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TAX REGULATION OF ENTERPRISE R&D EXPENDITURES: SPECIAL ASPECTS AND PROBLEMS OF REGULATION

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The subject of the research is a corporate income tax regime of tax accounting of intangible assets and R&D spending. The working hypothesis is that realization of the regulative potential of tax policy in relation to stimulating R&D activity and creation of intangibles assets shall be streamlined and adapted to increase the effectiveness of innovations. Authors suggest that the key tax policy goal of the mechanism is the widening of the volumes of commercialized R&D results and intangibles, lowering the tax risks, and increasing the legal certainty. The aim of this research is formulation of tax policy proposals for subsequent reforming this mechanism of direct taxation of transactions related with R&D.

To achieve the aim of the research the following research approach was employed by the authors. As a first step authors present a literature review on the issue. As a second step authors are performing the analysis of current rules related to tax accounting of R&D costs and intangibles in accordance with Tax Code of Russian Federation. As a third step authors delineate the barriers and legal obstacles in the performance of tax incentives for R&D by reviewing the judicial cases and analytical reports on the issue. Finally, authors formulate their tax policy proposals for the subsequent tax reforms in relation to tax accounting of R&D.

The results and the scope of the study. Author's working hypothesis is based on the idea that the effective application of tax policy instruments can contribute to success of the jurisdiction in winning in global tax competition game. This is particularly important in context of digitalization and for attracting investments and parts of activities of multinational enterprises to the territory of the state. Intangible assets and key people which coordinate the processes of the creation of intangibles can be regarded as the crucial value-added factors in the modern economy where technological MNEs are increasingly dominating. Countries compete internationally for these talented people and favorable and certain tax regime can positively impact on MNE decisions to make a profit center in any jurisdiction, while tax uncertainty can negatively impact this decision.

Conclusions. One of the key results of this research is that R&D tax incentives in Russia remain rather unpopular instrument in corporate practice. Authors explain this with the existing legal barriers and legal uncertainty. This uncertainty leads to tax risks for taxpayers which impacts their decisions for using the incentives. Review of judicial cases related to tax accounting of R&D costs when calculating corporate income tax base showed that there are many different areas of disputes between taxpayers and tax authorities. It is important to note that some of this uncertainty is already addressed in recent amendments to Article 262 of Tax Code. Authors propose to reduce uncertainty by extending the scope of R&D tax incentives to all types of R&D activity. The goal of the research is therefore can be considered as achieved.

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1. Introduction

The issue of state support for innovation business has been on top of its relevancy in Russia for a long period of time. Since the 2000s the rules for applying the multiplying coefficient of tax accounting for R&D costs as well as the length of the period of the useful life of intangible assets have been reviewed. Tax rates for investing in tech companies were reduced. Special conditions for residents of Skolkovo and other special zones were created. Finally, in 2020, a tax maneuver was implemented in the IT industry, reducing the tax burden on income tax to 3% and insurance premiums to 7.6%. The results of the study show that despite such state support for innovation activities, the potential of tax incentives for R&D and the creation of intellectual property by Russian companies is not fully unlocked.

The purpose of this study is to analyze the problems of the administration of the law arising from the tax recognition of R&D expenses and the creation of intangible assets for the purposes of calculating the tax base for income tax. The working hypothesis is that due to the high level of legal uncertainty, the regulatory potential of tax policy in this area has not been fully unlocked today. To achieve the stated goal of the study, following approach was applied. First, we carried out a literature review on issues regarding relationship between tax and economic policy and the level of innovation activity in the country. Second, we carried out an analysis of the rules for tax recognition of R&D expenses and accounting for intangible assets applied in accordance with the Tax Code of the Russian Federation. Third, we identified barriers and legal obstacles regarding the functioning of tax incentives for R&D in Russia by summarizing and analyzing judicial practice and analytical materials related to the issue. Finally, we formulated proposals for further reforms in the field of tax recognition of the R&D expenses.

2. The Impact of Tax Factors on Innovation Activities: Literature Review

International practices suggest that the effective application of tax policy instruments is a significant condition for successful international competition to attract transnational companies (TNCs) in the context of digitalization [1, p. 6]. Intangible assets and individuals who coordinate the processes of their creation and maintenance are key value creation drivers in modern economy dominated by tech corporations. In effect, countries compete to attract these individuals to live and work on their territory, so tax cuts can influence corporate decisions to establish a profit center in a particular country, although this is not a decisive factor.

Alongside TNCs, companies from the developing countries, international development banks, government agencies, universities, venture capital funds, as well as individuals, including micro-investors play an important role in the process of international investment in innovative activities At the same time, the attractiveness of a jurisdiction for investment in innovative activities is usually influenced by various factors, in particular, the general level of innovative activity of state and business in the particular country, the degree of development of high-tech industries, the qualifications and cost of scientific and technological personnel, the availability and quality infrastructure for R&D, the research potential of local universities and research centers, as well as the reliability of the protection of intellectual rights and other features of state regulation of scientific and technical activities [2]. Along with this, one of the key factors influencing the choice of jurisdiction for investment in R&D is the development level of the state support for innovation activities mechanisms [3]. Tax incentives is the most effective instrument of state support for science, technology and innovation.

The international practices of introducing various tax incentives to support innovation activities prove the relevance and effectiveness of such measures. Currently, the practice of applying fiscal incentives to R&D is developing in the direction of their more flexible combination, as well as expanding the range of goals achieved by such tools [4].

Creating a balanced combination of measures to protect its tax base from artificial movement to transit countries and the simultaneous

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introduction of incentives aimed at increasing the competitiveness of the Russian jurisdiction is an essential goal of Russia's tax policy. In the modern world, despite a popular idea among economists of creating equal and neutral taxation rules "for all", direct tax incentives for tech companies is a "necessary evil" due to the high mobility level of key employees and the ability to deliver digital products to the most remote markets with zero transport and logistics costs. So, for example, services for updating or purchasing an application or using a program can be provided from any tax-friendly jurisdiction, which leads to difficulties to correctly determine the country of taxation of the profits of such companies[1]. In the absence of global tax regulation, the digital sphere has become a place of intense international tax competition from hub countries (Cyprus, Singapore, the Netherlands) [5].

Research literature on intellectual property (IP) taxation and the role of tax incentives in the context of international tax competition in connection with the introduction of the BEPS plan in 2015, points out the need to avoid obtaining tax incentives for intellectual property in the absence of a corresponding economic activities in this jurisdiction, both within the framework of the domestic and international taxation regime [6; 7]. This idea is also reflected in the BEPS 5 (2015) report on harmful tax competition[2]. However, at present, there is no unambiguous answer to the question of the correct definition of the jurisdiction in which the creation of added value by companies with a high level of digitalization takes place. In addition, there is no certainty which functions are associated with the creation of added value by such companies[3].

Based on the Tax Foundation expert review (2021)[8] and other sources cited below, it is possible to summarize the findings presented in the scientific literature on the effectiveness of the application of incentives for IP and R&D

- Increase in the number of patents in the country after the introduction of the IP-box regime – by 3% for every 1% reduction in the rate [9].
- An international tax competition matters. Part of innovation activity is "stolen" from other countries with higher taxes. Companies that increase R&D spending in a country with deductions, reduce it in countries without deductions [10].
- Patents can be registered in countries with IP-box only for profit relocation [11].
- The effect of "harmful tax competition" will decrease after the the BEPS Action 5 ("nexus approach") implementation, but it may grow in the future [12].
- The largest companies are the main beneficiaries of IP and R&D incentives due to significant compliance costs [13].
- In the UK there have been 59 265 R&D tax credit claims for 2018-2019 fiscal year, of which 52 160 are in the small and medium-sized enterprises (SMEs) R&D scheme[4]

The conclusions differ from study to study. A number of researches testify in favor of the effectiveness of the use of tax incentives as a tool for stimulating innovation activities, while other works prove the thesis that these exemptions are an important instrument of international tax competition, therefore they do not lead to the emergence of innovations, but rather facilitate the flow of already existing intellectual resources and

[1] Addressing the Tax Challenges of the Digital Economy, Action 1 - 2015 Final Report // OECD. – URL: https://doi.org/10.1787/9789264241046-en. P.55 Par. 117 (date of access: 20.09.2020).

[2] Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance, Action 5 - 2015 Final Report, // OECD. – URL: https://doi.org/10.1787/9789264241190-en.

[3] Tax Challenges Arising from Digitalisation – Interim Report 2018: Inclusive Framework on BEPS, OECD/G20 Base Erosion and Profit Shifting Project. // OECD. – URL: https://doi.org/10.1787/9789264293083-en (date of access: 20.09.2020).

[4] HMRC (September, 2020) Research and Development Tax Credits Statistics. – URL: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/921817/Research_and_Development_Tax_Credits_Statistics_September_2020_accessible.pdf (date of access: 10.06.2021)

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legal intellectual property rights between countries. It seems to us that both conclusions are of great practical importance to elaborate proposals for the development of tax policy in Russia, since they indicate that in the conditions when countries competing with Russia introduce preferential tax regimes for R&D and intellectual property, the risk of spillover of economic and tax bases in this area from Russia.

It should be noted that the stimulation of innovations by the state, as a rule, is aimed at supporting R&D, as well as at developing of the corresponding infrastructure and involves direct financing, as well as the creation of tax incentives that motivate R&D spending [14].

Government subsidies for scientific and research work[5], as well as grants and various types of financing and lending in partnership with private business are the instruments for direct financing of innovation activities. Also, a stimulating effect can be provided indirectly through tax and other mechanisms to support innovation activities, as a rule, by providing various tax exemptions and preferences for R&D spending, by administrative simplifications and loan guarantees [15; 16].

Comparing the effectiveness of stimulating innovation activity through the indicated methods of state support, A.L. Suslina and R.S. Leukhin note that the main disadvantage of direct financing is the subsequent "...effect of crowding out private capital by public capital, which leads to saving companies' internal funds, which were initially meant to be spent on R&D, and which may later be spent on non-innovative purposes" [14, p. 64]. The use of tax instruments to stimulate scientific and research activities is the most universal way to support innovation, since it puts all possible participants in such activities on an equal footing, regardless of their size, experience and form of ownership [14]. At the same time, modern specialists note not only a wider range of recipients, but also the transparency of the procedure for obtaining tax incentives among the main advantages of tax incentives for the purpose of providing a stimulating effect on economic entities to spend on R&D [14; 17]. In addition, as O. G. Golichenko notes, that the application of tax incentives is neutral in regard to such company characteristics as belonging to a particular industry, type of production or a region [18].

However, as modern experts note, tax instruments for providing state support should be considered as an inseparable part of the general state policy to stimulate innovation activities [14]. V.G. Panskov, when considering the models of state regulation, also notes that "... none of the models of state regulation account exclusively for tax instruments" [17, p. 89]. The need to apply various measures by the state to motivate economic entities to invest in the development of innovative activities is indicated by O.G. Golichenko, who notes that the policy of motivating actors includes maintaining a balance between the internal activity of actors and external effects; compensation of risks linked to innovative activities and a drive to accept part of these risks; stimulation of actors belonging to different mesolevels of the system (structural factor) [18]. Thus, despite the advantages of tax incentives to support innovation activities compared to direct financing, modern experts point out the impossibility of achieving the desired results only through the use of tax incentives linked to R&D. In addition, tax instruments do not allow investors to make up the objective shortcomings of the national innovation system, such as, for example, a shortage of scientific and technological staff, a low level of protection of intellectual property rights [2; 19]. Therefore, support for science and innovation should be carried out in close connection with various external effects that affect the attractiveness of investing in innovation [18].

At present, in Russia, as in most foreign countries, the bulk of domestic spending on research and development relates to the business sector. However, in Russia, most of these expenses are financed by the state, and not by the companies themselves, which is associated with a low value of the knowledge created [20; 21]. The consequence of this is the low competitiveness of innovative products in foreign markets. In this regard, the increase of private investment in R&D is an important condition for innovative development.

[5] In the article, the concepts of "research and development" and "R&D" (research and development work) are used as synonyms.

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In order to support innovation activities, as well as to encourage companies to spend on R&D, there are various tax mechanisms are currently in Russia, including corporate income tax exemptions. The effect of these incentives implies the possibility of reducing the tax burden both due to expenditures on R&D, and to income from the commercialization of the results of R&D. However, the results of studies by modern experts on the issues of tax incentives for innovation activities indicate the insufficient effectiveness of existing tax instruments to motivate R&D spending, in particular because of the imperfection of their provision mechanisms [22-24].

3. Special aspects of R&D expenses recognition

Currently, one of the main instruments of tax incentives for R&D is the possibility of recognizing the R&D costs for corporate income tax purposes. This exemption allows taxpayers to reduce the amount of corporate income tax liability in terms of their R&D expenses by including certain types of such expenses in other expenses when determining the tax base.

The list of types of R&D expenses accounted for corporate income tax purposes is established by Art. 262 of the Tax Code of the Russian Federation. In accordance with the provisions of this article, R&D expenses are understood as expenses for the creation of new or improvement of manufactured products and for new or improved technologies, methods of organizing production and management. In particular, such expenses include: expenses for the remuneration of employees involved in the implementation of R&D, material expenses, depreciation amounts for fixed assets and intangible assets, the cost of work under R&D contracts, deductions for maintaining funds to support scientific and innovation activities in the amount of not more than 1.5 percent of sales revenues, other expenses directly related to R&D[6].

According to the general rule, accounting for R&D expenses for profit tax purposes as part of other expenses is carried out in the period of completion of R&D (separate stages), regardless of the result (positive or negative) of R&D). The following types of expenses are excluded:

– deductions for the formation of funds to support scientific, technical and innovative activities - expenses are recognized in the fiscal period when they were incurred;

– exclusive rights to intangible assets (hereinafter referred to as IA) obtained as a result of R&D.

In the event that, as a result of R&D, the exclusive right to intangible assets is obtained, the corresponding expenses are subject to accounting in the following order:

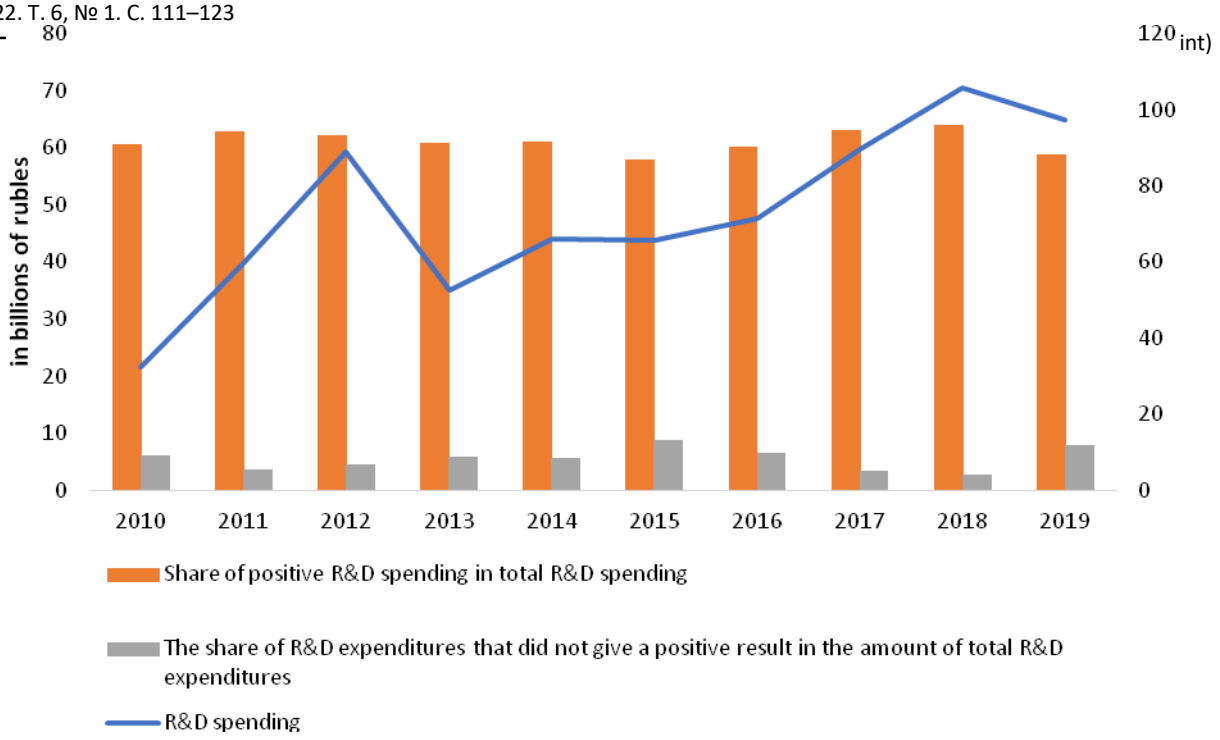
– as part of other expenses related to production and sale, within 2 years; or

– as part of the initial cost of intangible assets.

Similar procedure of applying 1.5 multiplying coefficient applies to R&D expenses according to the list established by the Government of the Russian Federation. Since R&D that did not give a positive result does not relate to intangible assets, the recognition of expenses for the purposes of corporate income tax is possible only as part of other expenses. The procedure for accounting for R&D expenses chosen by the taxpayer is reflected in the accounting policy for tax purposes.

Thus, the current procedure for recognizing R&D expenses is neutral with respect to the final result (positive or negative) of R&D. Given that the implementation of scientific research and development almost everywhere bears the risk of not obtaining positive R&D results, such approach to granting a tax benefit should be considered methodologically correct. However, according to the Russian Federal Tax Service, the share of R&D expenditures that did not lead to positive results is extremely low, that indicates that the taxpayer takes into account for tax purposes only those R&D that potentially have a high chance of a positive outcome. Comparative data on the volumes and changes in R&D expenses taken into account for the purposes of taxing the profits of organizations are shown on Figure 1.

[6] Tax code of the Russian Federation (part two). [Electronic resource]. – URL: http://www.consultant.ru (date of access: 20.05.2020).



Dynamics of R&D expenses accounted for corporate income tax purposes, billion rubles

In recent years, R&D expenditures taken into account when determining the tax base for corporate income tax tend to increase. Thus, over the past 5 years, the volume of these expenses has been increasing and averages about 57 billion rubles. The largest amount of tax benefit is R&D expenses not included in the list of the Government of the Russian Federation. The amount of R&D expenses according to the list approved by the Government of the Russian Federation in 2019 was 19.3% of all R&D expenses. At the same time, on average, the volume of such expenses in 2019 per taxpayer amounted to 192 million rubles, which is 3 times higher than the value of the same indicator for all R&D expenses taken into account when determining the tax base for corporate income tax.

It should be noted that the rule for recognizing R&D expenses according to the list approved by the Government of the Russian Federation currently applied has been in effect since 01.01.2012. Before, the costs of such R&D (regardless of the result) were taken into account for the purposes of corporate income tax in the fiscal period when they were carried out and included in other expenses in the amount of actual costs, taking into account a coefficient of 1.5. A distinctive feature of the procedure for applying the exemption in terms of R&D expenses in accordance with the list approved by the Government of the Russian Federation, which was in force before 2012, was the possibility of a one-time recognition of the corresponding amounts of expenses, taking into account the established multiplying factor. Currently, this procedure for recognizing expenses is applied only to R&D operations on the list of the Government of the Russian Federation, launched before 01.01.2012.

Thus, the current mechanism for reducing the tax burden on income tax in connection with R&D expenses makes it possible to take into account certain types of research and development expenses when calculating the tax base. Currently, a single procedure for recognizing such expenses is applied, regardless of the R&D result (positive or negative). However, in the event of a positive outcome of R&D and the acquisition of the exclusive rights on intangible assets based on its results, accounting for expenses for the purposes of corporate income tax is carried out at the taxpayer's choice either as part of other expenses or in the initial cost of intangible assets.

A similar procedure for recognizing expenses has been introduced since 2018 in relation to R&D expenses according to the list of the Government of the Russian Federation, taking into account the established coefficient of 1.5. Along with this, the prevailing part of R&D expenditures are R&D expenditures with a positive result. Over the past 10 years, the proportion of R&D expenditures that led to a positive result in total R&D expenditures for corporate income tax purposes averaged about 92%. At the same time, the share of R&D expenditures that did not give a positive result for the period 2013-2019 has a downward trend. The reason for this reduction might be a shift in taxpayers preferences towards R&D, which will certainly have positive results, rather than solving global problems associated with the development of fundamentally new technologies.

4. Barriers to Tax Incentives for R&D

Despite the fact that tax incentives do not often serve as a determining factor in making decisions regarding investments in R&D, they are extremely important for creating conditions fostering the development of innovative activity [14]. However, the level of demand for existing tax measures in terms of stimulating R&D is low, which is confirmed by the results of selective studies by the National Research University Higher School of Economics and Delloite.

The HSE Newsletter, published in 2015, contains the results of the innovation activity monitoring of the actors of the innovation process. The conclusions are based on a sample of about 2,000 industrial and service enterprises. At the same time, this sample contains both innovative and non-innovative enterprises in the ratio of about 70 to 30, respectively. The monitoring showed that in 2012 only 14% of enterprises took advantage of the state support measures provided in the innovation sphere[7]. At the same time, despite the greatest demand among innovative companies, only 43.6% of respondents applied for such support, that is, less than half of the enterprises in this sector. It should be noted that 14.3% of innovative enterprises from the sample and 3% of non-innovative enterprises took advantage of tax support measures, including the possibility of accounting for R&D expenses when calculating the tax base for corporate income tax. Among the main reasons for such unpopularity of existing incentives are the variability of state support instruments and the complexity of applying individual benefits and preferences, both from the standpoint of their use by taxpayers and tax administration. It should be noted that the results of the Delloite study also led to the conclusion about the low popularity of certain tax incentives, including benefits in the form of a deduction for R&D expenses in an increased amount[8]. Thus, based on a sample of 130 companies practicing innovative or high-tech development in Russia, it was revealed that 36% of the surveyed companies identified unclear, and therefore risky for the taxpayer, rules for obtaining it as the main obstacle to applying the increased deduction for R&D expenses. At the same time, 27% of respondents indicated a lack of understanding of what kind of company's activities are related to R&D in terms of tax legislation or the non-compliance of companies' activities with the requirements, the fulfillment of which makes it possible to obtain a tax benefit[9]. The results of the legal precedents review also point to contentious issues regarding the use of certain tax incentives by taxpayers.

The overview of legal precedents of the application of R&D tax incentives is presented below.

The issue of qualifying R&D costs. In Case No. A40-240988/16, the issue of the legality of applying a coefficient of 1.5 to R&D expenses according to the List of the Government of the Russian Federation by VimpelCom PJSC was considered[10]. In order to determine the legality of applying this tax benefit, the court clarified the

[7] Innovative Activity of the Subjects of the Innovation Process. Higher School of Economics Information Bulletin. 2015. No. 4.

[8] Deloitte. Efficiency of State Support Mechanisms for R&D in Russia. Deloitte Research Report, CIS Moscow, 2016.

[9] The sample includes companies participating in the Skolkovo Foundation that use the benefits provided for its residents.

[10] Resolution of the Ninth Arbitration Court of Appeal dated 30.01.2018 No. 09AP-63972/2017 in Case No. A40-240988/16.

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compliance of the costs incurred by the taxpayer with the R&D criteria included in the List of the Government of the Russian Federation. In turn, the answer to this question required the involvement of experts, including for evaluating the content of the work performed.

Evaluation for compliance of disputed works with R&D was carried out according to two criteria: (1) the criterion of "novelty" (characteristics of the R&D subject); (2) the criterion of "significance for science as a whole" (a characteristic of the expected result). The choice of these criteria is due to the inherent characteristics of R&D, in particular, the focus on improving technologies or management methods used on the scale of the Russian Federation and the significance for Russian science as a whole.

Since the results of the expert opinion showed that the disputed works only contained signs of development work and were aimed at improving the technologies used within one company, VimpelCom PJSC, the court declared unlawful the taxpayer's use of the corporate income tax benefit. In its decision, the court also proceeded from the fact that the benefit is aimed at stimulating the development of innovative activity in the Russian Federation. In this connection, this measure of support for business entities is to be provided based on the contribution of taxpayers to the development of their activities in general and cannot be reduced to supporting only those of them whose efforts were aimed at solving exclusively their own, technical problems that have no scientific value for other business entities.

The issue of attributing costs to R&D expenses or their inclusion in the initial cost of intangible assets. In Case No. A72-3819/2017, was considered the issue of the legitimacy of attributing certain costs of Aviastar-SP JSC to R&D expenses according to the List of the Government of the Russian Federation using a coefficient of 1.5[11]. During the trial, it was established that, based on the results of the joint activities of JSC Aviastar-SP and Ulyanovsk State University (hereinafter referred to as UlSU), a computer program was created, the exclusive rights to which belong to JSC Aviastar-SP. At the same time, when creating this computer program, the result of the intellectual activity of USU was used, obtained in connection with the implementation of R&D under a joint state contract with the Ministry of Education and Science of Russia and subsequently transferred to USU under an agreement on the alienation of the exclusive right of Aviastar-SP JSC. Having received from USU the results of the work performed under the state contract with the Ministry of Education and Science of Russia, Aviastr-SP JSC accepted them for accounting as intangible assets.

Having accepted for accounting and put into operation the created intangible asset, Aviastar-SP JSC submitted to the tax authority an amended tax return and, together with it, a corresponding report on R&D performed (individual stages of work), the costs of which are recognized in the amount of actual costs using the coefficient 1.5. However, the court found it unreasonable for the taxpayer to apply this procedure for attributing expenses, since the disputed costs were associated with the creation of intangible assets and, therefore, are subject to inclusion in the initial cost of an intangible asset and cannot be attributed to R&D expenses using a multiplying factor.

The issue of determining the value of intangible assets obtained as a result of R&D. In case No. A56-41079/2015, the issue of the legitimacy of JSC Sukhoi's inclusion of the costs of performing the R&D stage 1.2 in R&D expenses was considered[12]. During the trial, it was established that in 2006 the result of the work was the invention "Information-controlled system of the aircraft" and the industrial design "Integral aerodynamic layout aircraft", for which Sukhoi OJSC received exclusive rights and issued the corresponding patents. According to the procedure in force in 2006, R&D expenses could be evenly included by the taxpayer in other expenses within 2 years, provided that R&D results are used in production and (or) in the sale of goods (works, services) in the prescribed manner. However, JSC Sukhoi did not take into account the disputed costs

[11] Resolution of the Eleventh Arbitration Court of Appeal dated 17.10.2017 г. in case No. A72-3819/2017.

[12] Resolution of the Thirteenth Arbitration Court of Appeal dated 20.07.2017 г. No. 13АП-12400/2017 in case No. A56-41079/2015.

upon completion of the first stage of work and signing the acceptance certificate within 2 years, but accounted for them within 1 year, starting from 01.01.2011 (after the conclusion of a contract in 2010 with a foreign customer, the signing of which made it possible to use the developed draft design). However, the tax inspectorate considered such attribution of expenses unlawful, since as a result of the expenses incurred, the taxpayer received intangible assets subject to depreciation in the prescribed manner.

According to the documentation attached to the case, the cost of patents for accounting and tax purposes was determined by the taxpayer as the sum of the expenses actually incurred for registration of the exclusive right (patent fees). However, to take into account intangible assets for tax purposes, having determined their value in the amount of the state duty, in accordance with paragraph 9 of Art. 262 of the Tax Code of the Russian Federation, the taxpayer could, if these patents arose as a result of work on stage 1.2 of the ROC. The court also determined that intangible assets were created by the organization itself, therefore, their value is to be determined based on the amount of actual expenses for the creation of intangible assets, including material costs, wages, services of third-party organizations, patent fees in connection with obtaining patents, certificates (paragraph 12, clause 3, article 257 of the Tax Code of the Russian Federation). That is, in this case, the cost of intangible assets is the cost of the entire R&D stage, since without its acquisition it would be impossible to acquire intangible assets.

The issue defining the period of allocation of costs for R&D with reference to the terms of the implementation of the relevant work. In case No. A66-22059/2017, was considered the issue of the legality of including in the tax base calculating corporate income tax for 2013 the losses of previous years (2010-2012) to which it is possible to determine the specific period of their occurrence[13]. During the progress of the procedure, it was established that Tverstekloplastik OJSC (customer) concluded a contract with Transenergostroy LLC (executor) for the execution of R&D works, the deadline for which expired in 2011. Due to the lack of documents confirming the continuation of work after 2011, the court found it unreasonable to include by the taxpayer as part of expenses that reduce the tax base for corporate income tax for 2014 of R&D costs for the “Kozhukhi” product (without a positive result). Along with this, in 2011, work was carried out on the development of R&D with the assignment of the code “Bridges and Crossings” to the result. However, the completion of these works was recognized in 2014 with a positive result. Therefore, the taxpayer included the amount of expenses incurred, including in 2011, in the tax base for the purpose of calculating income tax for 2014, taking into account the coefficient of 1.5. However, according to the tax register, the expenses for the development of Bridges and Crossings were already recorded by the taxpayer in 2011, which was also the year when the R&D contract expired. In this regard, the court determined that these costs relate only to 2011 and, according to the wording of paragraph 2 of Art. 262 of the Tax Code of the Russian Federation, should be subject to accounting by the taxpayer as part of other expenses evenly over 1 year in accordance with the established procedure.

Disputes between taxpayers and tax authorities as a result of the application of existing tax incentives in terms of R&D-related operations cover a wide range of issues, not only related to the legality of applying a separate tax benefit, but also with the compliance of R&D with the list of the Government of the Russian Federation for the use of a special coefficient, and the procedure for attributing R&D costs, determining the cost of intangible assets received as a result of R&D and determining the period of cost occurrence.

5. Conclusion

Currently, the option to take into account certain types of R&D expenses when calculating the tax base for corporate income tax is one of the key instruments of tax support for innovative activities within the framework of Russian tax legislation at the federal level. At the same time, the current procedure for recognizing R&D expenses is unified and does not depend on the result (positive or negative) of R&D.

[13] Resolution of the Arbitration Court of the North-Western District dated 26.09.2019 г. in case No. A66-22059/2017.

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The volume of this benefit in 2019 amounted to about 65 billion rubles [14] For comparison, the level of internal current expenditures[15] on R&D in the Russian Federation for the same period amounted to 1,061 billion rubles[16].

Thus, despite the fairly significant amount of benefits (about 63 million rubles on average per taxpayer), the popularity of its use among taxpayers is extremely low. Among the main reasons for this, taxpayers note the various risks of applying existing tax incentives to R&D, associated with ambiguous interpretations of the rules for obtaining them.

The results of a review of judicial practice on issues related to the application by taxpayers of the current mechanism for reducing the amount of corporate income tax in connection with R&D expenses indicate the existence of various disputes between taxpayers and tax authorities. It should be noted that at present, partially separate issues regarding the application of the provisions of Art. 262 of the Tax Code were settled as a result of amendments to it[17]. In particular, at present, the procedure for granting corporate income tax benefits has been unified, which allows taxpayers to apply a reduction coefficient of 1.5 to R&D expenses according to the list of the Government of the Russian Federation.

Thus, starting from 2018, all taxpayers incurring R&D expenses have the right to choose how to account such expenses for corporate income tax purposes (as part of other expenses or in the initial cost of depreciable intangible assets) using a coefficient of 1.5.

It should be noted that among companies engaged in developments in the innovation field (Delloite, 2016), the majority, as a rule, use various tools to protect the results of intellectual activity, including by filing patents for inventions. In this regard, the unification of the procedure for recognizing R&D expenses for corporate income tax purposes will significantly reduce the risks of legal uncertainty regarding the application of existing tax incentives to R&D among companies investing in research and development and reduce barriers to their application.

Along with this, at present, the application of a tax exemption for R&D predetermines the need for taxpayers to incur expenses for the creation of a fundamentally new product that represents value for science in general. However, the results of a sample survey of companies engaged in the development of innovative products and technologies (Delloite, 2016) show that their activities are mainly aimed at creating new or improving existing technologies, processes and services focused on the company, and not on the market as a whole. In this regard, it is advisable to conduct an inventory and update the R&D perimeter, in respect of which the exemption is granted.

In order to significantly simplify the application of the key incentive to R&D in terms of corporate income tax, it is advisable to expand the application perimeter of the coefficient 1.5, the application of which is currently provided only for R&D expenses according to the list established by the Government of the Russian Federation. The extension of such a procedure for granting incentives for R&D expenses, regardless of their compliance with the list of the Government of the Russian Federation, will significantly simplify the application of this tax incentive by taxpayers and expand its targeted focus. As a result, this will

[14] Report on the tax base and the structure of accruals for corporate income tax. Federal Tax Service of Russia. URL: https://www.nalog.ru/rn77/related_activities/statistics_and_analytics/

[15] Internal current costs - labor costs, insurance premiums to the Pension Fund, Social Insurance Fund, FFOMS, TFOMS, the cost of acquiring equipment at the expense of the cost of work, other material costs (the cost of raw materials, components, components, semi-finished products, fuel, energy purchased from the side, works and services of an industrial nature, etc.), other current costs.

[16] Internal current costs for research and development by types of costs (for the Russian Federation; for the constituent entities of the Russian Federation). Rosstat. URL: https://rosstat.gov.ru/folder/14477

[17] Federal Law No. 166-FZ of July 18, 2017 "On Registration of Amendments to Articles 251 and 262 of the Second Tax Code of the Russian Federation". [Electronic resource]. – URL: http://www.consultant.ru (date of access: 20.05.2020).

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reduce the administrative barriers associated with the application of a coefficient of 1.5 and confirmation of the compliance of the committed R&D expenditures with the criteria, conditions and directions from the list established by the Government of the Russian Federation, and will also lead to a reduction in contentious issues when applying the benefit by eliminating the need to develop criteria for classifying certain expenses as eligible R&D expenses.

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