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Government Seeks to Reopen 10-Year-Old Tax Crimes

By Peter Hobson

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The amendments are the latest step taken by the Russian authorities to bring money back from offshore zones like Cyprus.

Emboldened investigators will start digging into tax crimes dating back a decade if amendments extending the limitation period on tax lawsuits to 10 years from three years are passed.

Changes to the Tax Code would also cut the range of tax optimization schemes available to companies and expand the powers of the tax service, according to draft legislation seen by Vedomosti.

Since originating in the Federation Council — Russia's upper house of parliament — the draft legislation has been filtered through the tax service. Prime Minister Dmitry Medvedev threw his weight behind the initiative earlier this month, and government ministries will begin examining the document in the coming weeks.

With the Russian economy on the verge of recession, authorities have been looking to shore up tax revenue by hardening their attitude toward tax avoidance. President Vladimir Putin has spearheaded a campaign to strong-arm businessmen into returning to Russia from offshore zones and sponsored legislation returning the right to open tax lawsuits to the Investigative Committee — the Russian equivalent of the FBI.

The new draft legislation would amend the Tax Code, making numerous tax optimization schemes illegal. Manufacturing the conditions to take advantage of special tax rates, exemptions or rebates, as well as and any "actions or inaction undertaken to avoid paying taxes" would be branded abuses. If the tax authorities find agreements or transactions made only for effect or to mask other activity, tax exemptions ought not to be applied, the legislation says.

This formulation poses a risk to offshore tax reduction arrangements, said Denis Schekin, managing partner of legal firm Schekin and partners — if tax reduction is deemed more of a motivating force than business aims, authorities could declare the sought-after tax benefits invalid.

The draft version would also extend the limitation period to 10 years from three years, and the authorities have long been chafing at the bit to delve into suspected tax offenses currently sheltered by the three year limit, said Roman Terekhin, partner at law firm Nalogovik.

If a three-year check is a trial for companies, a 10-year probe could paralyze them, said Terekhin. Such checks will be exceptions, an official said.

The forms of tax avoidance targeted by the legislation are already in the playbook of the tax service, which in its practice refers rulings by the Supreme Arbitration Court. However, officials are keen to embed them in the Tax Code. Precedents set by the Supreme Arbitration Court are not binding on lower courts, and last year's reform of the court system uniting the Supreme Arbitration Court with the Supreme Court has further clouded the fate of any precedents set.

Fixing the norms in the Tax Code would make it easier to open criminal lawsuits, said Schekin.

However, the Criminal Code currently allows legal action only in a small number of defined cases, such as falsification of documents and non-fulfillment of tax liabilities. This could change — the Investigative Committee is arguing for changes to the Criminal Code that would allow inventors of tax avoidance schemes to be brought to account, said senior inspector Georgy Smirnov.

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