

ECONOMIC STIMULATION (INCENTIVE) OF BAT IMPLEMENTATION IN THE RUSSIAN FEDERATION: PROBLEMS AND PROSPECTS**L. YU. ISMAILOVA,***Institute**for Contemporary Education "JurInfoR-MSU", Moscow, Russia**lyu.ismailova@gmail.com***O. O. ZHURAVLEVA***Institute**for Contemporary Education "JurInfoR-MSU", Moscow, Russia,**ozhura@gmail.com***Abstract**

Now it exist the demand for the research of the emerging approaches to the use of new legal means and mechanisms within the framework of gradual introduction of a new system for standardizing the environmental impact in the Russia. It foresees the establishment of an optimal balance of state regulation measures for performing economic and other activities. Federal and regional regulations including legislation and by-laws, as well as legal acts of some municipal units have been analyzed.

The paper considers the problems of economic stimulation of the BAT implementation in the Russia which were identified as a result of the analysis of the legal support and practice of introducing the principles of BAT implementation in the RF and its subjects.

Approaches to the promotion of the tax incentives principles in the part aimed at achieving the maximum multiplicative effect from the BAT implementation in the economic and social spheres, taking into account regional specificities, are suggested.

Some tax mechanisms for stimulating the BAT implementation are considered, including those that are involved within special investment contracts. An additional measures of economic incentives for business entities at the level of subjects of the RF are presented.

Key words: *environmental impact; BAT (best available technologies); multilevel law regulations; the principles of stimulation of BAT implementation; models of tax incentives for BAT implementation; special investment contract;*

JEL Classification: *Q56; L51; K32, K34*

I. INTRODUCTION

The Federal Law № 219-FZ of July 21, 2014 “On Amendments to the Federal Law “On Environmental Protection” and Certain Legislative Acts of the Russian Federation” (Code of Laws of the RF. 2014. no. 30 (Part I). Art. 4220), further on – “Federal Law № 219-FZ”, forms a new system for standardizing the environmental impact. The basis of this system is the concept of the best available technology.

It’s understood by the legislator as the technology of production of goods (products), the performance of work, the provision of services, determined on the basis of modern scientific and technological achievements and the best combination of criteria for achieving the environment protection objectives, provided that it is technically possible to use it (Article 1 of Federal Law № 219- FZ, hereinafter referred to as “BAT”). OECD experts have identified, that “similar concepts are being used worldwide” (Report on OECD project on best available techniques for preventing and controlling industrial chemical pollution, p. 11).

According to the estimates given by the scientific experts of the Joint Research Center for the Science and Knowledge Service of the European Commission in the “Best Available Techniques (BAT) Reference Document on Waste Incineration”, draft of 2017 (http://eippcb.jrc.ec.europa.eu/reference/BREF/WI/WI_5_24-05-2017_web.pdf), taxes, as well as subsidies, can significantly affect the final price of goods, works and services delivered for the waste disposal (from 10 to 75%). It’s aim to provide a scientifically based support to the European political process. The expressed scientific result does not imply the political position of the European Commission. Neither the European Commission nor any person acting on behalf of the Commission is responsible for using the results that can be made on the basis of this publication (<http://www.epa.ie/licensing/info/bat/>). The framework of this system envisages establishing the optimal correlation of state regulation measures in the performance of economic and other activities, as well as the

introduction of methods of economic stimulation for economic entities, carrying out measures to reduce the negative impact and applying the best technologies.

It is supposed that this will reduce the negative impacts on the environment and ensure high standards of environmental well-being. According to Article 28.1 of the Federal Law of 10.01.2002 № 7-FZ “On Environmental Protection” (Code of Laws of the RF. 2002. no. 2. Art. 133) the application of BAT is aimed at the comprehensive prevention and (or) minimization of negative impact on the environment.

The strategic benchmark to the tightening of environmental requirements for enterprises and their practical implementation was outlined in the President’s Address to the Federal Assembly of the Russian Federation of March 1, 2018. Since 2019, 300 industrial enterprises that have a significant negative impact on the environment should switch to environmentally friendly, best available technologies, and since 2021 all enterprises with a high risk category for the environment must do this.” (<https://rg.ru/2018/03/01/stenogramma-vystupleniia-vladimira-putina-pered-federalnym-sobraniem.html>).

II. PROBLEMS AND PROSPECTS

Taking into account the gradual transition of the Russian Federation to the BAT principles, including the entry into force of the relevant provisions of federal acts, as well as the step-by-step adoption of BAT reference books, the development of adequate economic incentives for the implementation of BAT in various sectors and branches of the economy will require subsequent adjustment and improvement at both regional and municipal levels.

Since the BAT implementation and its economic incentives are considered as important strategic targets for regional and municipal development, it is necessary to work out and specify the strategic planning documents at the regional and municipal levels. The appropriate standards should be developed and included in regional and municipal legislation. In order to ensure their actual fulfilment, the regular monitoring of existing programs is to be carried out to support the transition to BAT principles, as well as action plans for performing the strategies developed aiming at the dissemination of the positive experience and using the most effective measures in the ‘pilot’ projects of the referred territories.

The analysis of regional approaches to economic stimulation of the BAT implementation has revealed significant differences in the level of RF subjects and municipal entities’ involvement in the process of legal, including legislative, support to the BAT implementation. We must admit that this is quite natural if we take into account the scale of the country’s territory, the diversity of geographic areas, the conditions for doing business and other socio-economic factors. The uneven distribution of existing production capacities in the subjects of the Russian Federation also objectively determines the level of stakeholders’ interest in providing incentives for the BAT implementing. As a consequence, the progress rate of development of full-fledged regional incentive models for the transition to BAT principles will differ. This situation is reasoned by the existence of many legal regulation centers in the field of tax law at various levels of the legislative power, acting independently and simultaneously (Zhuravleva and Ismailova, 2009, p. 26).

In addition, BAT reference books are not adopted simultaneously, but according to the approved schedule. This circumstance along with the nature of the actual localization of productions and their impact on the environment predetermine the level of significance of legislative changes, concerning the BAT sphere, for different subjects (of the Russian Federation). The Article 4.2. of the Federal Law “On Environmental Protection” distinguishes four classes of installations depending on the nature of the negative impact on the environment, which affect the timing of the application of the new standards.

This brings about the need to continue the analysis of regional, municipal and sectoral experience to introduce the economic approaches to stimulate the BAT implementation into legislation as appropriate BAT information and technical reference books are adopted. At the same time, when determining the need to perform measures to stimulate BAT in the regions, it is necessary to take into account the experience of other subjects of the Russian Federation, understanding that the processes proceed in parallel in different territories having different dynamics and results.

In some subjects of the RF the regional laws on environmental protection specify the powers of the representative bodies of the subjects of the Russian Federation in the part not only of enacting laws and other normative acts regulating relations in the sphere of environmental protection and monitoring their implementation, but also other powers already imperatively defined by the federal legislator. In particular, the provision of tax incentives in accordance with the procedure established by the legislation of the Russian Federation, as well as benefits related to payment for negative impact on the environment: 1) when performing activities for the BAT implementation and 2) other measures to reduce the negative impact on the environment (for example, Kurgan region). However, this approach seems superfluous, since it does not enshrine any additional incentives, and can rather mislead a potential BAT investor.

The presence of such norms in the regional legislation does not actually improve the position of the economic entity (enterprise) operating in the respective territory, as it does not guarantee either the actual availability or the subsequent appearance of regional tax incentives for the BAT implementation.

According to the general rule established by the Tax Code of the Russian Federation, further – “RF Tax Code” (Code of Laws RF. 2000. no. 32. Art. 3340, Code of Laws RF. 1998. no. 31. Art. 3824), the representative bodies of the subject of the RF are endowed by the federal legislation with the authority to adopt normative legal acts, including those that define these tax privileges. The problem is that not all subjects have the appropriate current budgetary resources to compensate for the falling income from tax relief at the expense of other revenues. Regions should avoid enshrining in regional laws norms that are redundant and do not in fact affect the possibility of implementing a stimulating effect.

The existence of such declarations in regional environmental protection laws, without their reinforcing by respective norms of regional legislation on taxes and fees, also has virtually no effect on the feasibility of stimulus measures in practice. This circumstance is worthwhile to be taken into account when evaluating the strategy for achieving the economic efficiency of the BAT implementation projects fulfillment in a particular territory.

Since 2016, more and more attention has been paid to economic measures to stimulate the BAT implementation through the regional regulation of special investment contracts (SPIC). Currently, many subjects of the Russian Federation and municipal units have already adopted normative legal acts defining the procedure for concluding the SPIC. The analysis of the regional legislation conducted in the framework of the research showed, for example, that such acts are available in most of the constituent entities of the Russian Federation. For example, in Volgograd, Kaliningrad, Kaluga, Kurgan, Magadan, Moscow, Murmansk, Penza, Saratov, Sverdlovsk, Tula, Ulyanovsk, Chelyabinsk regions, Krasnodar Territory, the Republics of Adygea, Dagestan, Ingushetia, Kalmykia, Karachaevo-Cherkessia, Komi, Chuvash, North Ossetia-Alania, and in St. Petersburg. Similar acts are found in municipal units. For example: Resolution of the Administration of the city of Gorno-Altaysk of 24.08.2016 № 82 “On approval of the procedure for concluding a special investment contract, to which the municipal entity “Gorno-Altaysk City” is a Party” (www.gornoaltaysk.ru).

Due to the fact that for the fulfillment of the SPIC with the participation of the Russian Federation at the federal level, the relevant order of the RF Government determined the procedure for concluding these contracts, the subjects of the Russian Federation, in most cases, relied on the proposed federal model. Resolution of the Government of the Russian Federation of 16.07.2015 № 708 “On special investment contracts for certain branches of industry” (Code of Laws RF, 2015, no. 30, Art. 4587). So, by analogy with it, in the list of documents for the investor submitting an application for the conclusion of the SPIC, within the framework of which the BAT implementation is expected, the plan for environment protection measures and the program for improving environmental efficiency are mentioned.

It should be noted that one of the most attractive features of the SPIC is the stability of the parameters of the tax regime during the relevant projects performance. Maintaining stable conditions for the investment projects implementation is one of the significant guarantees of attracting domestic and foreign investments. This is largely promoted by the “stabilization clause”, which may imply an unchanged tax regime. The reservation about unchangeable circumstances (“*clausula rebus sic stantibus*”) as a legal construction has been known since the time of Roman law and was also studied in Soviet legal science. The scope of the stabilization clause may be different, and its application leads to the emergence of a preferential taxation regime. As a result, most often there are falling incomes of budgets of the budgetary system of the Russian Federation.

At present, such a clause, which protects from unfavorable changes in the legislation of the Russian Federation, is fixed for foreign investors and commercial organizations with foreign investments, the Article 9 of the Federal Law of 09.07.1999 № 160-FZ “On Foreign Investments in the Russian Federation” (Code of Laws RF. 1999. № 28. Art. 3493).

A similar norm not related to the nationality of investments appeared in the RF Tax Code as applied to the participants of the SPIC. It should be noted that often the favorable conditions for investors, suggesting the BAT implementation, are determined by several legal regimes provided for by the RF Tax Code. Each of them, in fact, gives certain benefits, in particular for corporate income tax. These include the following regimes: 1) regional investment projects (RIPs) and SPICs, as equated to RIPs in terms of tax consequences, 2) special economic zones (SEZ), 3) Vladivostok free port and 4) territories with advanced socio-economic development. In all cases, the taxpayer has the right to apply one of the possible regimes and be registered specifically in the given territory. The RF Tax Code and regional legislation regulate the values, specifications and conditions for the application of preferential tax rates for corporate profit tax. In this case, the application of these regimes excludes the possibility of using the right to an investment tax deduction for corporate profit tax (clause 11 of Article 286.1 of the RF Tax Code). For them, in accordance with paragraph 4.1 of Article 5 of the RF Tax Code, the provisions of legislative acts on taxes and fees, changing tax rates, tax exemptions, the procedure of calculation of taxes, the order and terms of payment of taxes and worsening the situation of these taxpayers in terms of legal relationships, relating to the performance of such contract, shall not apply before the earliest of the

following dates: (1) the expiration date of the SPIC or (2) the expiration date of the tax rates, tax benefits, the procedure for calculating taxes, the order and the terms of payment and taxes imposed on the date of SPIC signing.

Traditionally, the schemes containing the “grandfather’s reservation” regime, which allows to make tax payments predictable for a sufficiently long period, cause considerable interest among investors. This regime makes it possible for an investor to remain within the specified limits for the investment contract performance in accordance with the aggregate tax burden, and, therefore, seems promising from the economic entities’ point of view who implement BAT both directly and as elements of justification in assessing investment and credit risks.

Accordingly, the subject of the Russian Federation, which did not determine the procedure for concluding the SPIC without the participation of the Russian Federation, faces the task of developing and adopting appropriate acts taking into account the experience of other regions. The subjects of the Russian Federation that adopted these acts will have to monitor their enforcement, inform the participants of economic activities and citizens about the progress of such SPIC fulfillment and the evaluation of their results.

At the same time, the absence of legislative enshrinement of the powers of the executive authorities of the subject of the Russian Federation to determine the procedure for concluding the SPIC with the participation of the relevant entity at the regional level makes it impossible to establish an appropriate order for it and, consequently, to conclude similar contracts.

Constant competition between states gets exacerbated in connection with the implementation of protectionist policies measures, both at the local and regional levels. In the international practice there were examples of restrictions (of incentives), the essence of which is the establishment of special investment rules by portfolio investors, taking into account the impact of companies’ activities on climate and environment (Bondarenko, 2017) . Not only appropriate benefits and incentives are consolidated, but even special institutes for the development of industries and territories, infrastructure for the implementation of relevant rights are founded, and information support is provided. The innovation of environmental legislation is aimed at conceptual change of approaches, therefore, the timely development of methodological recommendations for investors plays a significant role. So, it would be useful to develop a special methodical support for the application of the SPIC for RF subjects implementing BAT or localizing production based on the BAT principles, but so far there is none.

It should be noted that in the context of the changes that are taking place in connection with the transition to new principles, not only private, but also public entities need the information support and maintenance. For the latter category, it is traditionally difficult to implement economic incentives to introduce new technological approaches both at the development stage and at the stage of administering such incentives. The practice of introducing measures to stimulate innovative activities has shown that problems can arise in connection with the need to identify and establish legally significant facts, determine the timing of incentives, its grounds, the timing and consequences of entry and exit to the appropriate preferential regimes.

The Article of the Federal Law № 219-FZ, determining the order of entry into force of new regulation, foresees several terms: 01.01.2015, 01.01.2016, 01.01.2018, 01.01.2019, 01.01.2020. Due to the phases of BAT implementation provided for by the Federal Law № 219-FZ, it is worthwhile to monitor the practice of performing such projects with the participation of public entities at various levels in order to ensure timely adjustment of incentive measures. The legal system should attach great importance to law enforcement, which in a certain sense creates a system as legal (Zhuravleva and Ismailova, 2010, p.38).

A selective analysis of the existing regulatory support for the implementation of the SPIC with the participation of municipal units showed that, firstly, the lack of legal regulatory support for the implementation of the SPIC at the level of a subject of the Russian Federation does not mean the absence of such at the level of the municipal units comprising it (in the part of the SPIC implemented without participation of relevant subjects of the Russian Federation). Accordingly, economic operators should take into account the location of the facility (enterprise) and analyze the possibility of using the tools of municipal support for the BAT implementation in the form of municipal SPIC fulfillment or SPIC with the participation of municipalities.

The analysis of regional legislation showed that economic incentive measures in the SPIC form at the regional level are expected to be used for projects in which BAT is planned to be implemented. In particular, certain provisions of the procedure for the conclusion of the SPIC with the participation of the Moscow region and the municipal units of the Moscow region openly testify to this.

So, for the conclusion of the SPIC, during which BAT is introduced, if it is not possible to comply with the standards for permissible emissions and discharges of substances and microorganisms, the investor – as part of a statement with other documents, specified in the Procedure for concluding special investment contracts with the participation of the Moscow Region and municipal units of the Moscow Region, approved by Resolution of the Moscow Region Government of October 31, 2016 № 815/40 (Informationny vestnik Pravitelstva MO, 2016, no. 18) – submits the documents confirming the BAT implementation in accordance with the Federal Law “On Environmental Protection”. According to item 7 of the Procedure these include: a) the plan for environment protection actions, agreed with the central executive authority of the Moscow region, authorized by the

Government of the Moscow region in the field of environmental protection and by the federal executive authority authorized by the Government of the Russian Federation in accordance with the Federal Law “On Environmental Protection” (for facilities of categories II and III); b) the program for improving environmental efficiency, approved by an interdepartmental commission, founded in accordance with the Federal Law “On Environmental Protection” (for category I facilities); c) and a copy of the investment agreement(s) or preliminary contract(s) for the implementation of investment project that determine the procedure for the participation of third parties in the implementation of investment project (if any).

Accordingly, if some municipal units have not yet determined the procedure for concluding the SPIC without the participation of the Russian Federation, but plan to conclude such ones, they can develop and adopt appropriate acts taking into account the experience of other municipal units of the Russian Federation. Municipal units that have adopted these acts should monitor their enforcement, inform participants of economic activities and citizens about the progress of such SPIC and the results, as well as timely identify gaps in legal regulation that impede the use of incentives of this type when implementing BAT.

The municipal units, like the subjects of the Russian Federation, need to inform enterprises about existing incentive measures, and for the purpose to assist in improving the investment climate they should create special information materials and resources (including electronic ones) on the application of the SPIC with the participation of municipalities for investors implementing BAT or localizing the productions, based on the principles of BAT. The performance of such measures can be considered as one of the components to ensure a beneficial environment and the health of citizens residing in the respective territories.

III. CONCLUSION

In conclusion, it should be noted that the current Russian legislation does not contain restrictions for subjects of the Russian Federation in part of performing measures to support the BAT implementation on a sector or industry-specific basis. At the same time, the industry-specific or sectoral approach to economic stimulation of BAT implementation makes it possible to specialize stimulating activities in accordance with specific goals and strategic priorities of the region’s social and economic development, which, however, does not allow for an extensive interpretation of this approach and the establishment of tax incentives and preferences of an individual character.

In order to ensure the effectiveness of the stimulating impact a system of priorities should be formed, taking into account the specific needs of the region or the municipal unit, including those in the environmental and / or social spheres. When assessing the potential impact of an incentive-based BAT implementation in a specific industry, one should consider the possible multiplicative effect (including the spheres not directly related to the BAT implementation, such as tourism, health care).

When justifying the necessity to use benefits it is recommended to take into account specific needs of the region or municipal unit, including those in environmental and/or social spheres.

When deciding on the need to enshrine a new type of tax incentive for the BAT implementation in regional legislation, municipal regulatory legal acts, it is necessary to compare the specific circumstances of its performance with the scope of possibilities already provided by the relevant subject of the Russian Federation (municipal unit) in connection with the existing regulation, as well as the potentially possible regulatory fixing in order to create favorable conditions for the BAT implementation projects.

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