Economic Mechanisms Ensuring the Right for Favourable Environment in the Legislation of the Russian Federation*

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Abstract

This article examines the financial guarantees to implement the citizenship constitutional right for a favorable environment in the Russian Federation (RF), the use of different environmental taxes for that purpose, along with a critical analysis of the Law's rules and regulations and the legal stand point of the Constitutional Court regarding the legal nature of the costs charged by companies for their negative impact on the environment.

Key words author: Economic Guarantees of the Right for Favourable Environment, Environmental Legislation of the Russian Federation, Charges for Negative Impact on Environment.

Key word plus: Environmental Economy, Environmental Impact, Environmental Law Russian Federation.

JEL Classification: K32, K34, Q5, Q51.

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MECANISMOS ECONÓMICOS QUE GARANTIZAN EL DERECHO A UN MEDIO AMBIENTE FAVORABLE EN LA LEGISLACIÓN DE LA FEDERACIÓN RUSA

RESUMEN

El presente artículo estudia las garantías económicas de implementar el derecho constitucional ciudadano por un medio ambiente favorable en la Federación Rusa, el uso de diferentes tasas ambientales para tal fin, junto al análisis crítico de las normas y reglamentos de la legislación y la posición jurídica del Tribunal Constitucional en relación con la naturaleza jurídica de los costos percibidos por las empresas por su impacto negativo en el medio ambiente.

Palabras clave autor: garantías económicas del derecho para un medio ambiente favorable, legislación ambiental de la Federación Rusa, cargos por el impacto negativo en el medio ambiente.

Palabras clave descriptor: economía ambiental, impacto ambiental, derecho ambiental Federación Rusa.

Clasificación JEL: K32, K34, Q5, Q51.

Mécanismes économiques qui garantissent un droit favorable à l'environnement dans la législation de la Fédération de Russie

Résumé

Le présent article étudie les garanties économiques mises en œuvre par le droit constitutionnel des citoyens en faveur de l'environnement dans la Fédération de Russie, l'utilisation de différentes taxes environnementales à cette fin, en s'appuyant sur l'analyse critique des normes et des règlements de la législation et la position juridique du Tribunal Constitutionnel par rapport à la nature juridique des coûts perçus par les entreprises par leur impact négatif sur l'environnement.

Mots clés auteur: garanties économiques du droit pour en environnement favorable, législation environnementale de la Fédération Russe, dégâts causés par l'impact négatif dans l'environnement.

Mots clés descripteur: economie environnementale, impact environnemental, droit environnement Fédération de Russie.

Classification JEL: K32, K34, Q5, Q51.

Summary: Introduction. 1. Current Development of Environmental Law in Russia. 2. Charges for Negative Impact on Environment. 3. Russian Court Practice on the Issue. 4. Need for a New Legislative Act. 5. Legal Mechanism of Charges for Negative Impact on the Environment: Evolution of Legal Regulation. 6. Classifications of Environmental Levies. 7. Suggestions on Modernisation of the Charges for Negative Impact on Environment. Conclusions. Bibliography.

INTRODUCTION

Ensuring of the right to favourable environment provided by the constitution, must be the core of the government environmental policy. Environment protection is a new constitution value that emerged in the 20th century, stipulated by the general condition of the mankind's survival, thus naturally pursuing universal interests, not "selfish" national ones. It raises the legal culture to a new, higher level; creates conditions for deepening international cooperation; develops the culture of good neighbourhood relations, with national legal regulations acquiring a new tuning – a universal one as it is impossible to reliably protect the environment in one particular country when its neighbours keep ignoring environment protection issues. This is a constitutional value of a new level and character. In this respect the Russian regulation of environment protection arouses much interest as it meets the challenges of time.

1. CURRENT DEVELOPMENT OF ENVIRONMENTAL LAW IN RUSSIA

In accordance with Article 16 of the RF Federal Act of 10 January 2002 N° 7-FA "On Environmental Protection"[1] (hereinafter – The Environmental Protection Act) any negative impact on environment is to be paid for, with particular forms of charges to be determined by federal acts.

1.1. PLUS SIGHT

In fact, the notion of payment for the use of natural resources was fundamental for the former Russian environmental legislation. According to Article 20 of the RSFSR Act of 19 December 1991 N° 2060-1 "On Protection of Natural Environment"[2] the notion of paid nature management included charges for the use of natural resources (land, subsoil, water, woods and other vegetation, fauna, recreation and other natural resources), for pollution of the environment and other kinds of impact. The charges for natural resources in the aforementioned Act was subdivided into charges for the right

1 The Collection of RF Legislation. 2002. N° 2, p. 133.

2 The Bulletin of the People's Deputies Congress and the RF Supreme Council. N° 10, p. 457.

to use natural resources within set limits; charges for excessive and unreasonable use of natural resources; and payment/contribution to reproduction and protection of natural resources.

It is easily noticeable that in the former Russian legislation all kinds of charges for natural resources, being an essential element of environment protection, were clearly divided into two relatively independent parts – charges for use and charges for pollution. The question is – Has such division been preserved after the new Act came into effect?

2. Charges for Negative Impact on Environment

The term "charges for negative impact on environment" was fixated in the Russian legislation not so long ago – in connection with the enacted Act on Environment Protection. However, the new Act does not contain any mention of charges for the use of natural resources, though the legal definition of the use of natural resources is ranked among basic notions in Article 1 of the Act. Yet, the far better formalized terminological system of the update environmental legislation allows determining precisely enough the limits, within which there exist legal foundations for collecting charges for negative impact.

2.1. Negative Impact on Environment: Definition

Basing on the statutory provisions of the current legislation, negative impact on environment can be defined as influence of human economic and other activities on components of natural environment, which consequences cause negative changes in environmental conditions with its interrelated physical, chemical, biological and other indicators. The use of natural resources includes all kinds of influence on natural resources in the process of economic and other kinds of human activity – both negative impact proper and other kinds of influence (Article 1 of the Act on Environment Protection). Negative impact on the environment is a kind of nature management. All kinds of negative impact provided for by the Act are connected with the notions of "environmental pollution" and "pollutant", which definitions are included in the general provisions of the Act. According to Article 1, environmental pollution is ingress of substance or energy into the environment, which properties, location or quantity can influence the environment negatively. To estimate the range and degree of negative impact, the following tools of environmental protection legislation are used – standards for acceptable exposure, standards and limits for acceptable discharges and disposals, and standards for maximum permissible concentrations. All these are connected with the ultimate goal of the introduced

limits – preservation and maintenance of environmental quality and favourable environmental conditions.

Thus, the Act on Environment Protection does not stipulate (as it was stipulated before) charging for activities that do not deteriorate the environment. It has only preserved the very principle of paid nature management (Article 3), with the kinds of charges for nature management provided for by other federal acts of the Tax Code of the RF.

As is clear, the division of charges for natural resource management into two groups has been actually preserved; yet, if such division could be previously made within one and the same legislative act, now it can be derived from a scope of acts of natural resource legislation, ecological legislation, tax legislation and other branches (sub-branches) of the RF legislation.

In this connection the legislator's intention to introduce a common ecological tax comes to mind. Apparently, it was not conceived as charges for the use of various natural resources (patterned after land tax or water tax) but as a payment levied in connection with the aggravated environmental situation resulting from the activities of business entities.

Article 13 of the RF Tax Code in the version effective before 1 January 2005 classified ecological tax as a federal tax levied on the territory of the RF. At the same time the mentioned version of Article 13 of the RF Tax Code can be with certainty labeled as a "stillborn" legal regulation – since Part 1 of the RF Tax Code was adopted, Article 13 has never been enacted, coming in force on 1 January 2005 in a different version that did not provide any more for the introduction of ecological tax in the RF system of taxes and duties.

2.2. Principle of Nature Management Payability in the RF Legislation

The existence of the principle of nature management payability in the RF legislation in two variants –via imposing nature management levies and via introducing charges for negative impact– does not seem to be incidental. Nature management levies correspond in their characteristics with rent payments, while charges for negative impact, in essence, have much in common with ecological taxes levied in many foreign countries, i.e. such public payment, which direct functional purpose is to prevent (alleviate) negative impacts of human economic activity on the environment.

The legislative regulation currently in force offers a general approach to defining the notion of charges for negative impact only. Thus, a definition of the notion of

negative impact on the environment is included in the general provisions of the Act on Environment Protection.

In accordance with Article 1 of the Act, negative impact on the environment can be determined as the influence of human economic and other activities on the scope of environmental components, which consequences cause negative changes in the environment in interrelation of its physical, chemical, biological and other characteristics.

As is indicted above, the Act on Environmental Protection considers negative impact on the environment as a kind of nature management. All kinds of negative impact provided for in the Act are closely connected with the notions of "environmental pollution" and "pollutant".

It is worth mentioning that the expired Act of the RSFSR "On Environmental Protection" used the term "payment for environmental pollution," which was fixated in a number of by-laws still in force.

3. Russian Court Practice on the Issue

Against the background of meager statutory qualification of charges for negative impact on the environment, court practice on the problem of legal nature of the charges is quite broad and highly heterogeneous.

Issues concerning charges for negative impact on the environment (for environmental pollution) regularly put on the agenda at all levels of the judicial system of the RF.

Thus, for quite a short period of time Russian higher court authorities formulated at least three mutually or partially exclusive legal positions:

1. Charges for environmental pollution has all the features of a tax and thus cannot be imposed by a decree of the RF Government[3].

2. Charges for environmental pollution are by nature fiscal levies and thus can be established by a decree of the RF Government within delegated authority[4].

3 The Decision of the RF Supreme Court of 28 March 2002 N° GKPI2002-178 "On declaring unlawful (invalid) the Decree of the RF Government of 28 August 1992 N° 632 'On approval of the Procedure of determining levies and their limit sizes for environmental pollution, waste allocation, and other kinds of detrimental impact' in the version of 14 June 2001" // Tax Bulletin. 2002. Issue 12.

4 The Determination of the RF Constitutional Court of 10 December 2002 N° 284-O "On demand of the RF Government to examine the constitutionality of the Decree of the RF Government 'On approval of the Procedure of determining levies and their limit sizes for environmental pollution, waste allocation, and other kinds of detrimental impact' and Article 7 of the Federal Act 'On enacting Part 1 of the RF Tax Code'" // The Collection of RF Legislation. 2002. N° 52. Article 5290.

3) Essential characteristics of charges for environmental pollution can be fixated at the level, no lower than a decree of the RF Government[5].

3.1. Russian Higher Courts' Decisions

Among the significant resolutions adopted lately by higher court authorities, we can distinguish two Decisions of the Panel of the RF Supreme Arbitrary Court – one of 9 December 2008 N° 8672/08[6] and the other of 17 March 2009 N° 14561/08[7].

Also, we should mention the Decision of the RF Constitutional Court of 14 May 2009 N° 8-P "On the case of examining the constitutionality of subparagraph "b" of paragraph 4 of the Decree of the RF Government "On approval of the Procedure of payment calculation and its limiting dimensions for environmental pollution, waste allocation, and other kinds of detrimental impact" following an inquiry of the Supreme Court of the Republic of Tatarstan"[8], according to which the challenged provision was declared irrelevant to the RF Constitution and expired from 1 January 2010.

The matter of legal nature of charges for negative impact on the environment has long been considered in the practice of arbitrary courts in the context of lawfulness of imposing default interest and calling to account for non-payment of environmental levies, i.e. it was actually reduced to the question of applicability of the provisions of Part 1 of the RF Tax Code to the issues of charges for negative impact on the environment. The legal position of the RF Constitutional Court set forth in its Determination of 10 December 2002 N° 284-O had a mixed reception in arbitrary courts, which generated at least three different lines of court decisions. Here are brief arguments of each line.

3.1.1. Court Decisions' Trend 1

Paragraph 4 of the declaration of the Determination of 10 December 2002 N° 284-O of the RF Constitutional Court stated that charges for environmental pollution is a source of income for the RF Federal Budget. Supplement 2 to the Federal Act of 15 August 1996 N° 115-FA "On the Budget Classification of the Russian Federation"[9] and that of 30 December 2001 N° 194-FA "On the Federal Budget for the year of

5 The Decision of the RF Supreme Court of 12 February 2003 N° GKPI03-49 "On declaring partially invalid certain provisions of the Decree of the RF Government of 28 August 1992 N° 632 'On approval of the Procedure of determining levies and their limit sizes for environmental pollution, waste allocation, and other kinds of detrimental impact'" // Bulletin of the RF Supreme Court. 2004. Issue 3.

6 The Bulletin of the RF Supreme Arbitrary Court. 2009. Issue 4.

7 The Bulletin of the RF Supreme Arbitrary Court. 2009. Issue 6.

8 The Bulletin of the RF Constitutional Court. 2009. Issue 3.

9 The Collection of RF Legislation. 2000. N° 32. Article 3338 (The Act has expired).

2002"[10] levies for standard and excessive discharges and disposals of pollutants, and waste allocation were classified as revenues from taxes. In this way the legislator has confirmed the imposition and levying of the charges.

Also, the RF Constitutional Court determined that before a new procedure of levying charges for environmental pollution and other kinds of negative impact on the environment is introduced, the old procedure of their levying will be preserved and followed.

The RF Constitutional Court decided that the previous procedure of levying was to be preserved before a new procedure was introduced.

Taking this into account, in case a nature user has failed to fulfill his obligation of paying for actual natural environmental pollution, a tax authority is entitled to charge environmental levies and impose the responsibility provided for in Article 122, paragraph 1 of the RF Tax Code. In case a nature user has failed to fulfill his obligation of due submitting to a tax authority a proper calculation of charges for natural environmental pollution, he is liable in accordance with paragraph 1 of Article 119 of the RF Tax Code[11].

3.1.2. Court Decisions' Trend 2

The Determination of 10 December 2002 N° 284-O of the RF Constitutional Court stated that charges for negative impact on the environment are of individual compensatory character and, by their legal nature are not a tax but a fiscal duty.

In accordance with paragraph 43 of the Ordinance of the Plenary Session of the RF Supreme Arbitrary Court of 28 February 2001 N° 5 "On certain issues of applying Part 1 of the RF Tax Code"[12], when solving the problem of lawfulness of the case of a taxation authority's applying Article 122 of the RF Tax Code in case of non-payment or partial payment of duties, the courts have to consider the nature of every mandatory payment called "duty". Nonpayment of the duty defined in paragraph 2 of Article 8 of the RF Tax Code, cannot entail the liability provided for in Article 122 of the RF Tax Code[13].

10 The Collection of RF Legislation. 2001. N° 53 (Part 2). Article 5030.

11 The Orders of the Federal Arbitrary Court of the Central Area of 30 January 2003 N° A23-3026/02A-5-194; of the Federal Arbitrary Court of the Far-East Area of 5 March 2003 for the case of F03-A51/03-2/274, of 13 Mach 2003 for the case of F03-A51/03-2/221, of 16 May 2003 for the case of F03-A51/03-2/1020; of the Federal Arbitrary Court of the Ural Area of 5 March 2003 N° F09-1214/03-AK; of the Federal Arbitrary Court of the East-Siberian Area of 15 September 2003 for the case N° A19-6435/03-44-F02-2899/03-S1 (unpublished, available at www.consultant.ru).

12 Bulletin of the RF Supreme Arbitrary Court. 2001. Issue 7.

13 See also: The Decisions of the Federal Arbitrary Court of the West-Siberian Area of 16 July 2003 for the case N° F04/3317-978/A27-2003; of the Federal Arbitrary Court of the East-Siberian Area of 29 July 2003 for the case N° A33-2240/02-C3a-F02-2267/03-C1 (unpublished, available at www.consultant.ru).

3.1.3. COURT DECISIONS' TREND 3

In accordance with paragraph 5 of the Determination of the RF Constitutional Court of 10 December 2002 N° 284-O and Article 7 of the Federal Act of 31 July 1998 N° 147-FA "On the Enactment of Part 1 of the RF Tax Code"[14] charges for negative impact on the environment are levied from business entities so that they could fulfill their financial and legal liabilities (obligations), arising from carrying out a kind of activity, which makes a negative impact on the environment, and are in fact a form of recover for economic damage from such an impact. The charges are not included in the system of taxes, which, according to Part 3 of Article 75 of the RF Constitution is subject to establishing by a federal act. Also, the analyzed levies are not a duty.

Thus, the indicated charges are rated among mandatory levies of nontax character levied in an official public procedure, which the provisions of the RF Tax Code are not applied to. Therefore, the responsibility provided for in Articles 119 and 122 of the RF Tax Code cannot be applied to payment of charges for environmental pollution, as well as it is impossible to impose default interest basing on Article 75 of the RF Tax Code[15].

Thus, despite the applied approaches to determining the character of charges for negative impact on the environment, worked out by the RF Constitutional Court and the Supreme Court of the RF in a number of court decisions, uniformity in the law-enforcement practice of federal arbitrary courts has not been achieved so far. Such contradictory arbitrary court practice appears to be stipulated by the introduction of a new, not enough formally determined, notion of "fiscal duty" into the terminological corpus of tax law.

3.2. RF CONSTITUTIONAL COURT'S CURRENT POSITION

However strong the logic of the RF Constitutional Court may seem, its current legal position on charges for pollution is beneath criticism from the viewpoint of the currently evolving law-enforcement practice, which often results in disregard of the constitutional principle of everybody's equality before law and court (Article 19 Part 1 of the RF Constitution).

The legislator found a solution to this problem – introducing amendments to the RF Code of Administrative Offences, aimed at increasing the liability for offences in the

14 The Collection of RF Legislation. 1998. N° 31. Article 3825.

15 The Decisions of the Federal Arbitrary Court of the Nort-Western Area of 27 January 2003 N° A56-30127/02; The Decisions of the Federal Arbitrary Court of the West-Siberian Area of 7 July 2003 for the case N° F04/3069-895/A27-2003, of 1 September 2003 for the case N° F04/4377-1427/A27-2003, of 20 October 2003 for the case F04/5364-752/A67-2003 (unpublished, available at www.consultant.ru).

sphere of protection of the natural environment. The Federal Act of 26 December 2005 г. N° 183-FA[16] introduced a new corpus delicti into the RF Code of Administrative Offences – non-payment or delayed payment of charges for negative impact on the environment (Article 8.41), providing for[17] a fine in relation to officials ranging from 3 to 6 thousand roubles, and in relation to legal entities – a fine ranging from 50 to 100 thousand roubles.

Besides, the liability for administrative offences in the sphere of protection of the natural environment and nature management, provided for in Articles 8.1-8.4 of the Code, shall be increased.

The comments to the bill on the issue of establishing a new corpus delicti included the following statement: "As a result of nonpayment of charges for environmental pollution, the federal and regional budgets will not receive considerable sums of money."

In accordance with Article 1 of the Federal Act of 10 January 2002 N° 7-FA "On Environmental Protection," requirements in the sphere of environmental protection are mandatory conditions, limitations or their scope, established by legislation and other acts and applied to economic and other kinds of activity. Therefore, one of environmental requirements is payability of negative impact. Article 8.1 of the RF Code of Administrative Offences imposes liability for non-compliance with environmental requirements. This Article is general and thus applied in cases when a committed offence cannot be qualified in the sphere of environmental protection and nature management according to a special provision. The introduction of a special corpus delicti into the RF Code of Administrative Offences – non-introduction of charges for environmental pollution – will allow raising the efficiency of applied measures of administrative responsibility for such offences and increase the preventive role of law in environmental protection. According to Article 8.41, government inspectors for nature protection responsible for ecological monitoring shall hold offenders administratively liable.

The amendments introduced into the RF Code of Administrative Offences have resolved the problem of legal liability for nonpayment of charges for negative impact within administrative and legal relations. However, the indicated measure cannot be regarded otherwise but temporary, aimed at an early settlement of the problem of absence of legal basis for making offenders accountable for this offence.

16 The Collection of RF Legislation. 2005. N° 52 (Part 1). Article 5596.

17 In the version of the Federal Act of 22 June 2007 N° 116-FA "On Amending the RF Code of Administrative Offences regarding the alteration of the mode of money penalty imposed for administrative offences" // The Collection of RF Legislation. 2007. N° 26. Article 3089.

4. NEED FOR A NEW LEGISLATIVE ACT

Yet, such a measure is unable to solve this problem in essence. The need for a separate legislative act is quite obvious –an act adopted in accordance with paragraph 3 of Article 16 of the Act on Environmental Protection (or, as an option depending on the current legislation policy–, supplementing a corresponding chapter to the codified act of legislation), which:

1. Would comply in its nature and economic essence with environmental levies.
2. Would provide a sufficient level of management and control over the flow of charges for negative impact into the budget system of the RF.

On analyzing the court practice, we can come to a conclusion that in their legal nature, charges for negative impact completely comply with the criteria of a tax – they base on the Act on Environmental Protection, paid in a monetary form, aims at recovering of the public authorities' costs of environmental restoration, basing on the principles of obligation, irrevocability and individual non-compensation.

4.1. PRINCIPLE OF NON-COMPENSATION

The principle of non-compensation is revealed in the fact that the payer does not acquire any right or privilege. When looking at the situation at an opposite angle, one can see that payers 'buy' from the government the to pollute nature (both within standards and beyond them), which does not seem to comply with the principles of jural state and those of social state, which has no right to sell socially and constitutionally significant values.

In Accordance with Article 42 of the RF Constitution, everybody has the right for favourable environment. Therefore, it is the persons who suffered because it was violated, are entitled to claim counter compensation from the polluter.

Such charges are not shared among those who suffered from pollution. Trade in favourable environment by the government, which does not have exclusive rights to it, in favour of certain citizens and organizations was unlawful from the viewpoint of the Constitution of the RF.

4.2. NON-TAX LEVIES

Moreover, if we follow the logic of the RF Constitutional Court, all natural resource taxes should be declared non-tax –land tax (levies for the right to use land), water tax– (levies for the right to use water), etc. Obviously, the conclusion of the RF Consti-

tutional Court of the non-tax character of charges for negative impact is beneath criticism. This conclusion was not supported by any branch of power – the legislative branch objected to it in the Federal Act of 27 December 2000 N° 150-FA "On the Federal Budget for the year of 2001"[18], where the levies were classified as tax levies; the Ministry for Taxes and Duties of the Russian Federation in the actions of its tax inspections that levied the charges as arrears; arbitrary courts – when trying cases of classifying the charges as taxes.

Even making an inquiry to the RF Constitutional Court on examining Article 7 of the Federal Act "On Enactment of Part 1 of the RF Tax Code", the Government of the RF indirectly admitted that the disputable levy has an explicit tax character (the Determination of the RF Constitutional Court of 10 December 2002 N° 284-O).

5. Legal Mechanism of Charges for Negative Impact on the Environment: Evolution of Legal Regulation

Charges for negative impact on the environment are provided for in Article 16 of the Act on Environmental Protection. The significance of the Article in legal regulation charges for negative impact can be characterized as follows. This Article:

1. Establishes the principle of payability for negative impact on the environment.
2. Determines kinds of negative impact, which can generate the obligation of introducing environmental levies into the budget system of the RF.
3. Contains blanket norms, i.e. general provisions concerning forms of charges for negative impact, procedure of calculating and levying charges for negative impact.
4. States that paying charges for negative impact does not exempt from the liability to take measures of environmental protection and indemnify the environment.

Similarity and, in some cases, identity of certain characteristics of charges for negative impact with those of taxes provides grounds for attempting to unitize the approaches to analyzing the mechanisms of levying charges for negative impact and tax levying –applying the apparatus and conceptual instruments of tax law. At the same time an obvious objection against such unification will be the thesis of different legal nature of tax and charges for negative impact and, consequently, that of incomparability of the objects of comparison. Indeed, both theory and practice of the recent years have chosen the way of denying the tax nature of charges for negative impact. Yet, regardless of the answer to the question of the legal nature of charges for negative

18 The Collection of RF Legislation. 2001. N° 1 (Part 1). Article 2.

impact it is hardly acceptable to deny in the mechanism of charges for negative impact the presence of certain cornerstone elements without which the mechanism's functioning in the legal sphere would be impossible.

What is at issues is such compulsory elements of levies as levy payer, levy object (source), unit and norm of taxation, schedule and procedure of payment into the centralized monetary fund (funds). Also, it seems possible to identify some facultative elements such as privileges in paying charges for negative impact, yet, their legal fixation of facultative elements, unlike those mandatory ones, are usually not regarded as a mandatory attribute of arising obligation of fiscal payment.

In accordance with Article 17, paragraph 1 of the RF Tax Code, tax is considered to be imposed when taxpayers and taxation elements are determined, including tax object, tax base, tax period, tax rate, tax calculation procedure, manner and time of tax discharge.

Let us make sure that each of the mandatory elements is present in the mechanism of charges for negative impact, provided for in the current normative legal acts.

5.1. Subjects of Payment

In accordance with paragraph 1 of the Procedure of determining levies for environmental pollution and fixating their limits, as well as those for waste allocation and other kinds of detrimental impact, approved by the Decree of the RF Government of 28 August 1992 N° 632[19] (hereinafter – the Procedure of charges determination), this procedure is applicable for enterprises, institutions, organisations, foreign legal entities and physical persons performing any kind of activity involving nature management on the territory of the RF.

5.2. Object (source) of Payment

The Procedure of payment determination, paragraph 1 provides that charges shall be levied for the following kinds of detrimental impact on natural environment – discharge of pollutants from stationary sourced into the atmosphere; discharge of pollutants from mobile sourced into the atmosphere; disposal of pollutants into surface and ground water bodies; allocation of wastes; other kinds of detrimental impact (noise, vibration, electromagnetic and radiation impact, etc.).

19 The Collection of Act of the RF President and RF Government. 1992. N° 10. Article 726.

5.3. Units and Standards of Charges

The Decree of the RF Government of 12 June 2003 N° 344 (ed. in the Decree of the RF Government of 1 July 2005 N° 410, with amendments introduced in Decree of the RF Government of 8 January 2009 N° 7)[20] establishes standard charges for discharges of air pollutants into the atmosphere by stationary and mobile sources, disposals of pollutants into surface and ground water bodies, allocation of production and consumption wastes, as well as additional coefficients taking into account such environmental factors as climate peculiarities of the territories, significance of natural and socio-cultural objects. Besides, as standard charges are established in fixed amounts of roubles (per unit of pollutant in tons, liters or thousands of cubic meters), they are subject to annual adjustment for inflation in accordance with the Federal Act of the Federal Budget adopted annually for the coming year. So, charges standard for negative impact on the environment, established in 2003, applied in 2004 with a coefficient of 1,1[21]; in 2005 – with a coefficient of 1,2[22]. Standard charges for negative impact on the environment, established in 2003, applied in 2006 with a coefficient of 1,3, and standard charges established in 2005 – with a coefficient of 1,08[23]. Standard charges for negative impact on the environment established in 2003, applied in 2007 with a coefficient of 1,4, and standard charges established in 2005 – with a coefficient of 1,15[24]. Standard charges for negative impact on the environment, established in 2003 were still applied in 2008 with the coefficient of 1.48, and the standards established in 2005 – with the coefficient of 1,21[25].

5.4. Payment Calculation

As was indicated above, at present the procedure of payment calculation is provided by the Decree of the RF Government of 28 August 1992 N° 632. In general, the algorithm of calculating charges for negative impact is given in ii.3-8 of the aforementioned Decree. Also, in the part not contradicting the current normative legal regulation of charges for negative impact, the Instructive and Methodological Guidelines for levying

20 Decree of the RF Government of 12 June 2003 N° 344 "On payment standards for discharges of pollutants into the atmospheric air by stationary and mobile sources, disposals of polluting substances into surface and ground water bodies, allocation of production and consumption wastes" // The Collection of RF Legislation. 2003. N° 25. Article 2528.

21 Federal Act of 23 December 2003 N° 186-FA "On the Federal Budget for the year of 2004" // The Collection of RF Legislation. 2003. N° 52 (Part 1). Article 5038.

22 Federal Act of 23 December 2004 N° 173-FA "On the Federal Budget for the year of 2005" // The Collection of RF Legislation. 2004. N° 52 (Part 1). Article 5277.

23 Federal Act of 26 December 2005 N° 189-FA "On the Federal Budget for the year of 2006" // The Collection of RF Legislation. 2005. N° 52 (Part 2). Article 5602.

24 Federal Act of 19 December 2006 N° 238-FA "On the Federal Budget for the year of 2007" // The Collection of RF Legislation. 2006. N° 52 (Part 2). Article 5504.

25 Federal Act of 24 July 2007 N° 198-FA "On the Federal Budget for the year of 2008 and for the planned period of 2009 and 2010" // The Collection of RF Legislation. 2007. N° 31. Article 3995.

charges for environmental pollution (hereinafter – the Instructive and Methodological Guidelines) approved by the RF Ministry for Natural Resources on 26 January 1993[26] and not formally repealed since are still applied (The RF Supreme Court in its Decision of 13 November 2007 N° GKPI07-1000 confirmed that the Instructive and Methodological Guidelines were adopted in accordance with the procedure of adopting normative legal acts and, after meeting a petitioner's claim to nullify a certain provision of the Guidelines, thus indirectly confirmed its being in force)[27] At present, the calculation form of charges for negative impact, the procedure of its filling and submitting to the government authorities are provided by the Order of the Federal Service for Environmental, Technological, and Nuclear Supervision under the RF Ministry of Natural Resources and Ecology of 5 April 2007 N° 204[28].

5.5. Payment Schedule

In accordance with the Order of the Federal Service for Environmental, Technological, and Nuclear Supervision under the RF Ministry of Natural Resources and Ecology of 8 June 2006 N° 557[29], the calendar quarter is recognized as a reporting period for charges for negative impact on the environment; charges are subject to transferring to the budget as a result of the reporting period no later than the 20th day of the following month after the close of the reporting period.

Besides, the sums of charges for negative impact on the environment are subject to transferring in corpore to the accounts of territorial authorities of the Federal Treasury with their later allocation between the levels of the RF budget system in accordance with the RF budget legislation. Since January 1 2005 the RF Budget Code fixed the allocation standards as follows: 20 percent to the federal budget, 40 percent to the budgets of the RF subjects and the budgets of municipal districts and city counties, and 80 percent to the budgets of the cities of Moscow and Saint-Petersburg.

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26 In the version of the Order of the RF State Committee for Environmental Protection of 15 February 2000 N° 77 (The Bulletin of regulatory enactments of federal executive authorities. 2000. Issue 14).

27 The Decision of the RF Supreme Court of 13 November 2007 N° GKPI07-1000 "On declaring partially invalid paragraph 4.7 of Supplement 1 to the Instructive and Methodological Guidelines for levying charges for environmental pollution, approved by the RF Ministry of Natural Resources and Ecology of 26 January 1993" (available at http://www.consultant.ru).

28 The Order of the Federal Service for Environmental, Technological, and Nuclear Supervision under the ib Ministry of Natural Resources and Ecology of 5 April 2007 N° 204 "On approval of the form of calculating charges for negative impact on the environment and the procedure of filling and submitting the form of calculating charges for negative impact on the environment" // The Bulletin of regulatory enactments of federal executive authorities. 2007. Issue 31.

29 The Order of the Federal Service for Environmental, Technological, and Nuclear Supervision under the ib Ministry of Natural Resources and Ecology of 8 June 2006 N° 557 "On fixing due dates for payment of charges for negative impact on the environment" // The Bulletin of regulatory enactments of federal executive authorities. 2006. N° 30.

As is clear, at present each of the mandatory elements of the charges for negative impact is formally determined and fixed in legal norms. Returning to the problem of mandatory tax elements (significant elements of tax obligation), one cannot help recognising their similarity with some elements of charges for negative impact.

On determining in general the essential elements of charges for negative impact, let us consider the most problem aspects of its legal mechanism.

The current system of normative legal regulation of charges for negative impact does not specify the subjects of charges for negative impact (hereinafter "payers").

The Act on Environmental Protection only contains an indirect mention of payers as subjects of economic and other kinds of activity, which consequences cause negative changes in the quality of the environment.

More precise limits of operation of the legal mechanism of charges for negative impact in the range of persons are determined in the Procedure of charges determination – as is indicated above, the Procedure is applied to enterprises, institutions, organizations, foreign legal entities and physical persons, carrying out activities connected with nature use and management on the territory of the RF.

Developing this provision, the Instructive and Methodological Guidelines for levying charges for pollution of the natural environment determine that charges are levied from enterprises, institutions, organizations and other legal entities regardless of the organization types and legal forms they base upon including joint ventures with participation of foreign legal entities and physical persons who have been entitled to carrying out economic activity on the territory of the RF.

We have to mention the inconsistency and in some case, contradiction of provisions of the Act on Environmental Protection, determining payers of charges for negative impact, and inconsistency of the corpus of by-laws concretizing these norms, with provisions of other legislative acts, regulating certain kinds of charges for negative impact.

Thus, in accordance with the Federal Act of 4 May 1999 N° 96-FA "On Protection of the atmospheric air"[30] levies for discharges of air pollutants into the atmosphere are levied from both physical persons and legal entities, and in accordance with the Federal Act of 24 June 1998 N° 89-FA "On production and consumption wastes"[31] (hereinafter Act on wastes) charges for waste allocation are levied from legal entities and sole proprietors.

30 The Collection of RF Legislation. 1999. N° 18. Article 2222.

31 The Collection of RF Legislation. 1998. N° 26. Article 3009.

None of the aforementioned acts contains provisions giving a precise, consistent and homogeneous list of liable payers. Yet, it should be noted that at the level of legal determination of отчетной accounting documents for charges for negative impact, the problem of determining payers can look allegedly solved. Thus, the form of calculation of charges for negative impact on the environment and procedure of its filling in, approved by the Oder of the Federal Service for Environmental, Technological, and Nuclear Supervision of 5 April 2007 N° 204 provide for the mentioned accounting documents are filled in by three categories of payers – Russian entity, foreign entity, and foreign physical person.

Despite the fact that such "vision" of liable payers of charges for negative impact corresponds to literal interpretation of paragraph 1 of the Procedure of charges determination, reasons and grounds for discriminating foreign physical persons when making them responsible for paying charges for negative impact and dispensing Russian physical persons from such responsibility, including Russian sole proprietors, who can really do much harm the environment with various kinds of their economic activity, remain absolutely unclear.

The problem of payers of charges for negative impact has not been neglected in court practice. In the Determination of 10 December 2002 N° 284-O the RF Constitutional Court came to a conclusion that payers are legal entities and sole proprietors carrying out economic activity making negative impact on the environment. The Court referred to Article 15, paragraph 4 of the Act on Environmental Protection, which later expired on the basis of the Federal Act of 22 August 2004 N° 122-FA[32].

However, this conclusion was not only supported by federal arbitrary courts of districts[33], it started getting disseminated in clarifications and methodological recommendations of the Federal Service for Environmental, Technological, and Nuclear Supervision.

Thus, the Letter of the Federal Service for Environmental, Technological, and Nuclear Supervision of 12 February 2007 N° 04-09/169[34] indicates that according to

32 The Federal Act of 22 August 2004 N° 122-FA "On Amending the RF legislation and declaring some acts of the RF expired in connection with the adopted Federal Acts 'On Amending the Federal Act 'On general principles of organization of legislative (representative) and executive bodies of the RF subjects' governmental power' and 'On general principles of organising local self-government in the Russian Federation'" // The Collection of RF Legislation. 2004. N° 35. Article 3607.

33 See, e.g. the Orders of the Federal Arbitrary Court of the North Caucasus Area of 14 March 2006 N° Ф08-766/2006-333A for the case N° A32-6800/2004-48/140; the Federal Arbitrary Court of the North-Western Area of 30 July 2007 for the case N° A05-11344/2006-33, of 28 December 2007 for the case N° A05-5798/2007 (unpublished, available at http://www.consultant.ru).

34 Letter of the Federal Service for Environmental, Technological, and Nuclear Supervision of 12 February 2007 N° 04-09/169 "On charges for negative impact on the environment" // Normative acts for the accountant. 2007. Issue 9.

the Decision of the RF Constitutional Court of 10 December 2002 N° 284-O the liability to pay charges covers business entities (legal entities and sole proprietors), making negative impacts. Thus, sole proprietors whose activities include servicing, commodity trade, etc. influencing the environment negatively must execute their duties of taxpayers in corpore.

Also, with reference to the mentioned Decision of the RF Constitutional Court, the Methodical Recommendations for managing charges for negative impact on the environment concerning air discharges into the atmosphere, established by the Order of the Federal Service for Environmental, Technological, and Nuclear Supervision of 12 September 2007 N° 626[35], determine the following subjects of charges for negative impact: 1) legal entities regardless of their organizational legal forms and forms of property; 2) sole proprietors; and 3) foreign physical persons.

In connection with the aforementioned, one cannot help noticing a tendency of vesting in the RF Constitutional Court the law-making competence of determining payers of charges for negative impact, in the absence of relevant normative legal regulation of payers, and, besides, excessively broad interpretation of the conclusions of the RF Constitutional Court (despite the fact that the Determination of the RF Constitutional Court of 10 December 2002 N° 284-O did not contain any mention of foreign physical persons as payers, this situation was reflected in the Methodological Recommendations of the Federal Service for Environmental, Technological, and Nuclear Supervision).

The simple enumeration of payers in paragraph 1 of the Procedure of charges determination cannot be considered a legal provision properly identifying the range of payers of charges for negative impact. Logically, Russian physical persons cannot be excluded from the range of liable payers as its key sense load is its link to the object of environmental levies.

Thus, the absence of a universal, precise and consistent range of payers of environmental levies generates a situation of legal uncertainty, which does not conform to the purposes of charges for negative impact, as well as to the general principles of imposing and levying fiscal charges.

35 Order of the Federal Service for Environmental, Technological, and Nuclear Supervision of 12 September 2007 N° 626 "On approval of the Methodological recommendations of administering charges for negative impact on the environment as regards to air discharges into the atmosphere. RD-19-02-2007" // Documents and comments. 2007. N° 24.

6. CLASSIFICATIONS OF ENVIRONMENTAL LEVIES

As charges for negative impact are not homogeneous in their structure and key characteristics (being a scope of environmental levies), classification of charges basing on different items is important for determining the mechanisms of the charges.

6.1. CLASSIFICATIONS OF ENVIRONMENTAL LEVIES BASING ON THE TAXATION OBJECT

Basing on the kinds of negative impact on the environment determined in Article 16 of the Environmental Protection Act, the following kinds of environmental levies can be distinguished:

1. Levies for air discharges of pollutants and other substances into the atmosphere.
2. Charges for disposals of pollutants, other substances and microorganisms into surfaces water bodies, ground water bodies and drainage areas.
3. Charges for pollution of soils and subsoils.
4. Charges for allocation of production and consumption wastes.
5. Charges for environmental pollution with noise, heat, electromagnetic, ionizing and other kinds of physical impact.

However, it should be noted that despite the broad enough range of kinds of negative impact provided for in the Act on Environmental Protection, at present Russian legislation lacks legal basis for levying charges for environmental pollution with various kinds of physical impact (e.g. with noise, heat, etc.), and charges for pollution of soils and subsoils are levied within charges for waste allocation. It seems obvious, that though environmental pollution with physical impact is made in reality, the degree of negative impact can be hardly estimated objectively, particularly its quantity and quality indicators, which is a necessary condition for designing and fixating an organizational and legal mechanism of environmental levies.

Thus, the Procedure of charges determination, as well as other by-laws specifying this Procedure, have established an organizational and legal mechanism of the following environmental levies: levies for discharge of pollutants from stationary sources into the atmosphere; levies for discharges of pollutants from mobile sources into the atmosphere; levies for disposals of pollutants into surface and ground water bodies; levies for waste allocation.

Despite the fact that the Procedure of charges determination duplicates the proposition of the Act on Environmental Protection concerning charges for certain kinds of physical impact environment (in particular, the Procedure of charges determination mentions charges for noise, vibration, electromagnetic and radiation impacts); at present the situation with these kinds of negative impact is quite problematic – the key parameters of environmental levies such as rate and calculation procedure have not been determined and, consequently, there is no legal basis for imposing charges for the kinds of negative impact on environment.

6.2. Classification of Environmental Levies Depending on the Volume of Environmentally Detrimental Activity and the Degree of Damage Caused to the Environment

Aiming at government regulation of economic and other kinds of impact on the environment, providing preservation of favourable environment and environmental safety, in accordance with the Act of Environmental Protection standardization is made by establishing standards of permissible impact on the environment. In accordance with Article 1 of the aforementioned Act, standards in the sphere of environmental protection are established standards for the environment quality and standards for permissible impact on the environment, in compliance with which stable functioning of natural ecosystems is provided and biodiversity is preserved.

In legal regulation of charges for negative impact, an important role belongs to the following kinds of standards of permissible impact – standards of permissible discharges and disposals of substances and microorganisms, established separately for stationary and mobile sources of impact on the environment; standards for production and consumption wastes and limits for their allocation.

As regards to discharges of pollutants into the atmosphere and disposals into water bodies, an additional mechanism ensuring the preservation of environmental quality – temporary agreement of limits of discharges and disposals. In accordance with Article 23 of the Act on Environmental Protection in cases when standards of permissible discharges and disposals cannot be complied with while measures for environmental protection are being taken, best up to date technologies are being installed or other nature-conservative projects are being implemented, limits for discharges and disposals can be introduced. Limits must be established on the basis of permits, in case of nature users' planning reductions in discharges and disposals aiming at stepwise achievement of the established standards or permissible discharges and disposals.

Thus, negative impact on the environment can be made either within the established standards or within the temporarily agreed limits, or with excess of the standards and/or temporarily agreed limits, depending on the actual volume of environmental pollution. Subject to application in each case specifically, the procedure of calculation, levy rates and, consequently, the total sum of payment to the RF budget system largely depend on a certain kind of the indicated categories of negative impact, which covers the actual volume of the environmental pollution.

Basing of the above considerations, distinguishing of the following kinds of charges for negative impact looks substantiated:

1. *Standard charges* – payment for pollution, which actual volumes do not exceed the statutory standards of permissible environmental impact.

2. *Limit charges* – payment for pollution, which actual volumes exceed the statutory standards of permissible environmental impact, but stay within temporary agreed limits.

3. *Over-limit charges* – payment for over-limit pollution, i.e. pollution, which actual volumes exceed both the statutory standards of permissible environmental impact and temporary agreed limits (if there are any), with fivefold increasing coefficient to be applied when calculating over-limit charges, which results in the fact that charges for negative impact concerning pollution exceeding standards and/or limits acquiring penalty character.

The procedure of calculating the sum of environmental levies is established so that the higher the actual volume of environmental pollution is in comparison to standards and limits, the higher is the efficient rate of charges for negative impact, i.e. the percentage of the payable sum of the environmental levy to the actual volume of pollution. Thus, charges for negative impact by the procedure of determination of the levy rate applied in every case in particular are comparable to progressive taxes, and this is where the regulating functions of charges for negative impact is most vividly revealed.

6.3. Classification of Environmental Levies on the Basis of Legal Regime of Detrimental Impact

In accordance with the current legislation of environmental protection, various kinds of negative impact on the environment must be made on the basis of permits issued by specially authorized executive authorities in the sphere of environmental protection. In accordance with paragraph 5.3.3.5 of the Statute of the Federal Service for Environmental, Technological, and Nuclear Supervision, approved by the Decree

of the RF Government of 30 July 2004 N° 401[36], permits for discharges and disposals of pollutants into the environment and detrimental physical impacts on the atmosphere are issued by the Federal Service for Environmental, Technological, and Nuclear Supervision. Thus, in the sphere of the atmosphere protection the permit for a disposal of detrimental (polluting) air substances into the atmosphere is issued, which contains maximum permissible discharges and other conditions providing the atmosphere protection; the sphere of waste handling presumes that permits for making objects of waste allocation must be issued. Therefore, availability of a permit for a certain kind of negative impact on the environment is a compulsory condition for performing corresponding economic or other kinds of activity. As by issuing the aforementioned permits the government authorizes a negative impact on the environment, identifying different legal regimes of environmental pollution seems to be well-grounded:

1. *Lawful*, or authorized by the government via issuing a permit and establishing limits of permissible impact and/or temporarily agreed limits.

2. *Unlawful*, or voluntary, uncontrolled, spontaneous negative impact, made in the absence of a permit for a certain kind of economic activity and supervision of governmental authorities over this type of economic activity.

As provided for in paragraph 6 of the Procedure of payment calculation in case a nature user does not have a permit for discharge, disposals of pollutants, and waste allocation, issued in accordance with an established procedure, the total mass of pollutants is calculated as over-limit and when calculating charges for negative impact, fivefold increasing coefficient is to be applied. Thus, two kinds of charges for negative impact can be identified:

1. *Charges for lawful pollution of the environment* levied under the stipulation that taxpayer takes all the necessary measures in the sphere of charges for negative impact (getting registered as a nature user, receiving a permit concerning a certain kind of pollution, complying with the standard limits of permissible impact on the environment / temporarily agreed limits, etc.).

2. *Charges for unlawful pollution of the environment* levied either in case of excess of established standards of permissible impact on the environment (temporarily agreed limits), or in case of absence of a certain kind of environmental pollution agreed upon by controlling authorities, which involves the absence of permit for carrying out environmentally detrimental economic activity.

36 The Collection of RF Legislation. 2004. N° 32. Article 3348.

It is worth emphasizing that if the former of the mentioned kinds of charges for negative impact can be characterized as a regularly environmental charge levied in proportion to the level of the made negative impact, the latter is of penalty nature, with the sum of the levied payment considerably exceeding the size of the payment that would be due in case the set rules and procedures were followed.

As an additional confirmation of validity of the aforementioned classification of environmental levies, we can mention some provisions of legislation of liability for administrative offences, as well as tax legislation, which in the aggregate could testify the uniformity of the legislator's will and consistency of the approach to differentiation of legal regimes for various kinds of charges for negative impact.

Thus, in accordance with Article 8.21 of the RF Code of Administrative Offences, discharge of air pollutants into the atmosphere or detrimental physical impact on it without a special permit, as well as violation of conditions of a special permit, are recognized to be administrative offences involving fines exacted from both physical and legal persons.

As regards to calculation of environmental levies in order to determine the tax base for profit tax, here we also find different legal regimes of payment for maximum permissible discharges (disposals, waste allocations) and payments for their excess. Thus, paragraph 7 of the Procedure of payment calculation states that the former must be made against production (work, services) costs, while the latter – against profit remaining at the nature user's disposal. The mentioned norm became a statutory provision when Part 2 of the RF Tax Code was adopted. Thus, as provided for in Article 254, paragraph 1 subparagraph 7 of the RF Tax Code, for the purposes of profit taxation, expenses incurred from maintenance and operation of fixed assets and other property for environmental protections purposes, in particular, levies for maximum permissible discharges (disposals) of pollutants into the environment are classified as material costs, i.e. they can decrease the payer's taxable profit.

At the same time, in accordance with Article 270, paragraph 4 of the RF Tax Code the organization's expenses as a sum of levies for over-limit discharges of pollutants into the environment are not taken into account for taxation purposes.

As is noticeable, the lawfulness of charging to expenses on profit tax is made dependant of the fact whether negative impact on the environment within temporarily agreed limits is recognized to be a maximum permissible discharge (disposal). As the term "maximum permissible discharge (disposal)" is not fixated in tax legislation, according to Article 11 of the RF Tax Code, it is to be used in the meaning it has in other branches of law. In accordance with Article 23, paragraph 4 of the Act on Environmental Protection economic actors have the right to make discharges (disposals)

of pollutants into the environment within the established standards of permissible discharges and disposals, limits for discharges and disposals provided that they get permits from an government body authorized in the sphere of environmental protection. Thus, compliance with the limits temporarily agreed upon with territorial authorities of the Federal Service for Environmental, Technological, and Nuclear Supervision under the RF Ministry of Natural Resources and Ecology, even if the actual volume of discharges exceeds statutory standards, could be considered to be "maximum permissible discharge (disposal)" and, accordingly, allowed in profit tax costs.

However, the RF Ministry of Finance Минфин in some of its comments[37] sticks to a different positions – when determining the tax basis for profit tax, only levies for discharges (disposals) of pollutants, allocation of wastes, and other kinds of detrimental effect within permissible standards can be taken into account as parts of material costs, while payment within specified limits (temporary agreed standards) yet exceeding maximum permissible standards, as well as levies for excessive discharges are considered to be levies for above-standard discharges of pollutants into the environment and are not allowed in profit tax in accordance with Article 270, paragraph 4 of the RF Tax Code.

Thus, owing to terminology inaccuracy in the legal regulation of charges for negative impact, the aforementioned provisions of the RF Tax Code have been interpretation in enforcement practice that does not comply with the sense initially implied in the difference of legal regime of standard and limit environmental levies on the one hand and excessive environmental levies – on the other.

6.4. Classification of Environmental Levies According to Environmental Importance of a Geographic Area of Pollution

To estimate the degree of damage caused to the environment by a certain kind of negative impact, the criterion of quantitative indicators of actual pollution volume is built into the procedure of environmental levies calculation. Thus, in accordance with the RF Government Decree of 12 June 2003 N° 344[38], every ingredient of pollutant (waste) coming to the environment as a result of negative impact, is due to quantitative measuring either in tons or in cubic meters. In accordance with paragraph 5.3 of the Instructive and Methodological Guidelines for levying charges for environment

37 Letters of the RF Ministry of Finance of 1 December 2005 N° 03-03-04/403, of 3 December 2004 N° 03-03-01-04/1/169 (unpublished, available at http://www.consultant.ru).

38 Decree of the RF Government of 12 June 2003 N° 344 "Of standard levies for discharges of pollutants into the atmospheric air by stationary and mobile sources, disposals of pollutants into surface and underground water bodies, allocation of production and consumption wastes" // The Collection of RF Legislation. 2003. N° 25. Article 2528.

pollution, the actual mass of discharge (disposal), which finally determines the ultimate sum of charges for negative impact, can be evaluated basing on the following data:

1. Data from the nature manager's control-measuring laboratory, governmental environmental monitoring authorities, other laboratories accredited to the right of carrying out analytical work.
2. Data of fuel consumption, raw materials consumption and material consumption.
3. Data of equipment temporary behaviour for a year.
4. Data of time and operating efficiency of dust-trapping and gas-cleaning equipment.
5. Wastes and substances generation standards used in domestic objects design, treatment facilities design, etc., including estimated specific performances of wastes per product unit.
6. Standards and characteristics of substance withdrawal from meliorated sites, residential and other areas.

Besides quantitative indicators of negative impact for calculation of environmental levies, much importance is attached to the polluter location, as well as to the environmental significance of the geographical region of pollution.

Basing on the provisions of the RF Government Ordinance of 12 June 2003 N° 344, we can identify the following special kinds of charges for negative impact:

1. Charges for negative impact on secure nature territories including treatment and recreation territories and resorts, as well as in the Arctic areas and those equated to them, the Baikal natural territory and ecological disaster areas.
2. Levies for discharges of pollutants into the atmospheric air of cities and towns.
3. Charges for locating wastes on specialized testing areas and industrial grounds equipped in accordance with the prescribed requirements and placed within the industrial area of the negative impact source.

Charges for discharge of pollutants into the atmosphere and charges for allocation of waste products and consumption residue are differentiated depending on the economic region of the polluted area, with the following economic regions singled out – Northern Economic Region, Northwestern Economic Region, Central Economic Region, Volga-Vyatka Economic Region, Central Black Earth Economic Region, Volga Economic Region, North Caucasus Economic Region, Ural Economic Region, West Siberian Economic Region, East Siberian Economic Region, Far East Economic Region, and Kaliningrad Oblast.

Charges for disposing of pollutants into water bodies are primarily differentiated by sea and river basins, as well as by the subjects of the RF, on which territory the source of contamination is allocated. The sums of charges differ if the source of contamination is allocated in the basin of one of the following water bodies – the basin of the Baltic Sea (the basin of the Neva River, other rivers of the Baltic Sea basin); the basin of the Caspian Sea (the basin of the Volga River, that of the Terek River, the basin of the Ural River, other rivers of the Caspian Sea basin); the basin of the Azov Sea (the basin of the Don River, the basin of the Kuban River, other rivers of the Azov Sea basin); the basin of the Black Sea (the basin of the Dnieper River, other rivers of the Black Sea basin); the sea basins of the Arctic Ocean and the Pacific Ocean (the basin of the Pechora River, the basin of the Northern Dvina, the basin of the Ob River, the basin of the Yenisei River, the basin of the Lena River, the basin of the Amur River, other rivers of the sea basins of the Arctic Ocean and the Pacific Ocean).

Each of the aforementioned economic regions / sea and river basins has a special coefficient of environmental significance to be taken into account when calculating the sum of charges for negative impact.

7. Suggestions on Modernisation of the Charges for Negative Impact on Environment

The undertaken analysis of the legal mechanism of charges for negative impact allows:

1. Establishing the legislative and bylaw levels of legal regulation and drawing a conclusion of the need for a more detailed legislative consolidation of the structural elements of charges for negative impact.
2. Distinguishing such mandatory elements of charges for negative impact as subjects of charges, object (source) of charges, unit and norm of charges imposition, terms and procedure of paying into the centralized monetary fund/s.

At present, each of the mandatory elements of charges for negative impact, being determined formally and fixated in legal norms largely resembles compulsory elements of a tax (essential elements of tax liability).

Economic regulation of environmental protection in the current Russian legislation is restricted to the charges for negative impact on environment, administrative fines for violation of requirements of environmental protection legislation and indemnifying for environmental damage caused owing to violation of environmental protection requirements, as well as legal norms providing tax reliefs to nature managers lacking

implementation mechanisms, while the economic mechanisms in use are of purely fiscal nature and low efficiency and influence.

My proposals on improving the Russian legislation as to raising the efficiency of performing the ecological function of taxation include:

1. The need for adopting a separate legislative in accordance with the Act on Environmental Protection that would fixate the fundamental principles of economic regulation of environmental protection, possibility of introducing concrete forms and tools of tax policy by tax legislation in accordance with the legal nature and economic essence of environmental levies.

2. In tax legislation, reasonability of legal fixation of concrete mechanisms of economic regulation in the sphere of environmental protection, as well as diversifying the legal impact via using more intensively tax exemptions, tax set-offs, tax credits, accelerated amortization, decreased tax rates as regards to certain environmentally important object of taxation and increased tax rates as regards to environmentally detrimental products or raw materials; temporary tax concessions for the period of constructing treatment facilities and permanent tax concessions for the purpose of developing the production of ecologically pure products and services.

CONCLUSIONS

Introduction of ecological tax in the RF seems to be in principle necessary and well-grounded; yet, as this measure causes a number of considerable practical problems stipulated by technical problems of measuring correctly the degrees of particular kinds of negative impact on the environment, problems of administering efficiently environmental charges, as well as the necessity to overcome the political opposition traditionally caused by any additional tax burden, we propose to postpone its introduction to medium-term prospects giving enough time to both the government and the public to ensure seamless introduction of ecological tax to the RF taxation system and its adequate perception.

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