



**Development of the Russian Tax  
System in 2009,  
Prospects for 2010**

3<sup>rd</sup> December 2009

Основные направления развития налоговой системы России в  
2009 году, перспективы на 2010 год



# Поправки к Части 1 Налогового кодекса РФ



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# Основные направления налогового администрирования и налогового контроля



- **Бюджетное послание Президента РФ о бюджетной политике в 2010 – 2012 годах**
  - Необходимо совершенствовать процедуры налогового администрирования, ведения и предоставления налоговой отчетности
  - Необходимо оптимизировать число выездных налоговых проверок и максимизировать результативность камерального изучения финансового состояния налогоплательщиков
- **Основные направления налоговой политики РФ на 2010 год и на плановый период 2011 и 2012 годов**

### **Планируемые к принятию меры в области налогового администрирования:**

- Совершенствование порядка учета в налоговых органах организаций и физических лиц
- Оптимизация взаимодействия между налоговыми органами и организациями, которые обязаны предоставлять сведения, связанные с налоговым администрированием



## Изменения в Часть 1 Налогового кодекса РФ, вступающие в силу в 2010 году

1. При выявлении ошибок, которые привели к излишней уплате налога, налогоплательщик получает право пересчитать налоговую базу в периоде выявления данных ошибок (абз.3 п.1 ст.54 НК РФ)
2. Начисляются проценты за каждый календарный день нарушения налоговым органом срока отмены решения о приостановлении операций по счетам налогоплательщика в банке. Процентная ставка принимается равной ставке рефинансирования ЦБ РФ, действовавшей в дни нарушения налоговым органом срока отмены решения о приостановлении операций по счетам налогоплательщика в банке (п.9.2 ст.76 НК РФ)

# Поправки в Часть 1 Налогового кодекса РФ, планируемые к принятию



Позитивные	Негативные	Комментарий
<p>Налогоплательщик получит право, а налоговые органы будут обязаны проводить сверки расчетов по налогам, пеням и штрафам по заявлению налогоплательщика</p>		<p>Снижение риска возникновения ошибок в налоговом учете и своевременное их выявление</p>
<p>Арест имущества налогоплательщика для обеспечения взыскания налога, пеней и штрафов может быть применен только при недостаточности или отсутствии денежных средств на счетах налогоплательщика или при отсутствии информации о его счетах</p>		<p>Невозможность наложения ареста на имущество налогоплательщика при наличии у него денежных средств на счету</p>
	<p>В случае предоставления налогоплательщиком уточненной налоговой декларации в рамках соответствующей выездной налоговой проверки <u>будет проверяться период, за который представлена уточненная налоговая декларация</u></p>	<p>Фактически, это означает повторную проверку периода, за который подается уточненная декларация</p>
	<p>Срок на подачу налоговым органом заявления в суд о взыскании задолженности по налогам и сборам за счет денежных средств налогоплательщика в банке или за счет имущества налогоплательщика <u>будет увеличен с 6 до 12 месяцев</u></p>	<p>Налоговые органы получают дополнительное время для подготовки заявления в суд</p>
	<p>Требование об уплате налога может быть передано руководителю (представителю) организации или физическому лицу лично под расписку <u>ИЛИ направлено по почте заказным письмом и считается полученным по истечении шести дней с даты направления заказного письма</u></p>	<p>Ранее данная норма требовала подтверждения факты и даты получения требования об уплате налога</p>

## Поправки в Часть 1 Налогового кодекса РФ, планируемые к принятию



### Повышение штрафных санкций за совершение налогового правонарушения

Основание	Штрафные санкции
Непредставление в установленный срок налоговой декларации	5% от неуплаченной суммы налога, но не более 20 процентов указанной суммы и <b>не менее 1000 рублей.</b>
Неправомерное несообщение (несвоевременное сообщение) лицом сведений, которые это лицо должно сообщить налоговому органу	<b>5 000 рублей</b> За те же деяния, совершенные повторно – <b>20 000 рублей</b>
Грубое нарушение организацией правил учета доходов и (или) расходов и (или) объектов налогообложения, если эти деяния совершены в течение одного налогового периода	<b>10 000 рублей</b> За те же деяния, совершенные в течение более чем одного периода – <b>20 000 рублей</b> За те же деяния, если они повлекли занижение налоговой базы – <b>20% от суммы неуплаченного дохода</b>
Непредставление в установленный срок в налоговые органы документов или иных сведений	<b>200 рублей</b>

# Поправки в Часть 1 Налогового кодекса РФ, планируемые к принятию



### «Технические» изменения в Часть 1 Налогового кодекса РФ:

1) Возможность направления и получения информации в электронном виде, например:

➤ Требование о представлении документов может быть вручено налогоплательщику лично, направлено по почте заказным письмом или передано по телекоммуникационным каналам связи

### Изменения в Часть 1 Налогового кодекса РФ, уточняющие сроки:

1) В случае направления документов по почте действует правило - **«считается полученным на шестой день с даты направления»**, например:

➤ в отношении решения о привлечении к ответственности за совершение налогового правонарушения и решения в отказе об отказе в привлечении к ответственности за совершение налогового правонарушения

➤ в отношении решения руководителя налогового органа о принятии обеспечительных мер



# Поправки в Часть 1 Налогового кодекса РФ, планируемые к принятию



## Признание недоимки и задолженности по пеням и штрафам безнадежными к взысканию и их списание

### Случаи признания недоимки безнадежной ко взысканию:

- Ликвидация организации
- Признание банкротом индивидуального предпринимателя
- Смерть физического лица
- Истечение установленного срока на взыскание недоимки

\*\*\* *Законами субъектов РФ и нормативными правовыми актами представительных органов муниципальных образований могут быть установлены дополнительные основания признания безнадежными ко взысканию недоимки по региональным и местным налогам и задолженности по пеням и штрафам по этим налогам.*

## Контакты

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# **Criminal Liability for Tax Fraud: Changing Rules**

**Development of the Russian Tax System in 2009,  
Prospects for 2010**

# Personal Income Tax Evasion (Article 198 Criminal Code)

- **Major Tax Evasion**

- Over RUR 500,000 (previously, over RUR 100,000) for three consecutive financial years, if the unpaid taxes exceed 10% of the taxes due; or
- Over RUR 1,500,000 (previously RUR 300,000).

- **Large-Scale Tax Evasion**

- Over RUR 2,500,000 (previously, over RUR 500,000) for three consecutive financial years, if the unpaid taxes exceed 20% of the taxes due; or
- Over RUR 7,500,000 (previously, over RUR 1.500.000).

# Corporate Income Tax Evasion (Articles 199 and 199.1 Criminal Code)

- **Major Tax Evasion**

- Over RUR 1,000,000 (previously, over RUR 500,000) for three consecutive financial years, if the unpaid taxes exceed 10% of the taxes due; or
- Over RUR 4,500,000 (previously, over RUR 1,500,000).

- **Large-Scale Tax Evasion**

- Over RUR 7,500,000 (previously, over RUR 2,500,000) for three consecutive financial years, if the unpaid taxes exceed 20% of the taxes due; or
- Over RUR 20,000,000 (previously, over RUR 7,500,000).

- **The Same Rules Apply to Tax Agents**

# Exemption from Criminal Liability

(Art. 198, 199 and 199.1 Criminal Code, Art. 28.1 Code of Criminal Procedure)

- **Grounds for Exemption from Criminal Liability**

- An individual, entity or tax agent are prosecuted in connection with personal or corporate income tax evasion or in connection for a failure to act as a tax agent, as applicable, **for the first time**;
- **taxes, penalty interest and fines** have been paid before pre-trial investigation is completed.

- **Compensation for Damages to State Budget Caused by Taxpayer**

# Information exchange between Tax Authority and Department for Internal Affairs



- **Tax authorities send (tax case) materials to the internal affairs department,**
  - In the event the taxpayer has not paid tax arrears, penalty interest and fines in full within two months from the expiry of the date specified in the tax payment notice;
  - Within 10 days from the time when this fact was discovered (Article 32.3, 108.3.1 of the Russian Tax Code).
- **Internal affairs departments send case materials to the tax authority,**
  - In the event circumstances have been identified requiring action by tax authority (Article 36.2 of the Russian Tax Code, Article 10.34 of the Law on Police)



- **Raising of tax evasion limits**
- **“Compensation for damages” principle**
- **Content of the tax payment notice**
- **Tax audit conducted by Internal Affairs Departments**
- **Procedure in the event a taxpayer succeeds in a tax dispute against tax authorities**



## Contacts

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# VAT: news in tax legislation and practice

Development of the Russian Tax System in 2009,  
Prospects for 2010

## Development of the Russian tax system in 2009; prospects for 2010

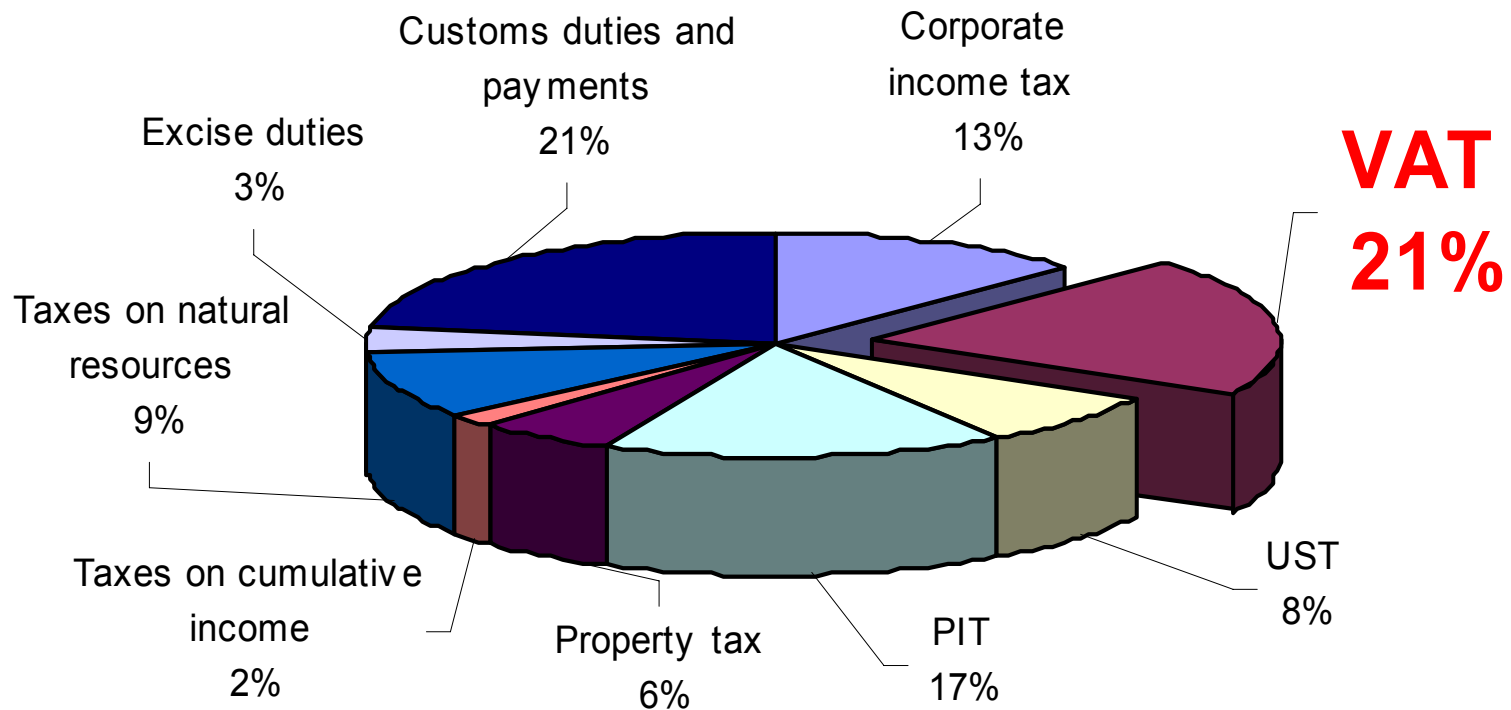
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- **VAT & the state budget**
- **Practical implementation of 2009 VAT legislation amendments**
- **VAT amendments in 2010**

## VAT & the state budget

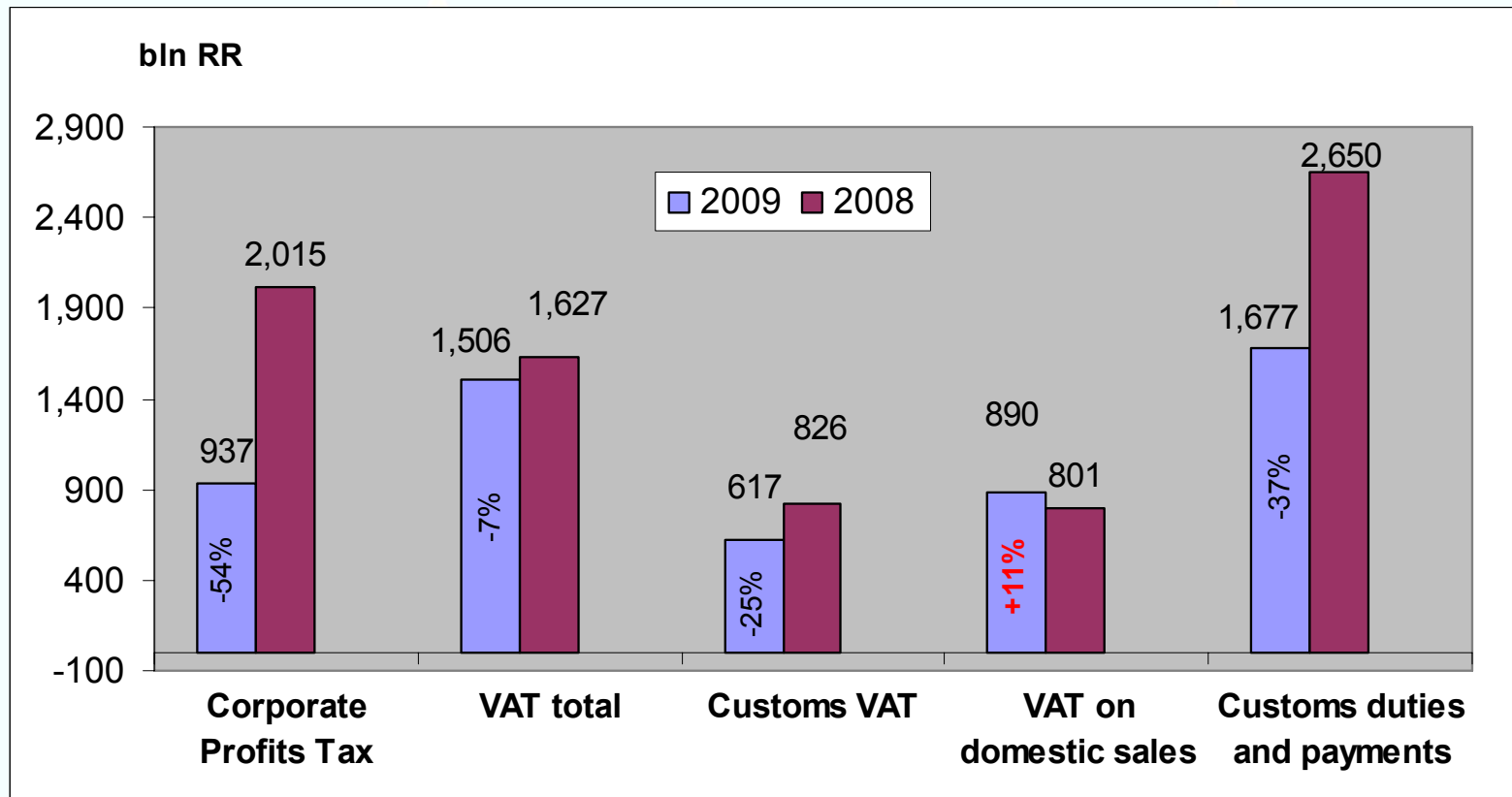
- VAT accounts for 21% of total tax and customs income of the Russian consolidated budget (for the period between January and September 2009)



source: [www.roskazna.ru](http://www.roskazna.ru)

## VAT & the state budget

- VAT is a stable source of revenue for the state budget (January - September 2009)



source: [www.roskazna.ru](http://www.roskazna.ru)

# Practical implementation of 2009 VAT legislation amendments



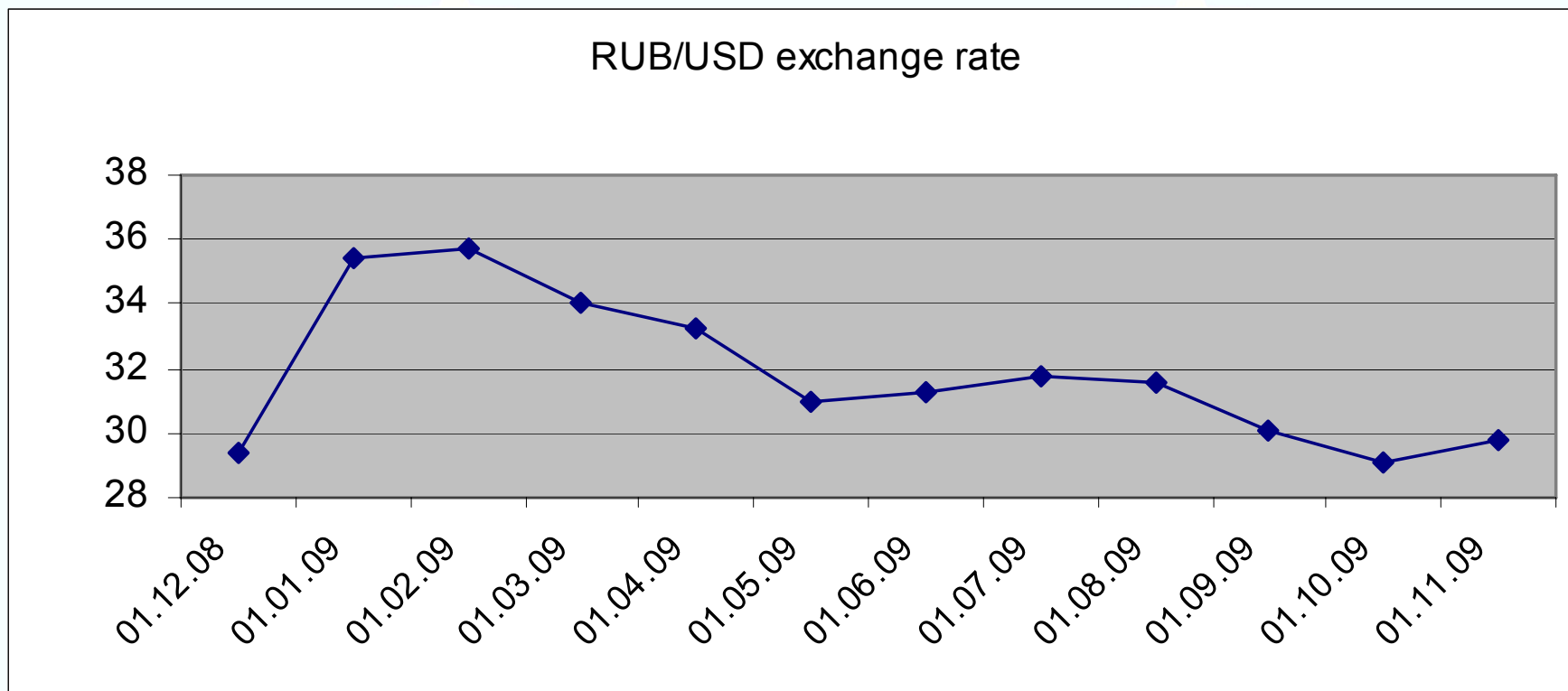
## VAT on advances paid to suppliers:

- 1 January 2009: introduction of the right for VAT recovery;
- Requirements for VAT recovery:
  - VAT invoices on advance payments;
  - Supply contracts containing an advance payments provision;
  - Payment documents.
- Some taxpayers did not apply the new provisions in practice in 2009.

# Practical implementation of 2009 VAT legislation amendments



## VAT on sum differences



# Practical implementation of 2009 VAT legislation amendments



## VAT on sum differences

- Output VAT implications;
- Input VAT implications;
- February 2009: Resolution of the Higher Arbitration Court supporting the right to reduce the VAT tax base on the amount of negative sum differences;
- August 2009: Letter of the Tax Service.



## VAT amendments 2010: simplification of VAT refund procedure

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- 1 January 2007: introduction of single VAT return for domestic and export sales;
- 1 January 2009: introduction of procedure for partial confirmation of VAT due from the Budget under the desk tax audits of VAT returns.
- 1 January 2010: the introduction of a simplified procedure for VAT refunds?

## VAT amendments 2010: simplification of VAT refund procedure

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### Proposed method of VAT refunds:

- Submitting an application for a VAT refund/offset simultaneously with submitting a respective VAT return;
- Obtaining the VAT refund/offset within twelve days;
- To apply for a VAT refund, the taxpayer should obtain and submit to the tax authorities a bank guarantee;
- Taxpayers meeting certain criteria may apply for a VAT refund without submitting a bank guarantee.

## VAT amendments 2010: other changes

### Adopted amendments to VAT legislation

- Regulation of operations with derivatives
- VAT exemption for municipal services in block apartment houses

### VAT amendments under consideration:

- Indirect tax agreement with Kazakhstan;
- Simplified VAT refund/offset procedure;
- Electronic VAT invoices.

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# Amendments to profit tax: in 2009 and 2010

Development of the Russian Tax System in 2009,  
Prospects for 2010

### What can we expect in the next year?

**Amendments of 2009:** Temporary improvements of the taxpayer position – will they continue to be in effect in 2010?

**Amendments of 2010:** Amendments introduced by Law No. 281-FZ dated 25 November 2009 – will they improve the life of a taxpayer?

## Temporary rules improving the taxpayer position in 2009

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### ***Amendments to paragraph 4, clause 1, article 269 of the Russian Tax Code (introduced by Law No. 202-FZ dated 19 July 2009)***

A temporary increase in the threshold amount of interest on debt obligations for the periods:

- ✓ From 01 September 2008 to 31 July 2009
- ✓ From 01 August 2009 to 31 December 2009

***Will this procedure for accounting for the threshold interest amount apply in 2010?***

## Amendments of 2010

### Surpluses identified during stock-taking or at the liquidation of a fixed asset



***Recognising expenses upon the sale of the surpluses identified during stock-taking or at the liquidation of a fixed asset (paragraph 2, clause 2, article 254 and sub-clause 2, clause 1, article 268 of the Russian Tax Code)***

**Before 2010:** the taxpayer was allowed to deduct only the profit tax paid.

**As of 2010:** the taxpayer may deduct the full value at which these surpluses were booked on accounts when they were identified.

***A disputable matter:*** Is it possible to apply this rule to expenses incurred before 1 January 2010?



## Amendments of 2010

### Depreciation of capital investments made by the lessee

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*The procedure for depreciating capital investments to leased property (paragraphs 6 and 9, clause 1, article 258 of the Russian Tax Code)*

The depreciation may be calculated:

- ✓ in the manner stipulated earlier, or
- ✓ on the basis of the useful life determined for capital investments in said facilities in accordance with the classification of the fixed assets, as approved by the RF Government.

***A disputable matter:*** Is it possible to deduct expenses during the lease term in full?

## Anticipated amendments in 2010

### Infrastructure expenses under investment projects

#### ***Anticipated amendments to the procedure for accounting for infrastructure expenses:***

Possibility to deduct infrastructure expenses incurred in 2007–2009.

Establishment of a statutory procedure for accounting for infrastructure expenses as of 2010.

- ✓ What is the status of the draft law submitted to the RF Government?
- ✓ What is the likelihood that the amendments may be enacted in 2010 if the draft law is approved?

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**Development of the Russian Tax  
System in 2009,  
Prospects for 2010**

3<sup>rd</sup> December 2009



**Replacing UST by social  
contributions  
in 2010**

# Main changes

- Contributions instead of tax (Federal Laws № 212-FZ and № 213-FZ dated 24/07/2009)
- Fixed rate for contributions instead of regressive tax rate
- Capped base
- Obligatory Accident Insurance coverage – the rules remain the same



# Main ideas

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- The transition from tax payments to insurance contributions
- Pumping up the budget
- Preventing misuse of tax benefits

*Those who use the Simplified Taxation System will make insurance payments at the rate of 34% beginning in 2011*

*“Your father’s son” – the parent can be liable for non-payment of insurance contributions of the subsidiary*



# Main changes

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- Administrative functions transferred to the Pension Fund and the Social Insurance Fund
- Link between social contributions and profit tax deductibility has been removed
- Foreign nationals temporary staying in Russia – no social contributions due (on the basis of the law as enacted at present – Pp. 15 P.1 Art. 9 of Federal Law № 212-FZ)



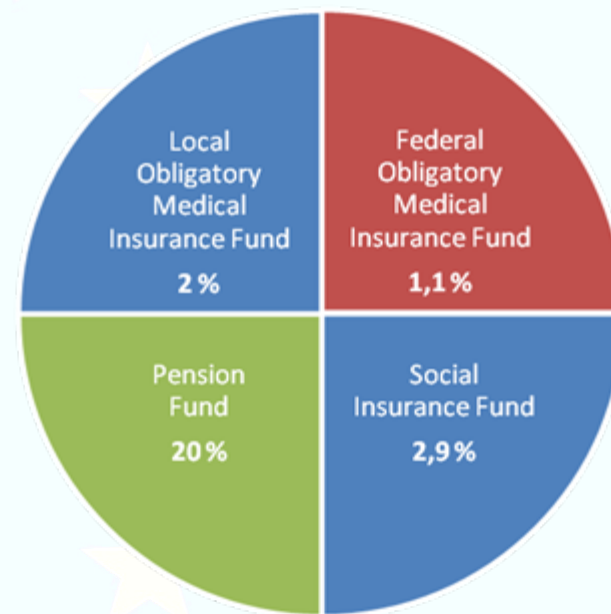
# Main changes

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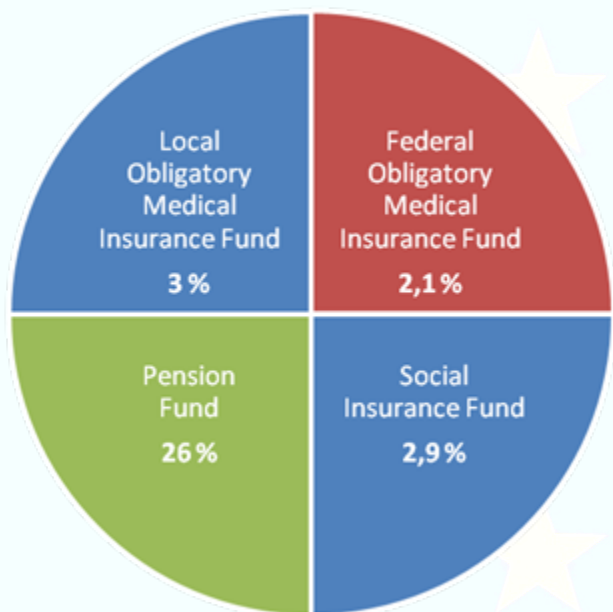
- Annual income exceeding RUB 415'000 – not subject to contributions
- This cap may be adjusted by the Government on annual basis
- Total contributions rate – 34%
- 2010-2014 – transition period with reduced rates

# Company burden in 2010

- General Taxation System
- Summary burden – 26%
- Cap – RUB 415'000
- Maximum contributions payable – RUB 107'900
- Payable in addition – Obligatory Accident Insurance contributions (0,2% - 8,5%)



# Company burden starting 2011



- General Taxation System
- Summary burden – 34 %
- Cap – RUB 415'000 (unless changed by the Government)
- Maximum contributions payable – RUB 141'100
- Payable in addition – Obligatory Accident Insurance contributions (0,2% - 8,5%)

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# **New in Taxation of Derivatives and Other Financial Instruments**

**Development of the Russian Tax System in 2009,  
Prospects for 2010**

# Content

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- Profits tax
  - Securities transactions (Art. 280 of the Tax Code)
  - Financial instruments of term transactions (FITT), including hedging transactions
- Other changes not covered herein
  - Profits tax: REPO and stock lending transactions
  - Profits tax: other items (revaluation of advances etc)
  - Value added tax
  - Personal income tax

# Taxation of Securities

- Definition of traded securities
  - *The maximum period of listing is limited - 3 months preceding the date of the transaction*
- Transfer pricing rules
  - *NB - Obligation of a taxpayer to adjust the purchase price of securities is introduced !*
  - *For transfer pricing purposes – go back to maximum 3 months to ascertain the quote (previously 12 months)*
- Netting does not lead to reclassification of transaction
- Applicable law – the law of the state in the territory of which securities are circulated (transactions are concluded).
- If impossible to determine the state where the transaction occurs the taxpayer has a right to elect such a state in tax policy:
  - location of the seller or the buyer of securities

# New in Taxation of Dividends

- Assignment of functions of a tax agent for dividend payments to a trustee in asset management context (Art. 275 of the Tax Code)
  - *When the dividends are paid to a beneficiary - a foreign entity.*
  - *Similar rule for repos when dividends are passed on to a non-resident.*



# Transfer Pricing – Transitional Provisions

N	Regulation	Status
1	Determination of prices range on the basis of <b>similar (identical, of the same kinds)</b> securities registered by an organizer of trade on the securities market	Cancelled starting 01/01/2010
2	The requirement of taking into account of the <b>specific conditions of the deal</b> , peculiarities of circulation and price of the security and other indicators in determining the reference price	
3	The procedure for determination of reference price of non-traded securities is to be established by the Federal Service for Financial Markets and agreed upon with the Ministry of Finance.	Effective starting 01/01/2010 <b>Suspended till</b> 01/01/2011
4	The reference price can be determined independently (the procedures and methods should be established in the tax accounting policy), or with the assistance of an appraiser, in each case using the valuation methods in accordance with the Russian legislation. CBR refinancing rate can be used for determination of the reference price of debt securities denominated in the currency of Russia.	Temporary acts from 01/01/2010 till 31/12/2010



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# Profits tax

New in taxation of  
financial instruments  
of term transactions (FITT)

# Changes in Definition of FITT

- Long-awaited amendments – there have been no changes in treatment of derivatives since 2002!
- FITT – derivative, as determined in Federal Law «On the securities market».
- Types of derivatives (including forward, futures, option, swap contracts) are to be determined by the Federal Service for Financial Markets in accordance with Federal Law "On the securities market".
- NB: Not a FITT are contracts, which **are not the subject to court protection (i.e. "gambling and bets")** in accordance with the Civil Code. Losses from such contracts are not tax deductible!

# Classification of Transactions

- \* 1. The taxpayer has the right to elect in the tax accounting policy whether to treat a transaction as a FITT or as a transaction for the delivery of the underlying asset with deferral of execution
- 2. Transactions concluded OTC can be classified as FITT provided that the delivery of underlying asset is to be performed not early than T+3
  
- \*\* Deliverable term transactions – FITT, which provide for the delivery of the underlying asset or conclusion of another FITT, which provides the delivery of the underlying asset.
- Non-deliverable term transactions – FITT, which does **not** provide the delivery of the underlying asset or conclusion of another FITT, which provides the delivery of the underlying asset.

# Classification of Transactions

Do not result in reclassification:

- Termination of the obligations on deliverable term transactions or transactions for the delivery of the underlying asset with deferral of execution, in a way different from the proper execution.
- Termination of the obligations on FITT by set off (netting) of homogeneous claims\* and obligations, properly documented.
- Homogeneous, in particular, means claims on delivery of equal amount of rights on securities of the same issuer, same class, category (type) or the same mutual investment fund under management of the same management company (for units in mutual investment funds), and claims for cash payments in the same currency.

# Hedging – Peculiarities of Taxation

- Hedged items: property and property rights, liabilities, claims and obligations.
- Income (expenses) from hedge transactions are included in the tax base in which income (expenses) associated with the hedged item is (to be) reflected.
- Income (expenses) from hedge transactions are recognized at the end of the reporting (tax) period and as of the date of execution of transaction(s)
  - regardless of the date of income (expense) recognition on the hedged item!

# Hedging – Peculiarities of Taxation

The following cases should not jeopardize hedge treatment:

- Excess of the quantum of the underlying asset on traded FITT used for hedging over the hedged item, if such excess is due to the exchange standard specification.
- Underlying assets can be hedged with a different instrument (so long as the correlation with the underlying asset can be established) or combination of instruments during the period of hedging.

# Timing of Income Recognition

- The tax base is determined as of the date of execution of the FITT
- FITT traded on the organized market
  - Variation margin calculated by the exchange (clearing organization) are included into the tax base on FITT.
  - Exception – transactions with FITT, the execution of which depends on a claim raised by one of the parties, including, dependence from circumstances which are unknown to come or not (e.g. options).



# Current Revaluation of Claims (Liabilities)

- Claims (liabilities) on FITT both traded and non-traded at an organized market
- Transactions for the delivery of the underlying asset with deferral of execution

are not the subject to current revaluation due to the changes of market price, market quotation, exchange rate, interest rates, stock indices or other criteria of the underlying asset.

For FITT used for hedge purposes, the taxpayer is entitled to envisage its current revaluation in the tax policy, provided that the hedged item is revalued pursuant to the Tax Code.

The income (expenses) arising as a result of such revaluation are calculated as at the end of the reporting (tax) period in accordance with changes of indicators, defined in the tax policy, in relation to the respective indicators, prescribed by the terms of the transaction.

# Tax Base Calculation – Banks & Licensed Dealers



	Bank	Professional participant*
Type of loss	Loss from non-traded deliverable term transactions with a foreign currency as an underlying asset.	Loss from non-traded FITT.
Is entitled to reduce general tax base	Yes	Yes

\* - Professional securities market participants, engaged in dealer activity, including banks which have the dealer licence.

# Transfer Pricing Rules

- ▶ “Market” price should be checked as of the date of execution of the term transaction
- ▶ For traded FITT taxpayers may use the data on the price range provided by trade organizer as of the date of the closest trade during the last 3 months
- ▶ For calculation of the reference price the taxpayers can use valuation methods, established by the Federal Service for Financial Markets and agreed with the Ministry of Finance

# FITT – Transitional Provisions

Date of FITT deal	Provision to be applied for recognition for the tax purposes	Provision to be applied for recognition of losses
Concluded after July 1, 2009, with due date starting from 1 January 2010*	In order applied in 2009	In order applied in 2009
Concluded before July 1, 2009, with due date starting from 1 January 2010*	In order applied in 2009	In order becoming effective in 2010
FITT, claims on which are not subject to legal protection according to the Civil Law (“gambling”), concluded before July 1, 2009, and recognized for tax purposes as transactions with FITT as of the date of its conclusion, are recognized as FITT.	In order applied in 2009 (?)	In order becoming effective in 2010 (?)

\* The same rule is applied for revaluation

**NB!** Outstanding losses of previous years

# FITT – Transitional Provisions

N	Provision	Status
1	Determination of «market» price on the basis of: <ul style="list-style-type: none"> <li>➤ information on similar (of the same kind) FITT, registered by the trade institutor,</li> <li>➤ average weighed price of similar (of the same kind) FITT calculated by the trade institutor,</li> <li>➤ reference price determined with due consideration of specific conditions of the deal, circulation characteristics and price of the underlying asset, interest rates level, etc.</li> </ul>	Cancelled starting 01/01/2010
2	The procedure for determination of reference price of the respective type of FITT is to be established by the FSFM and agreed with the Ministry of Finance	Effective starting 01/01/2010 <b>Suspended till</b> 01/01/2011
3	The reference price can be determined independently (the procedures and methods should be established in the tax accounting policy) or by an appraiser using the valuation methods in accordance with the Russian appraisal legislation.	Temporary acts from 01/01/2010 till 31/12/2010

## Contacts

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Ernst & Young



**Development of tax court  
practice in 2009**

# Major features of tax court practice in 2009



1. Continuing formation of a quasi-precedential legal system as a result of RF SAC Plenum Resolution No. 14 of 14.02.2008
2. Fewer tax cases as a result of the mandatory pre-court dispute resolution procedure and new VAT return rules
3. Increased share of property claims in the overall number of tax disputes
4. Continuing resolution of contentious issues in the application of tax law
5. Leading tax cases: one-day companies, zero percent VAT rate issues





# Quasi-precedential legal system

1. Predictable outcomes
2. Consistent and uniform judgments from different districts
3. Increased judicial authority
4. Consistency in consideration of cases



# Mandatory pre-court proceedings

1. A decision taken by a higher tax authority on the basis of a taxpayer's appeal against a decision by a lower tax authority does not in itself violate the taxpayer's rights and does not impose additional obligations, therefore it cannot be appealed in court (Case of Kosogorsky Metallurgical Plant VAS-9441/09)
2. A higher tax authority is not entitled to amend the decision of a lower tax authority appealed by a taxpayer, or to issue a new decision adverse to the taxpayer (Case of ALROSA, 5172/09)



# Other RF SAC rulings on tax procedures

1. The taxpayer is entitled to not comply with a demand for submission of documents made after the expiration of the three month period allotted for a chamber tax audit, and the tax authority cannot in this case deny the VAT refund (Case of Delfi-Avto-M, 10349/09)
2. The subjects of tax audits must be able to participate in consideration of the materials obtained by the tax authorities, including materials obtained through additional tax control measures. Otherwise the decision of the tax authorities is subject to unconditional cancellation (Case of Pikalyovsky Cement, 391/09)
3. The tax authority is not required to adopt a decision on the results of a tax audit on the same day the tax audit materials are considered, or on another day with notification of the taxpayer of the time and place the decision will be issued (Case of VNII Drainage of Natural Resource Deposits ..., 14645/08)



# Tax debt issues

1. In view of the need to reflect objective information on tax payments in statements of tax arrears, they should contain information on any outstanding debt, and indicate if the tax authority has lost the ability to recover it (case of Kemerovo Oblast Union of Consumer Societies, 4381/09)
2. RF SAC will soon consider a case on the lawfulness of reflecting non-existent debts on a budget payments record card (Case of Moscow Cellular Communications, 7037/09)



# RF SAC rulings on VAT

1. The VAT tax base should be reduced by “the negative amount” arising between shipment of a good/works/services priced in a foreign currency and payment being made because of currency fluctuations (Case of Ekvant, 9181/08)
2. VAT that a tenant pays on the cost of utilities (in particular, electricity, water, and heat) against VAT invoice issued by the landlord, can be recovered (Cases of Ofis-Tsentr, 12664/08, and Kineshma Automotive Components, 6219/08)
3. Case of Summit-Motors (8133/09) – which VAT rate applies to services concerning importation of goods into RF customs territory?



# Rulings on unjustified tax benefits

1. Evasion schemes (Case of Lenoblgaz, 9833/08) and absence thereof (Case of Tekhuglerod, 8337/08)
2. Unlawful outsourcing (Case of Dvortsovy Ryad – MS, 12418/08, Anzhero-Sudzhensky Myasokombinat, 17643/08, Yamalstroy, 1229/09)



# Judicial challenges

1. Recovery of legal costs (Cases of VNII Oil Cultures, 14278/08, MKMTI, 6284/07)
2. Significance of court decision on chamber audit in consideration of case of field audit (Case of SFAT, 3103/09)
3. Courts may treat one and the same facts of a case, established by the courts during consideration of disputes concerning VAT refunds involving one and the same parties, but in different tax periods, as either evidence of unjustified tax benefits, or as evidence to the contrary, as the courts are persuaded by other factual evidence, as a result of a qualitative change in the sum of evidence itself, its relevance, admissibility, sufficiency and relationship, and provided the court indicates in its decision the basis for the differing evaluation of the facts of the case (Case of Aluminum Casting Plant, 14786/08)



# RF SAC ruling on liability

A bank's performance of a taxpayer's payment instruction using a newly opened account after the bank has received of a tax authority decision staying operations with the taxpayer's account, if the payment is not related to payment of taxes, gives rise to liability under art. 134 TC RF (Case of Yug-Investbank, 12953/08)



# Civil law disputes with tax aspects

1. VAT transferred to a counterparty at the wrong rate is excess (mistaken) payment and should therefore be returned as unjustified enrichment (Case of Gazpromneft, 16318/08)
2. In the event a buyer returns a good of unsatisfactory quality the seller must refund the price of the good, including VAT, regardless of whether the supply agreement contains a provision on the inclusion of VAT in the costs to be refunded upon delivery of unsatisfactory goods (Case of AvtoVAZ, 3474/09)
3. Interest for use of another's funds (art. 395 CC RF) should accrue on the entire amount owed, including VAT (Case of Novy Gorodskoye Infrastruktura Prikamya, 5451/09)

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