 13], the issue of similar simplicity in the transition to the TPI of individual entrepreneurs who are in other special regimes or GTS remains unresolved. It seems that this transition can be carried out in a simplified manner, which is quite acceptable, taking into account the capabilities of automated services of the Federal Tax Service (hereinafter – the Federal Tax Service of Russia). In that case, when switching to the TPI regime, the taxpayer automatically ceases to be a payer of taxes under the GTS, STS or UAT.

It is worth noting that the model of automatic transition from one mode to another is already provided for by other provisions of Law No. 422-FZ. Thus, according to Part 15 of Article 5 of Law No. 422-FZ, if the tax authority has information about the loss of the payer The NPA of the right to apply a special tax regime or on the non-compliance of the taxpayer according to the requirements of Part 2 of Article 4 of Law No. 422-FZ, the taxpayer is de-registered with the tax authority on the initiative

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<sup>5</sup> Statistics for the national project "Small and medium-sized entrepreneurship and support for individual entrepreneurial initiative".

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<sup>6</sup> Letter of the Federal Tax Service of Russia dated January 10, 2019 No. SD-4-3/101@. Here and further information and explanatory acts The Federal Tax Service of Russia and the Ministry of Finance of Russia are cited by the SPS "ConsultantPlus".

<sup>7</sup> Letter of the Ministry of Finance of the Russian Federation dated January 20, 2022 No. 03-11-11/3168.  
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of the tax authority in the absence of a taxpayer's application for de-registration.

In connection with the above, it is proposed to fix in Law No. 422-FZ a simplified procedure for switching to the TPI regime from other tax regimes, indicating that a taxpayer "is automatically considered to have stopped using other special tax regimes when registering as a taxpayer of professional income tax" (Article 5).

1.2. The provisions of Law No. 422-FZ establish restrictions related to the application of the TPI regime (Part 2 of Article 4 and Part 2 of Article 6). Thus, in accordance with Part 1 of Article 6 of Law No. 422-FZ, income from the sale of goods (works, services, property rights) is recognized as the object of taxation of the TPI. At the same time, income from the transfer of property rights to immovable property, with the exception of renting (hiring) residential premises, is not recognized as an object of taxation of the TPI, in particular, income from the transfer of property rights to immovable property, with the exception of renting (renting) residential premises (paragraph 3, part 2, Article 6 of Law No. 422-FZ).

However, in practice, there are situations when an individual owns apartment and parking spaces in a residential complex. Garage spaces for cars are actually part of an apartment building. A citizen can plan to rent out these garage spaces to other tenants. However, with regard to income from renting a parking space, even located in a residential complex, the TPI regime cannot be applied.

Considering the above, the TPI does not apply to income from renting a parking space located in a residential complex<sup>8</sup>.

In this regard, it is proposed to grant the right to apply the TPI not only when renting

out residential premises, but also parking spaces. To do this, it is necessary to make appropriate changes to paragraphs 3 and 4 of Part 2 of Article 6 of Law No. 422-FZ. At the same time, in order to prevent abuse, it is important to link the possibility of renting a parking space exclusively with the rental of residential premises. Thus, the TPI regime will not be able to Take advantage of private parking. A similar approach is used in Article 2 of the Federal Law on May 22, 2003 No. 54-FZ "On the use of cash register equipment in making payments in the Russian Federation"<sup>9</sup>: an entrepreneur, including at the STS, can work without cash register equipment, for example, if he rents (leases) residential premises belonging to him by right of ownership, as well as residential premises together with parking spaces located in apartment buildings.

1.3. As you know, for Russian citizens, the status of a tax non-resident does not affect the right to work as self-employed – only the citizenship and location of customers are important. Restrictions related to the application of the TPI regime are established by Part 2 of Article 4 and Part 2 of Article 6 of Law No. 422-FZ, and the possibility of applying the TPI regime by a taxpayer is not made dependent on the presence or absence of the taxpayer's tax resident status of the Russian Federation, if the business activity is carried out on the territory of the Russian Federation<sup>10</sup>. In addition, the self-employed have the right to have income in foreign currency and receive it to any accounts, including those opened in foreign banks. However, Law No. 422-FZ does not contain wording applicable in similar cases to the taxation of income of individuals established by Chapter 23 of the Tax Code of the Russian Federation. So, according to paragraph 5 of

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<sup>8</sup> Letter of the Ministry of Finance of the Russian Federation dated June 6, 2024 No. 03-11-11/52481.

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<sup>9</sup> Collection of Legislation of the Russian Federation. 2003. No. 21. St. 1957.

<sup>10</sup> Letter of the Ministry of Finance of the Russian Federation dated December 20, 2021 No. 03-11-11/103727.

Article 210 The Tax Code of the Russian Federation taxpayer's income expressed (denominated) in foreign currency is converted into rubles at the official exchange rate of the Central Bank of the Russian Federation established on the date of actual receipt of these incomes (the date of actual expenditure), unless otherwise provided by Chapter 23 of the Tax Code of the Russian Federation. It is proposed to fill this gap by supplementing Article 7 of Law No. 422-FZ with a provision that taxpayer's income denominated in foreign currency is converted into rubles at the official exchange rate set by the Central Bank of the Russian Federation on the date of receipt of income.

2. The following group of proposals is aimed at curbing abuses in the use of self-employment and discrediting the tax regime by unscrupulous taxpayers. Let's make a reservation right away that within the framework of this article we will not consider the most widespread problem – the substitution of labor relations using the labor of the self-employed. This problem has already been widely covered in Russian and foreign studies on tax and labor law [14-20].

2.1. The norms of clause 8, clause 2, Article 6 of Law No. 422-FZ determine that for the purposes of calculation and payment Income from the provision (performance) of services (works) by individuals is not recognized as an object of taxation under contracts of a civil nature, provided that the customers of the services (works) The employers of self-employed persons or persons who were their employers less than two years ago are acting. When carrying out tax control measures, the tax authority may establish circumstances indicating, for example, the consistency of the actions of interdependent persons, the use of formal document management, etc., in order to "nominally" comply with the TPI and obtain unjustified tax

savings [21].

However, an unscrupulous taxpayer still has the opportunity to transfer employees to the status of self-employed while maintaining work responsibilities with a new organization with the same composition of founders, managers and providing services to the public at the same address. As noted in the literature, "the benefit in this case for the organization is obvious, with minimal costs for liquidation (reorganization), significant savings on tax and insurance premiums are generated. However former employees lose significantly from the point of view of social security (the period of work in the status of self-employed will not be counted in the insurance record (without paying insurance premiums by the person himself), may significantly reduce the amount of future pension, etc.)" [22]<sup>11</sup>. It seems that this problem can be solved by expanding the list of restrictions on the use of TPI and adding clause 8, Part 2 , Article 6 of Law No. 422-FZ with a provision excluding not only the possibility of a self-employed person to provide services to an employer (including a former one), but also a legal entity in which the self-employed is (or was) the founder.

2.2. Article 214.2 of the Tax Code of the Russian Federation defines the specifics of determining the personal income tax base when receiving income in the form of interest on deposits (account balances) in banks located in the territory of the Russian Federation. These incomes are subject to personal income tax. However, this provision is not reflected in Part 2 of Article 6 of Law No. 422- FZ and is not directly excluded from the list of objects of taxation of the TPI. In this regard, it is advisable to supplement the specified norm by excluding it from the list income in the form of interest on deposits (account balances) in banks located on the territory of the Russian Federation.

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<sup>11</sup> Quoted by HSE "ConsultantPlus".

3. The third group of proposals is aimed at improving the efficiency of tax administration.

3.1. Article 93.1 of the Tax Code of the Russian Federation grants the tax authorities the right to request documents (information) about the taxpayer, the payer of fees, the payer of insurance premiums and the tax agent or information about specific transactions. It concerns persons who are not verifiable taxpayers, payers of fees or tax authorities agents, i.e. third parties. As noted in the letter The Federal Tax Service of Russia dated October 11, 2007 No. SHT-6-06/774, requesting documents, including those related to opening and maintaining customer accounts (contracts, signature sample cards), transaction passports, as well as other documents may be carried out in accordance with the procedure established by Article 93.1 of the Tax Code of the Russian Federation, since opening an account in in a particular bank, the organization enters into contractual relations with this bank on a reimbursable basis and is not only a client of the bank, but also a counterparty for settlement and cash transactions.

According to paragraph 2 of Article 86 of the Tax Code of the Russian Federation, at the reasoned request of the tax authority, in established cases, statements on the availability of accounts (deposits) in the bank, on the balances of funds on them, statements on transactions on accounts (deposits) are provided by the bank to the tax authority. Moreover, banks are liable for non-fulfillment or improper fulfillment of their duties in accordance with the legislation of the Russian Federation.

Despite the above provisions of the Tax Code of the Russian Federation, special provisions of Law No. 422-FZ do not a similar authority has been established, although, undoubtedly, it should be present there too. In

this regard, it is proposed to consolidate in Law No. 422- FZ the right of tax authorities to demand from third parties (banks, operators of electronic platforms) documents on the activities of the TPI payer.

3.2. Article 11 of Law No. 422-FZ establishes the procedure for calculating and paying taxes. Non-fulfillment or improper fulfillment of the obligation to pay tax, which led to the formation of a negative balance of the taxpayer's single tax account, is the basis for sending the tax authority to the taxpayer through the mobile application "My Tax" of the requirement provided for in Article 69 of the Tax Code of the Russian Federation to pay the debt within the time limits established by Article 70 of the Tax Code of the Russian Federation. In case of non-fulfillment or improper fulfillment of the requirement to pay the debt, the tax authority has the right to collect the debt owed by the taxpayer in accordance with the procedure and deadlines established The Tax Code of the Russian Federation. It is proposed to supplement the specified norm and regulate the right of tax authorities to issue tax claims through the My Tax mobile application, if the relevant the obligation has not been fulfilled by the taxpayer on time. This will contribute to the principle of unity of legal regulation and will bring the provisions of Law No. 422-FZ into uniformity with the provisions of Articles 69 and 70 of the Tax Code of the Russian Federation.

The above approach is justified by the fact that, despite the elementary format of tax accounting and payment of the corresponding tax amounts provided for the TPI, the total amount of tax arrears under the TPI, according to operational according to the Federal Tax Service of Russia, as of February 28, 2024, it amounts to 8,167,795,055 rubles. It seems that further improvement of tax administration mechanisms, through which a new legally significant document flow of the tax authority and the taxpayer will be established in a

convenient application format, will facilitate the payment of tax by those TPI payers who, for subjective reasons, did not pay tax on time, but are not tax evaders. Considering that the physical individuals do not always have operational skills conducting business processes, it seems that this mechanism would lead to a reduction in the amount of tax arrears.

The authors would like to emphasize that the problem of debt or zero "declarations" should be solved within the framework of the branch of financial law, despite the high effectiveness of the impact directly on the legal personality of a person: for example, the suspension of payments of benefits to such a debtor. We should agree with S.V. Zapolsky, who rightly notes that "many social and economic problems can and should be solved precisely financially (or otherwise) however, the nature of the relevant relations rarely allows for the alternative of a specific legal instrument" [23, p. 7].

4. In order to increase the stability of the TPI regime, the following proposals can be put forward.

4.1. Article 6 of Law No. 422-FZ, unlike the relevant chapters of the Tax Code of the Russian Federation, which establish rules for the application of special tax regimes, does not contain a list of permitted activities. For comparison, Article 346.43 of the Tax Code of the Russian Federation establishes a closed list of types of entrepreneurial activity in respect of which the patent taxation system is applied. According to R.M. Boziev, contained in paragraph 2 of Article 346.43 of the Tax Code of the Russian Federation the list includes types of entrepreneurial activities related to the provision of services, performance of works, production and manufacture of goods and other activities related to solving household and other problems of the population, which can be provided by small

businesses [11, p. 171]. Article 346.12 of the Tax Code of the Russian Federation also defines in much more detail the circle of STS payers.

In practice, difficulties may arise with certain types of activities in terms of meeting the criteria for the TPI [24]. For example, in order to resolve the issue of the possibility of applying the TPI in relation to the activities of an arbitrator, an examination of the relevant specific contractual relations between the organization, the arbitrators and the parties to the arbitration is required<sup>12</sup>.

However, the presence of a closed list always contributes to legal certainty.

In connection with the above, it is proposed to amend Law No. 422-FZ by analogy with the patent system taxation is a closed list of activities that are allowed to be carried out when using the TPI regime. At the same time, this list can be differentiated depending on the provision of services to individuals or legal entities.

4.2. The TPI regime is not prohibited for persons who are engaged in the sale of goods of their own production, subject to the established restrictions<sup>13</sup>. In general, it should be said that an individual should participate in the production process associated with the creation of goods – a simple packing of purchased from other persons of goods in one set cannot be recognized as the production of their own goods [25, p. 83]. A number of problematic issues are associated with the products of our own production, for example, their certification, as well as conflicts with licensing legislation [4]. The absence of a definition of goods of own production in the law does not contribute to legal certainty. In this regard, it is necessary to fix the definition of goods of own production in

<sup>12</sup> Letter of the Ministry of Finance of the Russian Federation dated February 21, 2019 No. 03-11-11/11352.

<sup>13</sup> Letters of the Ministry of Finance of the Russian Federation dated February 8, 2022 No. 03-11-11/8320, dated April 26, 2021 No. 03-11-11/31559.

Law No. 422-FZ, since the possibility of applying the TPI and the rights of the taxpayer himself depend on the correct classification of goods. It is proposed to identify such products as "produced by the taxpayer himself without involving the employees with whom he is in labor relations (with the exception of the taxpayer's packaging of goods without carrying out the technological process of the stages of production of the goods and the modifications due to this in subsequent production units".

#### 4. Conclusion

In the course of the study, the authors prepared a set of proposals to improve the legal mechanism of the TPI regime, for which the following amendments to Law No. 422-FZ were formulated:

- to provide for a simplified procedure in Article 5 the transition to the TPI regime from other tax regimes, indicating that the taxpayer "is automatically considered to have stopped applying other special tax regimes when registering as a taxpayer of the professional income tax";

- to grant the right to apply the TPI not only when renting (hiring) residential premises, but also parking spaces;

- clarify the wording of Article 7 by the provision that the taxpayer's income expressed in foreign currency is converted into rubles at the official exchange rate set by the Bank of Russia on the date of receipt of income;

- to supplement clause 8, part 2 of Article 6 with a provision excluding the possibility of the self-employed to provide services to a legal entity in which the self-employed is (or was) the founder;

- exclude income in the form of interest on banking agreements (deposits, accounts), securities, etc. from the list of objects of taxation of the TPI;

- consolidate the right of tax authorities to demand from third parties (banks, operators

of electronic platforms) documents on the payer's activities TPI;

- to regulate the right of tax authorities to issue through the mobile application "My tax" demands for payment of tax if the relevant obligation is not fulfilled by the taxpayer on time;

- formulate a closed list (with possible differentiation depending on the provision of services to individuals or legal entities) of the types of activities allowed to be carried out using the TPI regime;

- to introduce a definition of the category "goods of own production".

The implementation of the above proposals will certainly increase the interest of taxpayers in TPI by creating clear and precise rules for finding

This regime, on the one hand, will shield a conscientious payer from the negative consequences of offenses committed without intent, and on the other hand, it will increase the effectiveness of the control work of tax authorities, which can be considered compliance with the balance of interests of participants in tax relations.



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#### INFORMATION ABOUT AUTHORS

**Karina A. Ponomareva** – Doctor of Law, Associate Professor; <sup>1</sup>Leading academic researcher, Center of Tax Policy; <sup>2</sup>Professor, Department of Legal Support of the Market Economy, Higher School of Law  
<sup>1</sup> *Financial Research Institute of the Ministry of Finance of the Russian Federation*  
<sup>2</sup> *The Russian Presidential Academy of National Economy and Public Administration*  
<sup>1</sup> 3/2, Nastas'inskii per., Moscow, 127006, Russia  
<sup>2</sup> 82, Vernadskogo pr., Moscow, 119602, Russia E-mail: kponomareva@nifi.ru  
ORCID: 0000-0002-2951-3067  
ResearcherID: N-7562-2016

**Aleksei A. Batarin** – PhD in Law; <sup>1</sup>Leading academic researcher, Center of Tax Policy; <sup>2</sup>Head, Department of the Operating Control Administration  
<sup>1</sup> *Financial Research Institute of the Ministry of Finance of the Russian Federation*  
<sup>2</sup> *Federal Tax Service of Russia*  
<sup>1</sup> 3/2, Nastas'inskii per., Moscow, 127006, Russia  
<sup>2</sup> 23, Neglinnaya ul., Moscow, 127381, Russia E-mail: batarin@nifi.ru  
ORCID: 0000-0002-8975-265X  
ResearcherID: KYQ-6477-2024

**Nadezhda G. Vishnevskaya** – PhD in Economy, Associate Professor; Leading academic researcher, Center of Tax Policy  
*Financial Research Institute of the Ministry of Finance of the Russian Federation*  
3/2, Nastas'inskii per., Moscow, 127006, Russia  
E-mail: Nvishnevskaya@nifi.ru  
ORCID: 0000-0001-5403-8213

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