

FISCAL ISSUES OF GOVERNMENT POLICY FOR THE INVESTMENT PROTECTION AND PROMOTION

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The subject. The institution of investing in the Russian Federation is determined by the set of economic and legal reformations. That is why discussions and debates about the necessity of creating of the investment code, unification of existing rules of investment activity regulation still exist. It is also necessary to form and systemise a kind of a common registry of state support measures and it is also necessary to control the provision of state support. Russian science studies legal regulation of state support of business subjects only in specific ways. Despite the plenty of works on the topic of legal regulation of activity of small and medium-sized businesses, this field of legislation is not developed enough to give an opportunity to conduct complex researches of theoretical and practical aspects relating to exclusively legal and financial framework of state support of the investment activity. In this article we detect and reveal general problems connected to introducing of tax frameworks of state support of promotion of investments in the conditions of existing Russian legislation. In the context of this article we show the analysis of novelties related to

legal regulation of tax instrument of state support of investments. Theoretical importance of this article lies in suggestions on improving of this field of national legislation.

This research is aimed at theoretical realising of legal regulations of current measures on performing of tax policy while implementing Act on investments.

The methodology. The basic method of research of mentioned problems is a formal legal one. There are some problems in the process of investing based on the Agreement on protection and promotion of investment. With the help of this method these problems were examined taking into consideration the implementing tax policy in this field of entrepreneurship.

The main results. Several legal problems are revealed and specified in this article. Authors prove their own point of view which consists of idea of detailed theoretical elaboration of the problematics in order to implement a framework of Agreement on protection and promotion of investment successfully, given that it is necessary to enact the list of bylaws by the Government of the Russian Federation and to create an impeccable software.

Conclusions. Authors suggest measures for improving of legal regulations of current investment legislation and tax and fees legislations. It is crucial to point out that such issues as a procedure of entering into agreements (including the procedure of holding a tender within public project initiative) and common requirements to them; standard form of an agreement; the procedure of monitoring of realisation stages of an investment project (in relation to which the Agreement on protection and promotion of investment was signed); the procedure of keeping of a register of such Agreements; the procedure of the identifying of the level of the compensation of spendings needed for the project's realisation and as well as spendings on payments of credits and loans' interests, coupon payments from the bonded loan and etc. From the point of view of the legal regulation's systematisation the complex law institution has been formed, and it contains principles and rules of both public and private law. The complexity of legal relationship, appearing in the process of investing, requires to take into account public and private interests, and moreover it conditions the necessity of intersectoral legal regulation. Combining diverse legal means provided for in the context of legal regulation of budgetary and tax relationships public legal entities in order to achieve a maximum effect can provide the stimulation of growth of investment which is able to become a booster for economic growth of the state.

Contribution. Imeda A. Tsindeliani and Evgeniya G. Vasilyeva contributed to the design and implementation of the research presented in sections 1-2, 7; Imeda A. Tsindeliani and Zhanna G. Popkova contributed to the design and implementation of the research presented in section 3; Imeda A. Tsindeliani and Maria A. Egorova contributed to the design and implementation of the research presented in section 4; Imeda A. Tsindeliani and Denis V. Tyutin contributed to the design and implementation of the research presented in sections 5-6; Imeda A. Tsindeliani, Evgeniya G. Vasilyeva, Zhanna G. Popkova, Maria A. Egorova, Denis V. Tyutin contributed to the analysis of the results (section 8).

1. Introduction

In the modern financial policy of the state, based on the concept of a "proactive" state, tools to support business activity are being actively introduced. A number of reforms in recent years have made it possible to strengthen the financial stability and economic sovereignty of Russia, and made it possible to create comfortable conditions for intensifying investment activity in the national economy.

The modernization of the elements of the financial system of the state is also significantly influenced by the current stage of the industrial revolution, which led to the transition of the economic systems of the state to new technological rails that allow the formation and development of the digital economy.

For decades, the formation of a framework for the legal regulation of investment relations in Russia was, basically, not ordered and did not rely on any general concept.

For instance, R.S. Bevzenko expressed the opinion that in our so-called "investment legislation" there is nothing but slogans about how the state likes investors, swears to protect them in every possible way and not offend them, in fact, there are no norms in it, that is, no specific rules of conduct. For this reason, it is possible that a certain approach has developed in law enforcement practice, according to which "investments" do not have their own strict or generally recognized legal content, and therefore, when used in the names of contracts, they can denote various relations that develop between participants in civil circulation, and it is necessary to establish the legal nature of the relevant agreements and resolve the dispute in accordance with the rules of chapters 30 ("Purchase and sale"), 37 ("Contract"), 55 ("Simple partnership") of the Civil Code of the Russian Federation, etc.¹

Nevertheless, in today's conditions for the implementation of financial and economic activities, investment projects have increased importance. Investing, at present, can be essential to improve the efficiency of entrepreneurial activity. It should be noted that in relations with foreign investors, the Russian Federation adheres to accept international standards.

Briefly, the "technology" of mutual foreign encouragement, which has developed in practice, can be described as follows: the state, in order of "gratitude" for investments from abroad and to attract such investments, in an international treaty agrees on a reduced rate of tax on profit (income) with dividends paid to foreign investors².

The relevance of this study is due to the theoretical and practical significance of issues related to the implementation of the fiscal policy of the state in the field of investment activity. In modern legal science, theoretical developments in the field of legal regulation of investment activity are insufficient, despite the presence of a number of works [4-10]. Modern Russian tax law in terms of legal regulation of tax optimization is not perfect; it is being modified by taking into account the economic, political and social requirements.

The institution of investment in the Russian Federation is predetermined by a complex of economic and legal reforms. Therefore, lengthy discussions do not stop regarding the emergence of a Russian investment code for the unification of investment activity regulation, systematization and formation of a unified register of state support measures, control over the provision of state support measures [12-16]. Currently, the legal norms governing relations for the implementation of investment activities are located in several legal acts. Under such circumstances, the creation of a codified act regulating investment activity seems to be the most objective and appropriate. The Investment Code will be able to generalize and unify in a single

¹ Point 4 Decree of the Plenum of the Supreme Arbitration Court of the Russian Federation dated July 11, 2011 No. 54 "On some issues of resolving disputes arising from contracts regarding real estate that will be created or acquired in the future" // Bulletin of the Supreme Arbitration Court. 2011. № 9.

² Determination of the Supreme Court of the Russian Federation of October 2, 2019 No. 307 ES19 8719 (cited in the Review of Judicial Practice of the Supreme Court of the Russian Federation No. 1 (2020) (approved by the Presidium of the Supreme Court of the Russian Federation on June 10, 2020).

legal act the existing rules governing investment activities, measures of its state support, which will contribute to a qualitative improvement in the investment climate in the country.

The Law of the Russian Federation of February 25, 1999 No. 39 "On investment activities in the Russian Federation, the Russian Federation, carried out in the form of capital investments"³, adopted back in 1999, provided for a certain degree of protection for investment entities that entered into government contracts, but, as a rule, investors did not receive stable conditions in practice.

Recently, new support tools for the implementation of investment projects have appeared. The issues of increasing the investment attractiveness of Russia are reflected not only in the economic, but also in the legal literature. There is an urgent need for a theoretical study of issues related to the nature and principles of investment activities, tools for the implementation of investment projects, guarantees and support measures, the formation of a unified register of state support measures, preferential conditions, including fiscal measures to support investment activities. On the legal regulation of taxation of profits and incomes in the Russian Federation influenced by many factors, among which an important place is occupied by the internationalization of tax law. More and more tax legal relations are of a cross-border nature [18, p. 67]. In recent years, Russian tax law has introduced institutions that have developed and are used in the tax law of foreign countries. These processes are progressive and are characterized by frequent changes in legislation, which indicates that the concept of deoffshorization and implementation of the BEPS plan is not always worked out in detail at the stage of adoption of bills.

We consider it expedient to further study these issues in order to harmonize the legal regulation of investment activities, given that this sphere of legal relations is affected by both the principles and norms of public law and private law.

³ Federal law "On investment activity in the Russian Federation, carried out in the form of capital investments" // *Sobranie zakonodatelstva (further - SZ RF)*. 1999. № 9. Art. 1096.

Researchers, in particular K.A. Ponomareva, notes that the non-discrimination regime assumes that "each state has the right to provide the subjects of its national law by the partner state with such taxation conditions that are no worse than the conditions provided by this state to the subjects of the national law of other countries" [19, p. 79]. The author also says that tax powers are a necessary condition for guaranteeing the external independence of the state and its internal sovereignty. She notes that in the absence of the ability to attract tax revenues to the budget, not a single modern state will be able to achieve a single political or economic goal.

Today, there is a gradual development of legal instruments for the implementation of state support for investment in domestic legislation. Director General of the Russian Direct Investment Fund K.D. Dmitriev believes that "the initiative to make investments in full must belong to the investors themselves, who cannot be forced to make investments by force, since it is business that forms the basis necessary for economic growth, and the state, in turn, provides all the necessary conditions for this."⁴

It should be noted that work in this direction is being carried out, so in order to provide additional guarantees and preferences for investors in the Russian economy, the Federal Law of April 1, 2020 No. 69, the Law on the Protection of Investments⁵, which was prepared in pursuance of paragraph 1 of the order of the President of the Russian Federation V.V. Putin dated April 4, 2019 No. Pr-566. In 2016 - 2018, the share of capital investments in the GDP of the Russian Federation amounted to 21.1%, the growth of investments amounted to 3.0%, which is 1.5 - 2 times lower than in countries in the active stage of development (for example, China - 44.8 % and 5.9%, Indonesia - 33.9% and 6.4%, India - 31% and 7.8% respectively, according to the World Bank).

⁴ Business discussed investments in the future of Russia through national projects at SPIEF // Information Telegraph Agency of Russia (ITAR-TASS).URL: <https://tass.ru/nacionalnye-proekty/6529841> (date of the application: 22.07.2022).

⁵ Federal Law No. 69-FZ of April 1, 2020 "On the Protection and Promotion of Investments in the Russian Federation" // *Rossiyskaya Gazeta*. April 3, 2020 No. 72. (hereinafter - Law No. 69-FZ).

This gap can only be reduced by realizing the deferred investment demand of large companies, since it is they who form up to 75% of new investment projects.⁶ Nowadays, it is planned to conclude 100 agreements on the protection and promotion of capital investments (APPCI) for almost 2 trillion rubles, and by the end of 2024 - 600 such agreements with a total investment of 12.6 trillion rubles. Among those who concluded the APPCI, there are many large companies: "Apatit" ("Phosagro" Group), "Green Line" Greenhouse Complex (part of the "Magnit" group of companies), "Miratorg", Wildberries, Sokolsky Pulp and Paper Mill ("Segezha" Group).⁷

Accordingly, since 2020, a new instrument for stimulating investment activity has been introduced at the federal level. The APPCI provides the investor with both the opportunity to receive state support measures and the right to stabilize the rules governing activities within the framework of the investment project, that is, a guarantee that its legal status will not worsen. Within the framework of the APPCI, the organization will be able to carry out not only new construction, but also the modernization and reconstruction of existing real estate objects. At the same time, the very procedure for concluding these agreements is significantly simplified by Law No. 69. As a result, the agreement actually establishes a new form of cooperation between state-public entities and business, which become equivalent subjects of civil law relations, which ultimately makes it possible to predict the conditions for the implementation of investment projects. Thus, Law No.69 supplemented the existing legal regulation in the field of private investment, established and consolidated new measures of state support, a mechanism that guarantees the unchanged

conditions for the implementation of large investment projects and the conditions for investors to receive compensation. In turn, this necessitated and improved the legal regulation of taxation in this area.

2. Agreement on the Protection and Promotion of Investments - a new form of investment protection and public-private partnership

The law on the protection of investments in Russia is aimed at improving the investment climate; it will give a stimulating impetus to the development of the country's economy to accelerate the growth of investment and their share in gross domestic product. Its main task is to create the most favorable conditions for investment activities in Russia. The solution to this problem lies in the distribution of investment regimes to investors and organizations that can ensure the transparency of the legal regulation of investment activity, its stability and stimulation. The Investment Protection Law is aimed at accelerating the development of investment activity and increasing the share of investment in gross domestic product. Thus, in 2020, the planetary GDP decreased by 3.5 percent, which is associated with the epidemiological situation and the introduction of forced restrictions, which, in turn, affected the business environment and economic dynamics in general. The growth rate of the Russian GDP in December 2020 slowed down to 4.3% after 5.3% in November, at the end of 2021 the economy grew by 4,6%⁸.

The law on the protection of investments was adopted in order to improve investment attractiveness, give an appropriate impetus to the development of the economy, to ensure the proper legal mechanism for state guarantees of investments. The main purpose of the adopted Law is to maximize the improvement of cooperation between the state and the organizers of the project and the preservation of the initial conditions under which the investment project was signed. The Investment Protection Law will be able to provide

⁶ Explanatory note to the draft federal law "On the protection and promotion of capital investments and the development of investment activity in the Russian Federation" // System for ensuring the legislative activity of the State Automated System "Lawmaking": <https://sozd.duma.gov.ru/bill/828237-7> (date of the application: 22.07.2022).

⁷ Online edition «forbes.ru» / <https://www.forbes.ru/finansy/438509-minekonomrazvitiya-opozdalo-zapustit-gosinformsystemu-kapitalovlozenia> (date of the application: 22.07.2022).

⁸ RIA Novosti/ RIA News. <https://ria.ru/20211228/tretyakov-gallery-vrubel-1765122312.html> (date of the application: 22.07.2022).
Law Enforcement Review
2022, vol. 6, no. 4, pp. 95–120

companies implementing investment projects with stability and predictability in terms of legal regulation, for which the only condition will be the conclusion of an APPCI with public legal entities. In addition, the said Law laid the foundations for the formation of a unified register of all state support measures that exist today, which is a rather important stage on the way to control over their provision and systematization.

The advantages of Law No. 69-FZ are the establishment of a transparent legal regulation of legal relations related to the participation of public legal entities in investment activities, which provide for the possibility of attracting a private investor to the implementation of an investment project, as well as the establishment of certain parameters for the participation of a public legal entity in such activities in accordance with the practice of implementing commercial investment projects in order to ensure the interests of public law entities. As a result of the adoption of Law No. 69-FZ "On the Protection and Promotion of Investments and the Development of Investment Activities in the Russian Federation", in order to systematize legislation in the field of investment activities, certain provisions of the RSFSR Law of June 26, 1991 No. 1488-1 were partially recognized as invalid "On investment activity in the RSFSR"⁹ (Law No. 1488-1)¹⁰ and Federal Law No. 160-FZ of July 9, 1999 "On Foreign Investments in the Russian Federation" (Law No. 160-FZ).¹¹ It should be noted that Law No. 1488-1 and Law No. 160-FZ include a significant number of norms-declarations. Moreover, certain legal relations that were covered by Law No. 1488-1 and Law No. 160-FZ were

previously regulated by civil or budgetary legislation, including during the codification, as well as other legislation and did not require duplication. For example, this applies to the rules on the right of an investor to insure his investments (paragraph 3 of Article 15 of Law No. 1488-1¹²), on the obligation of the investor to compensate losses to other subjects of investment activity (clause 1 of Article 17 of Law No. 1488-1¹³) and the others.¹⁴ According to the explanations set out in paragraphs 11, 12 of the Decree of the Plenum of the Supreme Court of the Russian Federation of June 23, 2015 No. 25 "On the application by the courts of certain provisions of Section I of Part One of the Civil Code of the Russian Federation", applying Article 15 of the Civil Code of the Russian Federation, it should be borne in mind that, as a general rule, a person whose right has been violated may demand full compensation for the losses caused to him. Compensation for losses in a smaller amount is possible in cases provided for by law or an agreement within the limits established by civil law.

It seems appropriate in the future (at the next stage of systematization of investment legislation) to invalidate the Federal Law of February 25, 1999 No. 39-FZ "On investment activities in the Russian Federation, carried out in the form of capital investments" (Law No. 39-FZ¹⁵), due to the impossibility of incorporating certain norms of Law No. 39-FZ into Law No. 69-FZ due to their archaism and inconsistency with modern approaches to investment activity. For example, in Law No. 39-FZ, an investment project is understood as a rationale for the economic feasibility, volume and timing of

⁹ Law of the RSFSR of June 26, 1991 No. 1488-1 "On investment activities in the RSFSR" // Gazette of the Congress of People's Deputies of the RSFSR and the Supreme Council of the RSFSR of July 18, 1991 No. 29. Art. 1005 (in terms of the norms that contradict the Federal Law of February 25, 1999 No. 39-FZ).

¹⁰ This Law is recognized as invalid in terms of the norms that are contrary to the Federal Law of February 25, 1999 No. 39-FZ "On investment activities in the Russian Federation, carried out in the form of capital investments".

¹¹ Federal Law of July 9, 1999 No. 160-FZ "On Foreign Investments in the Russian Federation" // SZ RF. 1999. № 28. Art. 3493.

¹² Law of the RSFSR of June 26, 1991 No. 1488-1 "On investment activities in the RSFSR" // Gazette of the Congress of People's Deputies of the RSFSR and the Supreme Council of the RSFSR of July 18, 1991 No. 29. Art. 1005.

¹³ Ibid.

¹⁴ Determination of the Supreme Court of the Russian Federation of September 2, 2021 in case No. A40-339710/2019; Determination of the Supreme Court of the Russian Federation of November 24, 2020 in case No. A43-37766/2019; Decision No. 2-4746/2018 2-650/2019 dated July 23, 2019 in case No. 2-4746/2018. Official site "Judicial and regulatory acts of the Russian Federation": <https://sudact.ru> (date of application: 22.07.2022).

¹⁵ SZ RF. 1999. № 9. Art. 1096.

capital investments, including project documentation developed in accordance with the legislation of the Russian Federation, as well as a description of practical steps for making investments (business plan). According to the presented definition of an investment project, it acts as a kind of “set of documents”, in accordance with which all the regulation of investment activity is built within the framework of this law. At present, the content of the concept of “investment project” has a completely different meaning.¹⁶ So, the investment project is being considered today taking into account the provisions of paragraph 3 of Art. 2 of Law No. 69-FZ (as amended by Federal Law No. 226-FZ of June 28, 2022) - a set of interrelated measures and processes limited in time and resources expended, aimed at the creation (construction) and subsequent operation of new ones or for the reconstruction and (or) modernization carried out in accordance with project documentation that has received a positive conclusion from the state examination, and the subsequent operation of existing real estate objects (including for reconstruction and (or) modernization carried out in accordance with project documentation that has received a positive conclusion from the state examination, and subsequent operation of existing real estate objects on the basis of a concession agreement or lease agreement) and (or) a complex of objects of movable and immovable property related to each other, and (or) for the creation and use of the results of intellectual activity and (or) means of individualization equated to them for the purpose of making a profit and (or) achieving another beneficial effect, including the prevention or minimization of a negative impact on the environment¹⁷.

Among other things, the systematization of

the principles and norms of law already available today, in terms of the implementation of the legal regulation of investments and the development of new ones, will entail the need for an in-depth analysis of the accumulated domestic and international experience in terms of organizing the investment activities of public legal entities, preparing draft amendments to an extensive list by-laws, assessing their impact on the process of implementing national projects with subsequent synchronization of possible changes with the budget legislation of the Russian Federation and mechanisms for managing state (municipal) property.

Based on the above, we summarize. As part of the implementation of Law No. 69-FZ, a public law contract with civil law elements is concluded with the investor, containing all the necessary conditions for the implementation of the investment project. Note that a public legal entity will be liable for violation of contractual terms, and under certain conditions it will be able to unilaterally terminate the contract with an unscrupulous investor. The agreement can be concluded both on the initiative of public legal entities, and the investor himself. If the initiator is a public legal entity (the Russian Federation or a constituent entity of the Russian Federation), a competitive procedure is carried out, according to the results of which an agreement is signed with the winner. An investor who proposes his own project can send an application and the corresponding package of documents to the Ministry of Economic Development of the Russian Federation for consideration, as a result of which a decision is made on the advisability of concluding an APPCI.

It is important to note that the Law actually offers a new set of tools to accelerate the growth rates of investments and their share in the country's gross domestic product. How effective it will be, able to improve the investment climate in the country, will be able to give a significant impetus to the development of the country's economy, time and the practice of its enforcement will show.

3. Stabilization clause - a new form of investment protection, the immutability principle of the conditions of investment activity

¹⁶ Federal Law of November 29, 2014 No. 377-FZ “On the Development of the Republic of Crimea and the Federal City of Sevastopol and the Free Economic Zone on the Territories of the Republic of Crimea and the Federal City of Sevastopol” // SZ RF. 2014. No. 48. Art. 6658.

¹⁷ Paragraph 3 in red. Federal Law No. 226-FZ of June 28, 2022 “On Amendments to the Federal Law “On the Protection and Promotion of Investments in the Russian Federation” // SZ RF. 2022. No. 27. Art. 4627.

For investors carrying out investment activities in the country, a certain system of guarantees and protection in the field of taxation has been established, the so-called "stabilization clause" [20, p. 48], which consists in the stability (invariance) of legal regulation. It includes norms on measures of state support and the obligation not to allow the deterioration of the financial performance of the investment project. For example, an organization that implements a particular investment project has the right to conclude an agreement on the protection and promotion of investments with one or more public legal entities. In accordance with this agreement, public law entities will guarantee the organization not to apply acts against it that may adversely affect the implementation of the investment project.

A stabilization clause is a principle that has developed in world practice to protect an investor from tightening national legislation regulating the investment regime for a specific period of time. In the previous Russian legislation, stabilization clauses were present in a different form than the current legislation, so in the Law on Foreign Investments it was valid only for foreign investors, and in the Law on Investment Activities in the Form of Capital Investments - the clause applied to both Russian and foreign investors. At the same time, the conditions for the implementation of the stabilization clause provided for by these laws had a number of differences, in connection with which, in practice, certain difficulties and uncertainties arose in their enforcement.

The basis of the stabilization clause is the principle that, if the rules contained in the contract binding on the parties corresponded to the legislation in force at the time of its conclusion, they will remain in force unless the law establishes that its effect extends to relations that arose from contracts, previously concluded¹⁸.

It also can be noted that Russian legislation could previously provide, for example, some

features of the operation of acts of legislation on taxes and fees in relation to a certain category of taxpayers, providing for the preservation of the tax burden in the event of an unfavorable change in legislation for them (which was sometimes referred to as the "grandfather's clause" [21]). Initially, it should be noted that the approach is considered traditional, according to which - the latest law cancels the previous law (if it contradicts it) [22, p.236]. It is this approach that the highest judicial bodies demonstrate when they explain the provisions on the procedure for the entry into force of a federal law and the acts that have become invalid at the same time¹⁹.

In law enforcement practice²⁰ the rules that protect the investor from changes in the legislation of the host country are also designated precisely as "grandfather's clause". According to information provided by A.N. Kozyrin, the very concept of "grandfather's clause" came from the practice of US constitutional law at the end of the 19th century. [23, p. 39].

Variants of current norms containing a "grandfather's clause" are enshrined in clause 4.2, clause 4.3 of Art. 5 of the Tax Code of the Russian

¹⁸ Civil Code of the Russian Federation (part one) dated November 30, 1994 No. 51-FZ (as amended on December 21, 2021) (as amended and supplemented, effective from December 29, 2021) // SZ RF. 1994. No. 32. Art. 3301.

¹⁹ Determination of the Constitutional Court of the Russian Federation of November 10, 2002 No. 321-O "On the refusal to accept for consideration the request of the Legislative Assembly of the Rostov Region to verify the constitutionality of Article 10 of the Federal Law "On Amendments and Additions to the Tax Code of the Russian Federation and to Certain Legislative Acts of the Russian Federation on taxes and fees" // Bulletin of the Constitutional Court of the Russian Federation. 2003. No. 2.

²⁰ Overview of the practice of court resolution of disputes related to the protection of foreign investors" (approved by the Presidium of the Supreme Court of the Russian Federation on July 12, 2017) // Bulletin of the Supreme Court of the Russian Federation, N 7, July, 2018;

Resolution of the Federal Arbitration Court of the North-Western District of October 21, 2005 case No. A56-6543 / 2005 (one of the first in judicial practice); Resolution of the Presidium of the Supreme Arbitration Court of the Russian Federation dated January 18, 2011 No. 12105/10 in case No. A05-7314/2008; Judgment of April 12, 2016 in case No. A55-9374/2015; Determination of the Supreme Court of the Russian Federation of November 24, 2021 in case No. A14-65/2020 / Official website "Judicial and regulatory acts of the Russian Federation»: <https://sudact.ru> (date of application: 22.07.2022).

Federation; Art. 38 of the Federal Law of July 22, 2005 No. 116-FZ "On Special Economic Zones in the Russian Federation"; Part 1 Art. 16 of the Federal Law of November 29, 2014 No. 377-FZ "On the development of the Republic of Crimea and the federal city of Sevastopol and the free economic zone in the territories of the Republic of Crimea and the federal city of Sevastopol".

Thus, the so-called guarantee of the immutability of tax conditions is one of the most important that an investor receives when implementing a project. Note that this guarantee is implemented only under certain conditions and depends on which public legal entity the APPCI (Investment Protection and Promotion Agreement) was concluded with.

Taking into account the provision on the stabilization clause, Art. 5 of the Tax Code of the Russian Federation, point no.4.3²¹ according to which, the provisions of legislative acts on taxes and fees, including in terms of the introduction of new taxes and (or) fees, which entered into force after the date of inclusion in the register of information about the conclusion with the taxpayer (payer of fees) APPCI (hereinafter referred to as subsequent acts of legislation on taxes and fees) do not apply to taxpayers (payers of fees) in terms of legal relations related to the execution of such an agreement, as well as Chapter 3.6 of the Tax Code of the Russian Federation "Features of Taxation in the Implementation of Agreements on Protection and Encouragement of Investments"²², which establishes the features of taxation of participants in investment activities and a number of changes made to Chapter 25 "Income Tax", Chapter 30 "Property Tax of Organizations" and Chapter 31 "Land tax"²³. Thus, one of the options for establishing the so-called "grandfather clause" in

tax law was implemented, which involves fixing the unchanged rules for taxing investment activities directly in the Tax Code of the Russian Federation [24].

In Law No. 69-FZ, a direct indication of the existence of tax incentives is provided as a measure of state support in Article 15 in the form of a tax deduction (actually incurred costs that reduce the amount of taxes payable to the budget) in expressly defined cases. Similarly, these provisions are currently interpreted by tax legislation.

With regard to activities within the framework of the APPCI, here organizations are guaranteed protection from changes in tax rules. As an exception, there will be cases of introduction of new taxes associated with the abolition of previously existing mandatory payments, which have a similar object of taxation. In other words, organizations will not be exempted from such payments.

In case if the APPCI is concluded with a constituent entity of the Russian Federation, the provisions of subsequent legislative acts in the field of taxes and fees will not apply in terms of changing the procedure for determining the tax base, tax rates and benefits, as well as in terms of the procedure and terms for paying corporate property tax and transport tax. If the APPCI is concluded with the Russian Federation and a constituent entity of the Russian Federation, then the organization will be guaranteed protection from changes in the above rules for corporate property tax and transport tax, as well as corporate income tax. In addition, the organization is guaranteed protection from changes in the terms of payment and the procedure for VAT refunds, as well as from the introduction of new taxes and fees. If the APPCI is concluded with a constituent entity of the Russian Federation and a municipality, then the provisions of subsequent legislative acts on taxes and fees in terms of changing the above rules on corporate property tax and transport tax, changing tax rates and benefits, as well as the procedure and terms will not apply to the organization payment of land tax. If the APPCI is concluded with the Russian Federation, a constituent entity of the Russian Federation and a municipality, then the provisions of subsequent legislative acts on taxes and fees in respect of all the above taxes will

²¹ Clause 4.3 was introduced by Federal Law No. 70-FZ dated April 1, 2020.

²² Ch. 3.6 of the Tax Code of the Russian Federation was introduced by Federal Law No. 225-FZ dated June 28, 2022 "On Amendments to Parts One and Two of the Tax Code of the Russian Federation".

²³ Introduced by Federal Law No. 225-FZ of June 28, 2022, certain provisions apply from July 28, 2022; part of the amendments from January 01, 2023; part - to agreements concluded after June 1, 2022, to which the Russian Federation is a party.

not apply to the organization²⁴.

The addition to Article 5 of the Tax Code of the Russian Federation is due to ensuring the immutability of legislation on taxes and fees for participants in agreements on the protection and promotion of investments. Thus, the features of non-application to such persons of new legal acts in the field of taxation, which come into force after the person is included in the register of parties to agreements, are fixed. The exceptions are acts, introducing tax benefits. It seems that the stabilization clause for investors will act as a certain additional guarantee against the adverse effects of changes in legislation, being a key point in ensuring the preservation of stable conditions for the economic activity of companies in the state. The stabilization clause is applied in a differentiated way, depending on a number of circumstances, including the public legal entity under the APPCI, the amount of capital investments of the organization implementing the project, the sector of the economy in which the investment project is being implemented.

3.1. Content, conditions of application, period of validity of the stabilization clause

In the current legislation, and in relation to tax legislation, a stabilization clause means the immutability of established legal regulations, including certain types of taxes (organizational income tax, corporate property tax, transport tax, payment deadlines and the procedure for VAT refunds, new taxes and fees), as well as the immutability of the conditions of land use and urban planning during the implementation of investment projects.

Within the framework of the adopted Law No. 69-FZ, the provisions of tax legislation acts that enter into force after the date of inclusion in the special register of information on the conclusion of the APPCI do not apply to participants in the APPCI. The stabilization clause introduces a certain prohibition on legislative changes, with certain

features, during the entire period of its validity.

Law No. 69-FZ provides for the provision of a stabilization clause on the basis of an agreement on the protection and promotion of investments for a period of 6, 15 or 20 years, subject to investment in the amount of at least: 250 million rubles - for projects in the field of healthcare, education, culture, physical culture and sports; 500 million rubles - for projects in the field of digital economy, ecology, agriculture; 1.5 billion rubles - for projects in the field of manufacturing; 5 billion rubles - for projects in other industries, with the exception of the gambling business, the production of tobacco products and alcoholic beverages, liquid fuels, oil and gas production.

The law provides for the possibility of extending the stabilization clause for 6 years at the request of the investor, if he has concluded contracts with small and medium-sized businesses in the amount of at least 18% of the total investment, and also if he has assumed obligations to invest more than 1 billion rubles of income from implementation of the Investment project. The stabilization clause is valid only in relation to the Investment Project being implemented. The Investor, if he has other activities along with the Investment Project, is obliged to keep separate records of products and other indicators that are important for confirming the right to apply the stabilization clause.

When making investments in the amount of more than 10 billion rubles, non-tax payments for up to 3 years, as well as export customs duties, can be included in the stabilization clause. In addition, it is proposed to stabilize state support measures that are provided to projects through the implementation of a mechanism for recognizing support agreements as related contracts and supplementing the APPCI with the main conditions of these contracts. In addition, it also provides for the formation of an electronic register of state support measures. Among other things, it provides for the optional participation of municipalities in the APPCI, subject to their consent, which makes it possible to include in the "stabilization clause" also the land tax, as well as certain acts in the field of urban planning and land use.

For organizations participating in the NWPC implementing projects, it is possible to compensate

²⁴ Federal Law No. 70-FZ dated April 1, 2020 "On Amendments to Article 5 of Part One of the Tax Code of the Russian Federation" // SZ RF. 2020. No. 14 (part I). Art. 2000.

for the costs of infrastructure, which is formed in the balance sheet of an organization that implements a project, a regulated organization, a constituent entity of the Russian Federation or the Russian Federation, as well as a municipality at the expense of newly incoming taxes from the project being implemented. In addition, organizations' expenses on social, energy, transport, digital and utility infrastructure may be subject to compensation.

The Russian Federation, a subject of the Russian Federation, has no grounds to refuse to conclude an APPCI. If the project provides for the creation of capital construction facilities, the Russian Federation and the subject of the Russian Federation conclude an APPCI, subject to the availability of a permit for the construction of the relevant capital construction facilities²⁵.

The conclusion of the APPCI is carried out in the information system automatically, and the signing of the APPCI by a state authority authorized by the Government of the Russian Federation with the subsequent entry of the APPCI into the register by the Federal Treasury acts as a form of expression of the will of the public party. Termination of the agreement can be carried out at the initiative of a public legal entity, provided there is a violation of the deadlines for the implementation of the investment project established by the APPCI. The Russian Federation, the subject of the Russian Federation is obliged not to apply acts that change the conditions for the implementation of the project. In the event that the application of the amended legislation took place, the investor has the right to demand compensation for real damage. Additionally, the Law provides for the possibility of compensating the organization implementing the project for losses (including lost income) if the main subject of the investment project is the creation of a transport infrastructure facility, and the volume of capital investments made amounted to at least 300

billion rubles. If, for the purposes of implementing an investment project, funds from the National Wealth Fund were allocated, budgetary investments and (or) state guarantees were provided, the Law provides for the possibility of compensating losses to a public law entity.

It should be noted that the improvement of the legal regulation of legal relations to protect and encourage investment is carried out continuously. A striking example is the Federal Law of July 2, 2021 No. 344-FZ "On Amending the Federal Law "On the Protection and Promotion of Investments in the Russian Federation", the amendments introduced by this law expand the opportunities for business access to the conclusion of an APPCI, and improve the compensation mechanism costs of the parties to the agreements, clarifies the powers of state authorities in concluding and executing the APPCI, specifies the procedural aspects of the conclusion of agreements, and eliminates internal contradictions that existed in previous versions of the Law on the APPCI. Thus, the provisions of the Law on the ZPK, devoted to measures of state support for investment projects carried out within the framework of the PZPK, have been significantly changed. The scope of the Law on the ZPK has been expanded: now it also regulates relations related to information support for the processes of investment activities and the provision of state (municipal) support measures within the framework of the state information system "Capital Investments". The Law on ZPK includes new concepts (investment stage, pre-investment stage, operational stage, investment project implementation stage), and the wording of some concepts (investment project, capital investments, supporting infrastructure, etc.) has also been clarified. It is expressly indicated that the concept of "investment project" includes measures for the reconstruction and (or) modernization and subsequent operation of existing real estate objects on the basis of a concession agreement.

Also, the powers of the Government of the Russian Federation and other state authorities in the field of protection and encouragement of investments have been clarified. The list of information to be displayed in the state information system "Capital Investments" has been specified, as well as the procedure for creating, commissioning,

²⁵ Conclusion on the Federal Law "On the Protection and Promotion of Investments in the Russian Federation" (project No. 828237-7) // Legislative Support System of the State Automated System "Lawmaking": <https://sozd.duma.gov.ru/bill/828237-7> (date of application: 22.07.2022).

developing and operating this information system. The conditions (criteria) for attributing investment projects to various spheres of the Russian economy are established (at the same time, the Government of the Russian Federation has the right to establish additional grounds for attributing investment projects to investment projects in the areas listed in the Law on the CPC). The list of spheres of the Russian economy and types of activity, the conclusion of the APPCI, in which it is not allowed, has been specified. It is possible to secure the fulfillment of obligations under credits and (or) loans attracted by the organization implementing the project, by pledging monetary claims arising in connection with the provision of such an organization with a measure of state support, provided for in Part 1 of Art. 15 of the Law on ZPK (reimbursement of expenses, tax deduction), and (or) on the basis of related agreements specified in paragraph 1 of part 1 of Art. 14 of the Law on ZPK (Agreement on the provision of subsidies, Agreement on the provision of budget investments). The procedure for concluding an APPCI in the form of a private project initiative (including in the case of participation in the APPCI of two or more constituent entities of the Russian Federation), as well as in the form of a public project initiative, has been clarified. The procedure for applying the stabilization clause has been clarified, the subject and conditions of the APPCI have been adjusted, the grounds and procedure for changing and terminating the APPCI, the procedure for changing and terminating the APPCI have been adjusted. Changes have been made to the provisions on liability for violation of the terms of the APPCI. The procedure for the operation and transfer of related infrastructure facilities to state (municipal) ownership or to the ownership of a regulated organization has been clarified, including the conclusion of a separate agreement by the organization implementing the project with the relevant authorized organizations (bodies).²⁶

It should be noted that from June 28, 2022, amendments providing for a number of innovations came into force, in particular, additions were made to Article 15 of the Federal Law of April 1, 2020 No. 69-FZ “On the Protection and Promotion of Investments in the Russian Federation”, according to which: “ The measures of state support specified in clause 1 of part 1 of this article are not provided to an organization that has entered into an agreement on the protection and promotion of investments and is implementing a project in the field of mining ores of non-ferrous metals (gold) with a capital investment of at least 300 billion rubles, included in the register of participants regional investment projects, as well as the validity period of an agreement on the protection and promotion of capital investments cannot exceed the period of non-application of acts (decisions) applied subject to the specifics established by Article 9 of this Federal Law, or the period of validity of state support measures for investment projects provided in accordance with Article 15 of this Federal statutory law, whichever expires later. At the same time, the organization implementing the project, after the expiration of the agreement on the protection and promotion of investments, is not exempt from fulfilling its obligations under the agreement on the protection and promotion of investments specified in paragraph 2 of part 13 of Article 11 of this Federal Law”.²⁷ Additionally, the following periods for the application of the stabilization clause are determined, calculated from the date of conclusion of the agreement on the protection and promotion of investments and not exceeding:

1) 6 years - in relation to investment projects, the volume of investments in which does not exceed 10 billion rubles, with the exception of investment projects in the field of agriculture, food and processing industry, education and healthcare;

2) 10 years - in relation to investment projects

in the sphere of agriculture, food and

²⁶ Federal Law No. 344-FZ of July 2, 2021 “On Amendments to the Federal Law “On the Protection and Promotion of Investments in the Russian Federation” and Article 15 of the Federal Law “On the Contract System in the Procurement of Goods, Works, and Services to

Ensure Public and municipal needs” // SZ RF. 2021. No. 27 (part I). Art. 5172.

²⁷ Federal Law of June 28, 2022 No. 226-FZ “On Amendments to the Federal Law “On the Protection and Promotion of Investments in the Russian Federation” // SZ RF. 2022. No. 27. Art. 4627.

processing industry, education and healthcare, the volume of capital investments in which does not exceed 10 billion rubles;

3) 15 years - in relation to investment projects, the volume of investments in which is more than 10 billion rubles, but less than 15 billion rubles;

4) 20 years - in relation to investment projects, the volume of capital investments in which is 15 billion rubles or more.

The new regulations are aimed at ensuring the effectiveness of the application of state support measures provided to organizations implementing investment projects within the framework of concluded agreements on the protection and promotion of capital investments (hereinafter - APPCI).

Based on the results of the analysis of legislation in the field of protection and promotion of investments, as well as legislation regulating legal relations related to the implementation of regional investment projects, it was found that for some large investment projects, state support measures offered within the framework of regional investment projects have a more favorable economic effect (hereinafter – RIP), along with some of the support measures provided under the APPCI.

In order to maintain the interest of entities implementing investment projects related to the extraction of minerals (non-ferrous metal (gold) ores) included in the register of RIP and concluded APPCI, as well as maintaining a balance of interests of the constituent entities of the Russian Federation in terms of revenues to the relevant budgets of the budget system of the Russian Federation the provisions of Federal Law No. 69-FZ of April 1, 2020 “On the Protection and Promotion of Investments in the Russian Federation” were supplemented with a provision that excludes the possibility of reimbursement of infrastructure costs through tax payments, while retaining the preferences provided for by the legislation of the Russian Federation on taxes and fees, aimed at stimulating the implementation of the RIP in the territories of the Far Eastern Federal District and individual constituent entities of the Russian Federation and providing for a preferential tax

regime that will allow: budget, up to 0% within 10 years from the tax period in which the first profit was received from the sale of goods produced as part of the investment project; apply, with the relevant decision of the constituent entity of the Russian Federation, a reduced tax rate of corporate income tax payable to the budget of the constituent entity of the Russian Federation at a level not exceeding 10% within 5 years from the tax period in which the first profit was received from the sale of goods produced within the framework of implementation of the investment project, and not less than 10% over the next 5 years; apply when calculating the tax on the extraction of minerals, the coefficient characterizing the territory of extraction of minerals (Ktd), in the value from 0 to 0.8 for 10 years; for especially large projects supported at the federal level, to extend the effect of tax benefits under the registered RIP until at least 2041²⁸.

We believe that these changes will have a positive impact, among other things, on the formation of incomes of the constituent entities of the Russian Federation, due to the fact that organizations implementing investment projects will not be able to recover infrastructure costs from the formed tax payments paid to the corresponding budget of the constituent entity of the Russian Federation.

The following conclusions can be drawn about the application of unchanged tax conditions for the implementation of guarantees. So, in order to implement the guarantee, the investor must comply with the necessary requirements established by law:

- the so-called tax guarantees, benefits, stabilization clauses apply only to a person who is a party to the APPCI. The statutory conditions do not apply to third parties. This restriction also applies to assignment;

- the investor must be considered a taxpayer under the current legislation on taxes and fees (therefore, it does not apply to tax agents);

²⁸ Federal Law No. 344-FZ of 02.07.2021 “On Amendments to the Federal Law “On the Protection and Promotion of Investments in the Russian Federation” and Article 15 of the Federal Law “On the Contract System in the Procurement of Goods, Works, and Services to Meet State and Municipal Needs” // SZ RF. 2021. No. 27 (part I). Art. 5172.

- changes in the legislation on taxes and fees do not apply exclusively to legal relations related to the execution of the APPCI (i.e. the investor should not simultaneously carry out other business activities);

- only those provisions of the legislation on taxes and fees that come into force after the date of inclusion of the APPCI in the Register of APPCI do not apply (under Law No. 69-FZ, information about the APPCI must be included in the Register within 5 working days after it is signed by the authorized authority, and only after entering such information in the Register, it is considered concluded). Accordingly, if the legislation on taxes and fees changes during the specified period, such a guarantee will not apply to the Investor, although at that time there is already an APPCI signed by both parties;

- the investor must keep separate records of taxable items, accounting for income (expenses) received (incurred) in the performance of the APPCI, and income (expenses) received (incurred) in the implementation of other entrepreneurial activities.

Thus, only compliance with all of the above requirements for the application of the rules of immutability of tax conditions will contribute to the full implementation of the relevant rights and legitimate interests of organizations implementing investment projects within the framework of concluded agreements on the protection and promotion of investments.

4. Investment Protection and Promotion Law: Key Aspects

A new tool for the implementation of investment projects with the use of state support measures was introduced by Law No. 69-FZ - agreements on the protection and promotion of capital investments. In addition, this law establishes the basis for the formation of a unified register of all measures of state (municipal) support that are applied on the territory of the Russian Federation. Such a measure is an important step towards systematization and control over the provision of these measures. The analysis of this Law showed that the APPCI can be concluded in

addition to other forms of investment agreements.

It is possible to conclude an APPCI during the implementation of investment projects in one of the areas of the Russian economy. The exception here is the gambling business, retail and wholesale trade, as well as the construction (reconstruction, modernization) of residential buildings, shopping malls and administrative and business centers. It should be noted that these types of activities are quite common due to the ever-increasing pace and demand in the consumer market. It seems that today there is a need to revise the specified list of economic sectors in which the investment project cannot be implemented within the framework of the NWPC, because the objective reality that exists today demonstrates the need for state support in these areas. According to N.A. Sheveleva, "the new Law does not, however, solve many problems, the conclusion of an appropriate agreement with a stabilization clause will not be available to all economic entities, real and potential residents of territories with a special status or participants in regional investment projects." [20, p. 48].

The key aspects of Law No. 69-FZ are as follows. Organizations that meet all the criteria of a company implementing projects will be able to send to specially authorized bodies applications for the conclusion of an APPCI in the form established by the Government of the Russian Federation. It will be possible to submit a full package of documents through the personal account of the GIS "Capital Investments" (which was originally supposed to start working from April 2, 2021). In the federal budget for 2021–2023 5.5 billion rubles were provided for the creation of the GIS "Capital Investments", follows from the passport of the federal project "Digital Public Administration"²⁹. The Ministry of Economic Development of the Russian Federation delayed the digitalization of the APPCI, the launch of a new algorithm tied to the state information system (GIS) Capital Investments. With the help of this information resource, it will be possible to conclude agreements on the protection and promotion of

²⁹ Passport of the federal project Digital Public Administration: <https://digital.ac.gov.ru/poleznaya-informaciya/material/Паспорт-федерального-проекта-Цифровое-государственное-управление.pdf> (date of application: 22.07.2022).

capital investments (IPPA) in electronic form. So far, the GIS do not work, and the APPCI is not concluded in electronic form. The Capital Investments system in a full format is scheduled to be launched in June 2022; it has been available in pilot mode since December 2021. The Ministry of Economic Development of the Russian Federation explained the large delay with the GIS by “preparing regulatory documentation for the new legislative framework for the APPCI»³⁰. In connection with the above, the Ministry of Economic Development of the Russian Federation, in the context of the delay in the planned digitalization of the APPCI, has prepared a regulation that allows them to be concluded in paper form.

We believe that the new APPCI tool will fully comply with proper regulation in the era of a new digital reality, digital transformation, since it is designed for a long-term perspective to support investors, allowing projects to be implemented in stable conditions. And the introduction of the state information system "Capital Investments" will standardize, simplify and speed up the mechanisms of interaction between all parties to the agreement.

The algorithm of actions regarding the conclusion of electronic agreements is as follows. It is necessary to submit a full package of documents through the personal account of the GIS "Capital Investments". Further, the documents are considered by the relevant state body and, through the same personal account, the applicant is informed of the decision made in relation to him. Prior to the start of the system, a package of all necessary documents must be drawn up on paper. It must be certified by the handwritten signature of the representative of the applicant and sent to the postal address of the state body. The conclusion of an APPCI is possible in the order of a public project initiative, the essence of which is that the authorized state bodies will announce their planned investment projects, in respect of which an APPCI can be concluded.

Information about such projects is placed in the form of declarations on the implementation of investment projects on the website of the GIS "Capital Investments", and before the start of the operation of this system, projects are reported on websites determined by the Government of the Russian Federation. Organizations can apply for participation in competitions, and the company that can offer the best conditions for the implementation of the investment project is recognized as the winner. The conclusion of the APPCI can be carried out no later than January 1, 2030.

Thus, an agreement on the protection and promotion of investments is concluded in a declarative manner following the results of the implementation of the procedures provided for by law.

Thus, within the framework of the adopted Law No. 69-FZ, APPCIs will be available only for projects with an investment volume of 200 million rubles or more, and the amount of “stabilization” obligations that can be received from the state within the framework of the APPCI directly depends on the amount of capital investments within the project (for example, some measures are available with an investment volume of 300 billion rubles or more). At the same time, only certain categories of funds allocated for the implementation of the project will be recognized as capital investments for the purposes of the APPCI. For example, they will not recognize funds received from the budget. When implementing a project by a specially created project company, only funds received from investors in the form of contributions to the charter capital or property of the project company will be recognized as capital investments.

The foregoing means that the conclusion of the agreements under consideration is possible only for large investment projects that have sufficient amounts of their own financing. Law No. 69-FZ determined the need to form a unified register of state (municipal) support measures. It was found that the APPCI can be concluded in addition to other forms of investment agreements. It should be especially noted that within the framework of the analyzed Law, the Government of the Russian Federation establishes the procedure for concluding an APPCI, the procedure for holding a tender as part

³⁰ Online edition «forbes.ru» / <https://www.forbes.ru/finansy/438509-minekonomrazvitiya-opozdalo-zapustit-gosinformsystemu-kapitalovlozenia> (date of application: 22.07.2022).

of a public project initiative, the procedure for maintaining a unified register of APPCI, and determining the amount of cost recovery. In addition, the Government of the Russian Federation adopts the necessary by-laws, which provide for a standard form of APPCI, and also regulates the procedure for their registration in the register.

It should be noted that in 2020, the first nine agreements were signed under Law No. 69-FZ for 135.7 billion rubles. The projects under which they were concluded assumed the creation of 6.4 thousand jobs, the Ministry of Economic Development reported. In total, by the end of 2020, it was planned to sign agreements on 20 projects with a total investment of about 900 billion rubles. In 2021, the Ministry of Economic Development planned to conclude 100 APPCIs with a total investment of 2 trillion rubles. At the moment, contracts worth 300 billion rubles have been signed.³¹

5. State measures to support investments

The main goal and purpose of the adopted Law No. 69-FZ is to create the most favorable and most expected conditions for investment projects and doing business. As a result of the adoption of Law No. 69-FZ, the foundations were laid for the formation of a unified register of state (municipal) support measures used in the Russian Federation. It was also determined the mandatory conduct of a financial and investment audit before the provision of appropriate support measures.

An analysis of the current legislation showed that reimbursement of costs from budgetary funds under the NWPC is provided only for projects in certain areas: transport infrastructure; energy infrastructure; communal infrastructure; social infrastructure; digital infrastructure. The facilities created during the implementation of Projects in the listed areas, if they are used exclusively for the implementation of a specific Investment Project, are called supporting

infrastructure. If such facilities are used for other purposes that are not only related to the Investment Project, then they belong to the associated infrastructure. If an organization builds, modernizes or reconstructs the supporting and (or) associated infrastructure, including reconstructing state-owned facilities, then it can count on receiving a subsidy: for reimbursement of investment costs; to reimburse the costs of paying interest on loans and borrowings, as well as coupon income on bonded loans attracted for the implementation of an investment project. The subsidy is paid from the federal or regional budget, depending on who is the public side of the APPCI. To receive a subsidy, certain conditions will need to be met: all property rights under the Project that are subject to registration are registered (real estate objects are put into operation, but intellectual rights is not registered); the Investor has no tax debts. The standards for cost recovery (the maximum amount of budget expenditures of the corresponding level for the implementation of the Project) are complied.

Let us dwell on the requirements for organizations implementing an investment project.

The results of the study are the conclusions that companies that implement investment projects can be absolutely any legal entity, including design organizations. The exception here is state and municipal institutions and state and municipal unitary enterprises. The project organization is the organization implementing the investment project, which was specially created for the purpose of implementing the investment project and meets the following requirements: the charter of the organization must contain the condition that the implementation of the investment project is the subject of its activity; at least 90 percent of the organization's revenue is the revenue that was received as a result of the implementation of the investment project.

Thus, in order to comply with the established stabilization clause, investors can create special project companies or keep separate records of profits from the implementation of an investment project. As for the possibility of participation in the APPCI of foreign investors, it can only be carried out through participation in the capital of Russian legal entities.

³¹ Internet portal "Vedomosti": <https://www.vedomosti.ru/economics/articles/2022/02/10/908800-vnes-rossiyu-serogo-spiska> (date of application: 22.07.2022).

I would like to draw special attention to certain measures of state support. Thus, Law No. 69-FZ provides that, in the manner prescribed by the budgetary legislation, the organization implementing the project may be reimbursed for the following costs: for the creation (construction), modernization and (or) reconstruction of facilities providing and (or) related infrastructure necessary for the implementation of the investment project, including for the reconstruction of infrastructure facilities that are in state (municipal) ownership; for the payment of interest on loans and borrowings, coupon income on bonded loans attracted for the creation (construction), modernization and (or) reconstruction of providing and (or) related infrastructure facilities necessary for the implementation of the investment project, including for the reconstruction of infrastructure facilities, in state (municipal) ownership. The maximum amount of reimbursable costs indicated above cannot exceed: 50 percent of the actual costs incurred for supporting infrastructure facilities; 100 percent of actual costs incurred for associated infrastructure facilities.

In addition, as mentioned above, the amount of reimbursable costs, together with the amount of actual damage, cannot exceed the amount of the above mandatory payments calculated by the organization implementing the project to pay to the budgets of public law entities that are parties to the APPCI.

For related infrastructure facilities, the Law makes a special clause that when making a decision on the provision of funds from the budget, such facilities must: come into state (municipal) ownership or the property of a regulated organization (subject of natural monopolies and (or) other organization, in respect of which, in accordance with the legislation of the Russian Federation carries out state regulation of prices (tariffs)³². At the same time, at the stage of making a decision on granting a subsidy, a source of financing for the maintenance, maintenance and

operation of facilities should be determined, or it should become the private property of the Investor. In this case, the Investor assumes all costs for the maintenance, maintenance and operation of the facilities. In cases where funds were allocated for the reconstruction of objects that were already in state or municipal ownership, such objects remain on the balance sheet of public law entities.

I would also like to note that the organization implementing the project, which has concluded an agreement on the protection and promotion of capital investments, may be provided with state support measures not provided for by the Federal Law "On the Protection and Promotion of Investments". At the same time, the amount of state support measures, with the exception of the amount of state support measures specified in the law, should not exceed the amount of capital investments allocated for the implementation of a new investment project in respect of which an APPCI has been concluded. In this case, capital investments are understood as investments in fixed capital (fixed assets), including the costs of new construction, reconstruction and technical re-equipment of existing enterprises, the purchase of machinery, equipment, tools, inventory, design and survey work and other costs.

It is allowed to provide state support measures in relation to infrastructure facilities included in the investment programs of regulated organizations, the financial support of which is carried out entirely at the expense of the organization implementing the project. In cases and in the manner determined by the Government of the Russian Federation, the organization implementing the project may be provided with state support measures in order to ensure the minimum profitability of an investment project in respect of which an agreement has been concluded on the protection and promotion of investments (Article 15 of Law No. 69-FZ).

6. Related contracts

Law No. 69-FZ under related contracts means contracts aimed at facilitating the implementation of an investment project in the manner prescribed by Article 7 or 8 of Law No. 69-FZ

³² The definition of a regulated organization is given in paragraph 12 of Art. 2 of the Federal Law of April 1, 2020 No. 69-FZ "On the Protection and Promotion of Investments in the Russian Federation" // Rossiyskaya Gazeta. April 3, 2020 No. 72.

(depending on the procedure for concluding an agreement on the protection and promotion of investments), information about which is entered in the register of agreements. The law refers to them:

1) an agreement on the provision of a subsidy, an agreement on the provision of budget investments, concluded in accordance with the budgetary legislation of the Russian Federation;

2) a loan agreement providing for the provision of credit funds to the organization implementing the project at a preferential rate, if at the time such an agreement is recognized as a related agreement, the creditor under it is a party to an agreement on reimbursement at the expense of the budgets of the budget system of the Russian Federation for income shortfall received by such a creditor as a result of the provision of credit funds at a reduced rate;

3) an agreement between the organization implementing the project and the regulated organization in accordance with the legislation of the Russian Federation, containing one or more of the following conditions: the conditions for the supply of goods, performance of work or provision of services acquired (received) by the organization implementing the project are established based on the values of long-term regulation parameters activities of regulated organizations determined in accordance with the legal acts of the Russian Federation, the subject (subjects) of the Russian Federation and (or) the terms of concession agreements and (or) agreements on public-private partnership, municipal-private partnership, and (or) on the basis of agreements on the conditions for the implementation of regulated activities, concluded by a regulated organization with a public legal entity represented by an authorized body; the price of a contract for the supply of goods, performance of work or provision of services is determined by agreement of the parties, with the exception of contracts in respect of which the procedure for determining the price is established by law or regulatory legal acts adopted in accordance with it; the organization implementing the project has the right to demand from the regulated organization the supply of goods, performance of works or provision of services, and

also undertakes to make payments established by such an agreement corresponding to the cost and agreed volumes of goods (works, services), regardless of whether it was presented by the organization implementing project, requirement for the supply of goods, performance of work or provision of services; creation (construction), modernization and (or) reconstruction of infrastructure facilities can be carried out by a regulated organization, while the corresponding expenses of the regulated organization for the creation (construction), modernization and (or) reconstruction of infrastructure facilities are compensated by the organization implementing the project in the amount provided for by the contract (by paying for goods, works or services of the regulated organization in the agreed amounts and (or) by paying cash), in order to ensure that the regulated organization achieves investment efficiency parameters not lower than those established by the documents of the regulated organization and (or) regulatory legal acts of authorized state authorities.

According to the provisions of Article 14 of Law No. 69-FZ, related contracts are concluded only if it is economically justified for the regulated organization. In addition, the agreement on the protection and promotion of investments should provide for the obligations of the public legal entity to compensate for the real damage to the organization implementing the project, to the extent and subject to the conditions provided for in Article 12 of Law No. formation of one or more of the following disorders:

1) violation of the terms and (or) volumes of granting subsidies, budget investments;

2) violation of the terms and (or) volumes of granting subsidies to the creditor;

3) change in the values of long-term parameters for regulating the activities of regulated organizations and (or) provisions of agreements on the conditions for the implementation of regulated activities, on the basis of which the conditions for the supply of goods, performance of work or provision of services purchased (received) by the organization implementing the project were determined.

The procedure and features of the conclusion, execution and termination of these agreements are determined in accordance with the legislation of the Russian Federation. Thus, a corresponding analysis of the provisions of Law No. 69-FZ showed that concession agreements are not directly named in the law as related contracts. We believe that if the concession agreements contain conditions for the provision of subsidies, they can be recognized as related contracts for the APPCI. This makes sense in order to include in the text of the APPCI the obligation of the public legal entity to compensate the real damage to the Investor in the event that the public legal entity violates its obligations under related contracts.

Note that related contracts are not accessory contracts. If an agreement on the protection and promotion of investments becomes invalid due to its termination, recognition as invalid or on other grounds provided for by the legislation of the Russian Federation or the said agreement, the rights and obligations of the parties under the related agreements shall not be terminated.

7. Features of taxation in the implementation of agreements on the protection and promotion of capital investments: tax preferences

The fiscal policy implemented in the country for several years has been steadily moving in the direction of tightening control over the payment of taxes. The current innovations are aimed at combating tax evasion abuses. [25, p. 430]. As a rule, the use of tax mechanisms in the form of preferences, benefits, facilitated control measures and accounting systems, both in the short and long term, creates favorable conditions for the economic development of the country [28, 29]. At the present stage of development of the tax system, there is a tendency to pay close attention to the methods of conducting financial and economic activities with a high tax risk [30]. Federal Law No. 163-FZ dated July 18, 2017 "On Amendments to Part One of the Tax Code of the Russian Federation" established a rule prohibiting taxpayers from reducing the tax base and (or) the amount of tax payable as a result of distorting information about the facts of economic life

(aggregate such facts), objects of taxation to be reflected in the tax and (or) accounting or tax reporting of the taxpayer. The concept of legal certainty "in addition to the requirements for the legal and technical presentation of legal norms also includes the need for their uniform interpretation and application in practice" [26, p. 25]. K.A. Ponomareva believes that the implementation of these classical postulates is possible "only under conditions of guaranteed certainty of the law, in which the individual has the opportunity to plan his own behavior in private life and in entrepreneurial activity for a long time" [27, p. 43].

Conducted by Y.V. Ledneva, the legal analysis led to the conclusion about the lack of consistency in the establishment of tax-legal preferential regimes in the field of scientific and innovative activities, their lack of effectiveness, the need to revise and unify tax support measures, as well as to eliminate unnecessary administrative barriers. [31, p. 27-31]. She is convinced that "the lack of effectiveness of the mechanism of tax exemptions used by R&D subjects is evidenced by numerous judicial practices" [31, p. 31].

The identified negative consequences are fully applicable to the activities of participants in the APPCI in terms of possible risks for the state, since the legislator, imposing additional burdens on interested parties (inclusion in the register, separate accounting, etc.), guarantees the provision of tax breaks through appropriate changes and additions to the tax law³³.

In Russian legislation, there is currently a problem of minimizing taxation as a result of the unfair use of this right. The reason for such abuse of the right by the payers of mandatory payments is the legislative unregulated application of the institution of tax planning. First of all, this applies to the so-called "gray" schemes, when creating which, taxpayers try not to violate the law, but in general, a significant minimization of tax liabilities is achieved. [32, p. 719].

At present, taking into account the significant modernization of investment legislation, it became necessary to improve the legislation on taxes and fees, in terms of establishing appropriate guarantees for the protection of a conscientious

³³ Were given earlier in this article.

taxpayer-investor. It should be noted that the current Russian legislation lacks clear criteria that allow in each specific case to distinguish between lawful minimization of taxation and illegal tax evasion, which causes certain difficulties in qualifying transactions [33, p. 723]. The criteria for the validity of tax planning, the limits of acceptable and possible behavior of the taxpayer as a result of an ambiguous interpretation of tax legislation remain one of the controversial issues in the relationship between tax authorities and business [25, p. 432].

Disclosing the features of taxation in the implementation of agreements on the protection and promotion of investments in terms of the application of tax preferences, we note the following.

Paragraph 6 of the Part 1 of Art. 2 of Law No. 69-FZ stipulates that in order for a project to fall into a preferential regime, one of the following conditions must be met in relation to it:

1) the organization implementing the project has made a decision on the implementation of the investment project, including on determining the amount of capital investments (expenses) required for its implementation, before the date of entry into force of this Federal Law, but not earlier than May 7, 2018, and at the same time met the following conditions: not earlier than May 7, 2018, received a permit for the construction of real estate objects created or reconstructed as part of an investment project, or began making capital investments if the investment project provides for the modernization of real estate objects and (or) the creation of results of intellectual activity and (or) equated to them means of individualization; not later than December 31, 2022, filed an application to conclude an agreement on the protection and promotion of investments in accordance with Article 7 of this Federal Law;

2) the organization implementing the project has made a decision to approve the budget for capital investments (expenses) (excluding the budget for expenses related to the preparation of design estimates, design and survey and geological exploration work) after the date of entry into force of this Federal Law and filed an application for concluding an agreement on the protection and

encouragement of investments in accordance with Article 7 of this Federal Law no later than one year after the adoption of such a decision.

The most important step towards the formation of transparent regulations related to the taxation of the activities of entities implementing agreements on the protection and promotion of capital investments was the adopted amendments to the Tax Code of the Russian Federation, in which Chapter 36 "Features of Taxation in the Implementation of Agreements on the Protection and Promotion of Investments" appears, which seems to be a very reasonable and justified solution. It is planned to introduce a new category of taxpayers (with a special status), a tax deduction mechanism for corporate income tax, corporate property tax, transport tax, land tax (hereinafter referred to as the tax deduction), payable by a party to an agreement on the protection and promotion of investments (hereinafter referred to as APPCI), in order to reimburse the costs incurred by the APPCI participant as part of the implementation of the investment project. The idea of the legislator is to get away from subsidies and provide a special category of taxpayers with special conditions - tax deductions (tax preferences) in order to minimize government spending. But here, obviously, a natural question arises about increasing the tax expenditures of public entities. Tax deductions can be applied to corporate income tax, corporate property tax, and transport and land taxes. Based on the applied tax deductions, the calculated taxes can be reduced to almost zero. The main condition for the purposes of applying the tax deduction is that the taxpayer must ensure that separate accounting is maintained. And since the obvious economic effect of the use of APPCI in the form of tax revenues is deferred³⁴, then the decrease in budget revenues from "popular" tax revenues to the budgets of the country's budget system is indisputable, which will certainly affect the fiscal interests of public entities. Therefore, scientific interest remains relevant in assessing the effectiveness of the measures provided

³⁴ Financial and economic justification for the Draft Federal Law No. 1184603-7 "On Amendments to Parts One and Two of the Tax Code of the Russian Federation" (as amended by the State Duma of the Federal Assembly of the Russian Federation, text as of 06/01/2021).

by state support for investment activities in the form of tax deductions, as well as the application of a tax "stabilization clause", tax monitoring and other tax incentives to comply with the fiscal interest of the state. [34].

A taxpayer that is a party to an agreement on the protection and encouragement of investments when calculating the amount of tax (advance tax payment) has the right to apply a tax deduction for APPCI in the manner and on the conditions provided for by Article 3821 of the Tax Code of the Russian Federation. A taxpayer that is a party to an agreement on the protection and encouragement of investments has the right to reduce the amount of tax (advance tax payment) calculated by him in accordance with Article 382 of the Tax Code of the Russian Federation in relation to property created (constructed), modernized, reconstructed as part of the implementation of an investment project, which is provided for by the agreement on the protection and encouragement of investments, and used by him in the implementation of the specified investment project, in the amount of the tax deduction for the APPCI in the manner and on the conditions established by this article. At the same time, the amount of the tax deduction for APPCI is determined by the amount reflected in the notification of the tax deduction for APPCI in relation to the tax (advance tax payment) in relation to the relevant object of taxation, which is submitted to the federal executive body authorized for control and supervision in the field of taxes and fees, in accordance with article 2518 of the Tax Code of the Russian Federation (hereinafter in this article - notification). The conditions for applying the tax deduction are as follows: the tax deduction for APPCI is applied starting from the tax period following the year in which the notification was submitted; as a result of applying a tax deduction for APPCI, the amount of tax (advance tax payment) can be reduced to zero; the unused part of the tax deduction for APPCI is taken into account when calculating the amount of tax (advance payment of tax) in subsequent tax (reporting) periods, if the application of the tax deduction in these subsequent tax (reporting) periods is provided for by the notification in relation to the

tax (advance payment of tax) in respect of relevant object of taxation³⁵.

A taxpayer that is a party to an agreement on the protection and promotion of investments has the right to reduce the amount of tax (advance tax payment) until at least one of the following grounds occurs:

1) the total amount of tax (advance tax payment) not paid in connection with the application of the tax deduction for APPCI became equal to the amount reflected in the notification in relation to the tax in relation to the relevant object of taxation;

2) the deadline for applying the tax deduction for APPCI, specified in the notification in relation to the tax in relation to the relevant object of taxation, has expired;

3) the taxpayer has lost the status of a participant in an agreement on the protection and promotion of investments.

The maximum amount of tax deductions of the taxpayer is determined on the basis of the calculation of the amount of compensation provided for by Law No. 69-FZ. The maximum amount of deductions is indicated in a special notification, which is sent to the Federal Tax Service of Russia by the authorized federal executive body in order to start applying tax deductions by taxpayers. Please note that there are no requirements related to the implementation of entrepreneurial and other economic activities, and the assessment of compliance with which is carried out within the framework of state control (supervision), municipal control, bringing to administrative responsibility, granting licenses and other permits, accreditation, conformity assessment of products, other forms of evaluation and examination. It also does not provide for the introduction of any administrative and other restrictions, as well as the imposition of additional obligations on subjects of entrepreneurial and other activities that increase their costs.

The adopted amendments determine who will be included in the category of taxpayers - participants in an agreement on the protection and promotion of investments, information on the conclusion of which will have to be included in the

³⁵ Federal Law No. 225-FZ of June 28, 2022 "On Amendments to Parts One and Two of the Tax Code of the Russian Federation" // SZ RF. 2022. No. 27. Art. 4626.
Law Enforcement Review
2022, vol. 6, no. 4, pp. 95–120

register of agreements on the protection and promotion of investments (hereinafter referred to as the taxpayer - a party to an agreement on the protection and promotion of investments). The organization acquires the status of a taxpayer - a participant in an agreement on the protection and encouragement of investments from the date of inclusion of information on the conclusion of the said agreement in the register of agreements. A closed list of grounds is also defined, upon the occurrence of which the organization loses the status of a taxpayer - a party to an agreement on the protection and promotion of investments. The conditions and procedure for the application and termination of the application by a taxpayer that is a party to an agreement on the protection and promotion of investments of tax deductions for taxes are established, the specifics of the calculation and payment of corporate income tax by taxpayers parties to agreements on the protection and promotion of investments are specified, and the procedure for granting tax deductions for taxpayers - participants in agreements to protect and encourage investment.

Thus, within the framework of the current regulation, an organization implementing an investment project may be granted a tax deduction in accordance with the legislation on taxes and fees, while simultaneously fulfilling the above conditions. It seems that the requirement for the simultaneous fulfillment of several conditions can be considered as an administrative barrier that prevents the taxpayers from using this tax preference on a larger scale and more actively. However, the effectiveness of replacing subsidies with tax deductions in APPCI will depend on the quality and careful design of state support measures. It seems to us expedient and most effective to combine existing measures - subsidies and tax deductions. Since significant tax payments within the framework of the APPCI will not appear soon (you will have to wait about 5-10 years, in some cases it may even be 15 years), therefore, the combined approach will be more reasonable in the current economic conditions.

8. Conclusions

The results of the analysis allow us to draw some conclusions that are of interest for further research into legal relations related to the taxation of investment legislation. Law No. 69-FZ is aimed at ensuring the effectiveness of the application of state support measures provided to organizations implementing investment projects under concluded agreements on the protection and promotion of capital investments. It should be taken into account that Law No. 69-FZ contains reference norms to legal acts of the Government of the Russian Federation and other by-laws, without which this investment protection and promotion regime may simply not work, which will require the appropriate adoption of by-laws at the federal and regional levels. Therefore, it necessitates a more thorough study of these legal acts. We believe that in order to increase the effectiveness of the implementation of Law No. 69-FZ and global changes in the investment climate in Russia, it will be necessary to monitor law enforcement, radically revise the work of state bodies by all parties to the agreements, and adopt new rules of work. It will also require a significant rethinking of the current investment regimes, state support mechanisms within the framework of the updated legal regulation. We believe that the considered regulations in the near future will be able to improve the investment climate in the country, help to accelerate the launch of a new investment cycle, which, however, does not exclude their ambiguous interpretation and law enforcement in the future. We believe that for the successful implementation of the new mechanism of investment activity, such issues as: a detailed procedure for concluding agreements, including the procedure for holding a tender within the framework of a public project initiative, as well as general requirements for them, should be settled; standard form of agreement; the procedure for monitoring the stages of implementation of an investment project in respect of which an APPCI has been concluded; the procedure for maintaining the register of APPCI; the procedure for determining the amount of reimbursement of costs necessary for the implementation of the investment project, as well as the costs of paying interest on loans and borrowings, coupon payments on bonded loans.

We hope that in the near future the APPCI,

as a new unified investment support mechanism, will increase the attractiveness of investment activity in Russia and become a new tool for encouraging investment in the Russian economy. We assume that the introduction of agreements on the protection and promotion of investments, ensuring the invariance of the conditions for the implementation of investment projects, will become the leading mechanism for state support of investment activities in Russia, since it can be combined with such mechanisms as concession agreements, public-private partnership agreements, this will be the beginning of the development of a new investment period in the Russian Federation.

The effective development of the national economy, the success of social policy, the assurance of quality that the state performs its functions directly depend on the level of investment attractiveness of the country and its individual territories, i.e. on how expedient it is to invest in the development of public-territorial entities and projects implemented in them. In the case of creating an attractive investment climate, the state is able to solve socio-economic and geopolitical problems, achieve a high level of quality of life for the population, and ensure a leading position in the international arena.

Therefore, one of the main goals in legal regulation at the present stage should be recognized as the creation of a favorable investment climate that creates the most favorable conditions for making a profit by both domestic and foreign investors, as well as achieving the socio-economic goals of developing the country's economy [35, p. 440].

The current state of the country's economy inevitably requires significant support, changes and the launch of new ways of state support for private investment. We consider it possible to assume that the idea of creating investment agreements (long-term investments and guarantees), a fundamental law representing guarantees of the invariance of the fiscal burden for organizations that have concluded an APPCI (Law No. 69-FZ), will become a new effective tool for encouraging investment, the foundation for the successful development of the investment climate countries, and the guarantees

provided by the state will allow maintaining the level of investment necessary for the sustainable high rates of development of the country's economy.

It should be noted that from the point of view of the systematization of legal regulation, a complex legal institution has been formed, containing both the principles and norms of public law and private law. The complex nature of legal relations that develop in the process of investment activity requires taking into account both public and private interests, and necessitates intersectoral legal regulation. In order to achieve the maximum effect, public legal entities can, through a combination of various legal means provided for in the framework of the legal regulation of budgetary and tax legal relations, stimulate the growth of investment activity, which can become one of the drivers of the country's economic development.

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