

LEGAL REGULATION OF PUBLIC-PRIVATE PARTNERSHIP SUPPORTING THE DEVELOPMENT OF ENERGY-EFFICIENT LIGHTING INDUSTRY

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ABSTRACT

The paper is devoted to certain forms of public and private partnership in the sphere of light technologies, special investment contracts, regional investment contracts, industrial parks, and industrial clusters. It studies the prospects of the development of general and special lighting considering the rise of population and its needs in high-quality social, medical and educational services. Authors analyze specific conditions of granting tax preferences to innovative companies that help to stimulate the production of high-tech goods. The authors explain why legal definitions of regional investment projects and special investment contracts need clarification. The paper specifies the conditions for setting up new productions in the territories of advanced economic development. The options of unification of legal mechanism, which regulates the creation and support of industrial parks and industrial clusters, are offered.

Keywords: lighting, industrial policy, public-private partnership, investment contract, investment project, industrial cluster, industrial park, subsidies

1. CONDITIONS OF LIGHT TECHNOLOGIES PRODUCTION IN RUSSIA

With the help of scientific methods of analysis, comparison, formalization and systematization the scientific tasks on determining the prospects for de-

velopment of light technologies on the base of investment models of joint participation of the state and the private companies are solved and the proposals on the clarification of legal mechanism for stimulating accelerated development of innovative productions are formulated.

The latest research has shown that by 2020 the turnover of the world lighting market will reach almost €10 billion with annual growth of 3 % from 2016 to 2020. Herewith, the dominating segment of this market (75 %) is general lighting market, which turnover is expected to reach €80 billion by 2020. The second segment, represented by automotive lighting, is lagging dramatically, as by 2020 its growth is not anticipated, and the third one is illumination segment, its turnover by 2020 is going to decrease.

Forming the Concept of long-term socio-economic development of the Russian Federation for the period up to 2030 [1], the Ministry of economic development of the Russian Federation has specified the main industries and projects based on the analytical data of the leading centres for scientific and technical development. The main vectors are electric power industry and energy-efficient development, transport infrastructure and space systems, information communication technologies, i.e., all they belong to high-tech industries [2] and their development is impossible to imagine without the developments in the sphere of lighting.

Development of any industries needs finance, search of investment sources, creation of the effective mechanism for stimulation of investment pro-

cess and further management of new projects. Thus, now different legal mechanisms are under formation, they are aimed at the development and improvement of implementation of lighting industry in Russia, and creation of competitive lighting production, LED and OLED technologies.

At present, there are treaty laws establishing rules of joint investment by the state and the subjects of activity in the sphere of lighting industry activity [3]. There have been established the territories with special economies where the lighting industry enterprises in the process of production can obtain diversified benefits both in the form of tax and customs privileges and in the simplified system of attracting foreign labour and simplified administrative procedure [4].

Lighting industry enterprises in certain constituent entities of the Russian Federation are potentially able to participate in the regional investment projects and special investment contracts that are being signed according to the Federal Law of 31.12.2014 No. 488-FZ "On Industrial Policy of the Russian Federation".

Thus, in the territory of the Republic of Sakha (Yakutia) there was implemented a unique investment project on setting up a greenhouse complex which due to instalment of modern lighting technology of general lighting with high luminous efficiency helps to grow crops in the severe climatic conditions.

2. ECONOMIC MEASURES FOR LIGHT TECHNOLOGIES DEVELOPMENT

This proves that such sector of lighting technology as general lighting has a substantial potential for development in Russia because taking into account geographical position of the country and its climatic conditions the creation of special conditions for substitution of natural lighting with artificial lighting supports plant growing and cattle breeding almost in any part of the country.

Lighting technology is necessary not only at the farms. Development of new technologies in the automobile industry, TV production, portable computers and mobile phones industries leads to the necessity to stimulate developments and implementation of new technologies in light sources.

Moreover, urbanization and, consequently, the growth of population in cities, the increase in consumption of services and evolution of social and

cultural life results in the formation of such segments as architectural lighting, office lighting, store lighting, hotel lighting, lighting of educational facilities and lighting in housing and utilities sector. In all above mentioned sectors the specific characteristics of "consumers of light" should be considered.

Furthermore, it is expected that by 2020 the population of the planet will approach 7.7 billion people, thereby there will be the significant growth in the demand for lighting both in residential and non-residential buildings that are used for production and educational purposes, especially in the cities that historically have been home for the major part of the population.

Population growth factor objectively predetermines the increase in the production of light sources as well as stimulation of the development of energy efficient light sources that goes in accordance with general energy saving economic tendency.

At the same time, the development of industries, medicine and social life is forming the base for new developments in the sphere of special lighting, such as emergency luminaires, cold storage light fixtures, fixtures for extreme clean facilities and fixtures for education institutions.

Development and industrial approbation of new lighting technologies are long-term risks so they need relative stability of financing and legal regime.

Still, tax incentives for the development of new industries face certain difficulties. Analyzing the norms written in the Article 25.9 of the Tax Code of the Russian Federation it can be stated that the tax status is made equal for the lighting enterprises – the participants of the regional investment projects (RIP) and special capital investment projects (SPIC).

Legislation does not differ these institutions, probably because both have the same domineering subject (the State) as the unifying factor. This, of course, raises some questions.

It is not clear whether the rules of the Tax Code of the Russian Federation that establish requirements for the participants of the RIP are extended on the legal status of the SPIC, including such requirements as ban on the presence of branches and representations outside the territory of the constituent entities of the Russian Federation where the project is being realized, or the implementation of the project exclusively in the territory of the constituent entities of the Russian Federation listed

in Clause 1, Article 25.8 of the Tax Code of the Russian Federation.

These problems need solutions because the management of the lighting industry enterprise can focus on the development of business by establishing a branch network, and to achieve the balance between the concentration (preservation) of main production in the territory of constituent entity of the Russian Federation is possible not only by forbidding the existence of isolated branches in the territories of other constituent entities of the Russian Federation but by softer measures such as determining the lowest share in the total amount of fixed assets (for example, not less than 80 %), and the fixed assets of the business concentrated in the territory of the specific constituent entity of the Russian Federation must not be lower the established share.

Besides, we consider the possible solution is to fix in the law the clear definitions of federal and regional investment projects, explain the special contract terms which represent the legal framework for the realization of relevant projects, and we also concentrate the attention on the fact that legal status and requirements that are imposed on the potential investors and projects are determined both by federal and regional law in the case of RIP and in the case of SPIC by federal norms – in accordance with the Federal Law of 31.12.2014 No. 488-FZ.

Existing regulations, which establish requirements to the participants of the RIP in the federal act: Article 3.3 of the Tax Code of the Russian Federation, give the participants the possibility to pay income tax to the federal budget at the rate of 0 %, i.e., not to pay it at all. As the federal budget is deprived of additional income, the order and conditions on which the participants can be granted these benefits is regulated at the federal level, but the constituent entities of the Russian Federation are authorized to deal with the issues of taxation regarding the income tax rate. Revenues on the income tax rate are compulsory for payment in the territory of the relevant constituent entity of the Russian Federation.

Such mechanism may prove its effectiveness because the tax reduction directly affects the investment flow into the territory, increase of production capacities, creation of jobs, income growth, and – by the means of increased effective demand – the growth of consumption as a factor of economic development.

In the conditions of international competition on the market of lighting production, the establishing of clusters on the development of new technologies of light sources is one of the macroeconomics competitive advantages.

Taking into account the existing sectors of lighting production, which include general lighting, automobile lighting systems, and illumination, the development of competitive production in every of the above mentioned sectors can be encouraged by temporary decreasing income rates alongside with the guarantee of stable legal regime of economic activity.

For the participants to have equal rights in the system of tax incentive it is necessary to supplement Clause 1, Article 25.9 of the Tax Code of the Russian Federation with the new provision relating the RIP (SPIC), *videlicet*, the new participants should have no tax debts and other debts on obligatory payments.

At the same time, the existing external constraints of the usage of international funding sources and the mobilization of internal resources leads to the decrease of economic activity and thus to the shortage of revenues into the regional budgets and the growth of their deficit. All this slows down the process of accepting regional regulation in the areas of tax incentives.

Nevertheless, some possibilities for the development of the lighting industry enterprises can be found in the territories of advanced economic development in Siberian Federal District and Far Eastern Federal District, and single-industry towns. The study of the legal regime in the territories of advanced social and economic development reveals that the lighting industry enterprises enjoy the maximum competitive advantages in comparison with the regime in other territories [4–8].

As the state offers preferential terms, it has the right to demand from the subject of lighting activity operating in the territory of the advanced social and economic development to take upon itself to refuse to use physically and morally obsolete fixed assets and to replace them – at its own expense – with new production assets as well as to use the maximum amount of the local labour in the production process.

Apart from the support of investment activity in industry the Federal Law of 31.12.2014 No. 488-FZ declares in the frames of special capital investment projects the implementation of new in-

centivizing mechanisms intended to support the residents of industrial (production) parks and industrial clusters in order to develop regional industrial production.

Currently, was established and continue to develop lighting industrial cluster “Fibre optics and optoelectronics” in the Republic of Mordovia (est. 16.03.2016). The cluster, or consolidation of a few enterprises, allows to establish close cooperation between independent companies that work functionally and geographically in one area of economy so that to provide a continuous process of development, approbation and implementation of new products with the simultaneous training of the workers who in future will apply the knowledge of these technologies in practice.

Clusterization (the process of unifying companies) in the lighting industry is essential for this type of enterprises because they are knowledge-intensive, ingenious and necessary for industry implementation.

The current legislation sets requirements on the industrial (production) parks, industrial clusters, management companies and specialized agencies. Based on the selection process, some regions get the rights to imply incentive measures and to subsidize expenses on creating the required infrastructure [9].

The legal model defines industrial parks as aggregation of the objects of industrial infrastructure handled by the management company, however, law continues to develop in this area including terminology and it does not define the role of “anchor resident” of the industrial park. In contrast with other residents and participants of the industrial park, anchor resident is obliged to invest not less than 10 % of the aggregate amount of extra-budgetary investment of the residents at the end of the 10th year since the start of the project realization [10]. As for the foreign legal practice, according to it *major user* is responsible for managing the industrial park.

The legal status of the participant of the industrial park and the investor of the industrial park is not defined, neither is defined the legal mechanism of cooperation between them and the management company in the case when the company does not carry out the investment functions. In the case of Greenfield-type industrial park, the definition of terms “Resident” and “Developer” also need clarification.

3. LEGAL BASIS FOR FINANCIAL SUPPORT OF LIGHT TECHNOLOGIES ENTERPRISES INVESTING ACTIVITY

Apparently, the role of the industrial (illuminant) park in the lighting industry is to generate educational, scientific, innovative, and enterprising initiatives on development and implementation of new materials and compounds used in the process of production of light sources, and new technologies used in production of light sources, new systems of light sources management, new fixtures of high luminous efficiency and new lighting solutions in manufacturing and agriculture sector.

For that reason, the main part of the state support provided to the industrial parks residents should be focused on the reimbursement of expenses on making and reconstructing of industrial infrastructure.

In this context, legislation can determine the industrial park as a subject of lighting industry activity and provide it with a parcel of land, on which it constructs manufacturing or warehouse premises, or purchases, or leases the ready-made properties for usage in the production process. In the former case, the state support can be represented in the form of partial reimbursement of expenses on construction, in the latter case it can be the provision of favourable lease terms or subsidizing a part of lease costs.

At present, at the federal level specific measures are provided, such as reimbursement of expenses on required infrastructure in the territory of constituent entities of the Russian Federation and the reimbursement of the interest rates on loans to the management company.

The size of reimbursement depends on the amount of taxes and fees paid by the residents. Consequently, preferential regime for the residents must be set by the constituent entities of the Russian Federation but the secondary legislation is still under development.

Thus, some constituent entities of the Russian Federation provide special benefits for the subjects of industrial parks depending on their status (anchor resident, resident, and participant) and the amount of investments made. Other constituent entities of the Russian Federation prefer grandfathering clauses of the regional investment regulation.

Finally, neither federal nor secondary legislation establishes liability for the breach of obligations written in the contract on creating the industri-

al park and conducting business on the territory of the industrial park.

Nor does it clearly define the legal consequences following the reorganization of the management company.

The solution could be found by analyzing the successful experience of implementation of organizational and legal forms of interaction between the regional authorities and industrial parks and the further development by the Ministry of Industry and Trade of the Russian Federation of the relevant methodical recommendations subject for enforcing by all constituent entities of the Russian Federation while forming the legal base for establishing in their territories the industrial parks and industrial clusters.

The adoption at the federal level the common methodology necessary for creation of industrial parks and other forms of innovative development does not deprive the constituent entities of the Russian Federation of their independence in choosing the forms and methods of interchange with the companies in ensuring beneficial financial and legal conditions for the development of industrial parks.

At the same time, the establishment of industrial structure facilities in the lighting industry can be implemented for creating industrial parks, industrial clusters and state subsidizing of precision spending, state contribution to the expenses on concession agreements, and state and private partnership.

To establish measures of public support for the development of industrial parks it is expedient to assume that state preferences are provided for investment projects in the key economic sectors only if the financing sources or financial guarantees do not belong to funds of the budgetary system and the investment activity do not fall under the scope of the public-private partnership laws and concession agreements because these spheres are covered by other laws.

The above described issues connected with the forming of legal and financial conditions for establishment and development of industrial (production) parks can be solved by working out and adopting of special federal law "On industrial (production) parks".

The vision of the law must include conceptual system, the principles of creation and functioning of industrial (production) parks, the procedure of implementing the right on creation of industrial parks and the normal requirements on the industrial parks,

general provisions for concluding contracts on creation and functioning of industrial parks and performance of production activity in their territories, specifics of production activity in industrial parks.

4. PERSPECTIVES OF CLUSTER FOUNDATION IN LIGHT TECHNOLOGIES PRODUCTION

Legal support for the participants of industrial clusters including lighting industry clusters is the Resolution No. 41 of the Government of the Russian Federation of 28.01.2016 "On the approval of the Rules of the federal budget subsidies to participants of industrial clusters for reimbursement of costs in the implementation of joint projects in industrial production of import substitution".

The industrial clusters concept is able to provide mutually beneficial cooperation between the participants and promote regional development. The international practice of formation of industrial cluster proves the importance of implementation of systematic supporting efforts that include allocation of land lots, creation of a searching system of suppliers and consumers, and placing of long-term orders with the public and private companies.

In accordance with the Resolution No. 41 of the Government of the Russian Federation of 28.01.2016, granted subsidies are aimed at equity financing of project or technical activities. We consider it necessary to widen the list and include there a new item of expenditure – cost financing of joint R&D in the amount of 50 % of the total expenditure, which can reduce the innovative activity risks in the lighting industry and ensure the relative financial stability of designs in the process of development and approbation of new technological solutions, and creates conditions to get patents quickly for the objects of intellectual property of the lighting industry cluster participants both, with the National Registry and foreign patent offices.

The suggestions offer the clarification of regional investment projects and special investment contracts participant financial status, formulating of the federal and regional investment projects definitions; they insist on making additional conditions for becoming the participant of the advanced development territories, come with the idea of creation mechanisms unification and support of industrial parks and industrial clusters, government financing imple-

mentation of the R&D in the amount of 50% of the total expenses on these projects.

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