

# The Topical Issues of Public Law

SCIENTIFIC-PRACTICAL INFORMATIONAL EDITION

REGISTERED IN THE **ROSKOMNADZOR**. REGISTRATION NUMBER - EL. No. FS 77-48634, 20.02.2012.

IS PUBLISHED MONTHLY. THE MAGAZINE HAS BEEN PUBLISHED SINCE JANUARY, 2012.

No. 2 (2) 2012

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The issue allowed for posting on the web site  
on the 15<sup>th</sup> of March 2012

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Vypusk dopushhen k razmeshheniju na sajte  
15.03.2012

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## Dear readers!

This issue of the magazine is devoted to the topic of distribution court costs (judicial costs) in a certain category of cases arising from public relations – tax disputes.

It is no secret that it is problematic to obtain from arbitration courts full satisfaction of the requirements on exaction from a tax authority of costs incurred during consideration of a tax dispute. However, this should not lead to the conclusion that compensation of real costs for payment representative services to a taxpayer is a rare case.

Publishers of electronic legal systems do not find actual to fill their bases with judicial acts which resolve issues of the allocation of judicial costs. Perhaps this is because, firstly, arbitration courts have begun to form a bank of decisions of arbitral tribunals (BRAS in Russian), and secondly, when processing a high volume of new normative- legal acts, publishers find more important to post in reference-legal bases the judicial acts, which resolve the main dispute between parties of proceedings.

In view of the workload of arbitration courts the filling of BRAS delays with filling of judicial acts' base. Also takes place absence of some court's judgments (at existence of a case in the data base).

Realizing that the court decisions made in favor of a taxpayer are a type of «weapon» in fighting the unlawful decisions and unlawful actions of tax authorities and their officials, editorial staff considers it necessary to familiarize readers with an arbitration practice, developed by CJSS “Sanar” while protecting the interests of its customers (taxpayers), as in here have been resolved issues of the discretion powers of judges regarding the determination of reasonable court costs of the taxpayer for payment of representative service.

In the absence of effective mechanisms of bringing to legal liability of officials of tax authorities, who make illegal decisions in respect of taxpayers, exaction of judicial costs from a tax authority is an only method that affects on legitimacy in actions of tax authorities. It is quite natural that significant amounts of costs collected from a tax authority, are greater than the amounts awarded by arbitration court for the proforma.

Editorial staff may be would have taken different position in relation to the tax authority, if there were no official statistics on the results of tax disputes for several years<sup>1</sup>, which indicates the high percentage of cancellations of tax authorities' decisions.

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1 URL: <http://arbitr.ru/press-centr/news/totals/> (date of reference: 28.02.2012)

## ARBITRATION PRACTICE OF CJSS «SANAR» ON CASES OF EXACTION JUDICIAL COSTS FROM THE TAX AUTHORITY.

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Views arbitration practice on cases of exaction court expenses (costs of justice) from tax authorities and resolved controversial legal issues which have appeared while producing practice of the tax authorities and the arbitration court. Comments on the conclusions and reasons that in this or that case led to adoption by the Court of particular judicial acts.

**Keywords:** court costs, judicial costs, distribution of court expenses, exaction of judicial costs, tax disputes, exaction of judicial costs from a tax authority.

Before CJSS “Sanar” has begun to develop a mechanism of exaction of judicial costs in favor of a taxpayer, has been missing the arbitration practice, in which would present a detailed analysis of services of the representative who protects the interests of the taxpayer in a tax dispute. Generally, the representative’s services were highlighted as a small number of rows, which described participation in the court session and traveling expenses related to participation in court sessions.

Innovation of CJSS “Sanar” in the field of legal services is that, in addition to the cost’s determining of one hour of services depending on the qualifications of the expert, has been set the dependence of the price and place of service, as well as normatives of work with text documents [16].

At the end of tax disputes CJSS “Sanar” provides its clients with a detailed account of the work done at each stage of the contested decision (action) of the tax authority or its officials, as well as Court’s judgments on tax dispute not yet satisfied the requirements of the taxpayer.

Litigation No. **A57-13542/06** (with the participation of specialists of CJSS “Sanar” as representatives of the taxpayer) was the first experience for the Arbitration Court of the Saratov region and the Twelfth Arbitration Court of Appeal in part of justification of representative’s service costs associated with forming

the evidence base (technical work on the collection of documents, copying, certifying and stapling) and the examination of non-normative acts and procedural documents of the tax authority. That is why it is interesting to consider all court's judgments adopted by the taxpayer's petition on the distribution of court costs, noting the genesis of legal position of the mentioned arbitration court instances.

In the first definition of the Arbitration Court of the Saratov region on case No. A57-13542/06 of December 1, 2009, according to application of LLC Engels' production association "Signal" to the Russian Federal Inspection of Tax Service on the largest taxpayers in the Saratov region on the exaction of court costs in the amount of 136195 RUR the following has been determined:

"...to provide services on legal support of activity of LLC EPA (Engels' production association) "Signal", related to the protection of its interests in tax relations in the Arbitration Court of the Saratov region about recognition the decision of the Interregional Federal Inspection of Tax Service on the largest taxpayers of the Saratov region from 29.09.2006, № 39/10 as invalid, the Organization concluded contract No. 024-02/2006 from 01.10.2006, on the provision of legal services, with JCSS "Sanar" (hereinafter - the law firm)".

According to paragraph 1.2 of the said contract, its purpose is to provide a legal examination of the non-legislative acts of the tax body, drafting and filing of annulment of the tax body's decision from 29.09.2006, № 39/10, drawing up and filing of the claim for ensuring of lawsuit, forming the evidence base, the participation on the client side in court sessions.

In accordance with paragraph 4.1 of the Contract on rendering legal services the cost of services is determined in accordance with the report on the work performed by the company after the end of the consideration of the case in Federal Arbitration Court of the Volga district, the result of which is the resolution of FAC of the Volga district.

According to the act of the executed works No. 43 of 25.08.2009, and report of completed works the cost of legal services amounted to 346 875 RUR, 40 kopeks.

This amount was paid by the LLC EPA (Engels' production association) "Signal" to CJSS "Sanar" by payment order No. 5866 on 09.09.2009.

Due to this fact the *Court recognized the proof of actual costs incurred by LLC EPA (Engels' production association) "Signal" in the claimed amount.*

However, bearing in mind the principle of maintaining a balance between the interests of the parties and the limits of reasonableness for payment of representative's services, the Court finds that *the claimed amount does not possess*

*the characteristics of rationality and is disproportionate to amount of work completed, the part of the expenditure is not a judicial one...*

The Court, in determining the reasonable size of representative's costs operates on internal belief which is based on an assessment of the evidences submitted by the parties...

Estimation of the cost of participation of the representative in a case should be made taking into account the complexity of the case ...

However, in determining the reasonable cost of the representatives should be taken into account the situation prevailing in the region at the cost of similar services, as well as the qualifications of persons performing services and the time it took for the representative to carry out his obligations.

This follows from the Information Letter of Presidium of Higher Arbitration Court of the RF No. 82 "On some issues of application of Arbitration Procedure Code of the RF" which stated that, in determining the reasonable cost of representative services may be taken into account, in particular: the time that could be spent by qualified specialist to provide materials; the current situation in the region on cost of attorneys' services; information from statistical bodies on the price in the market of legal services; the length and complexity of the case.

According to the presented price list of LLC "Right Center E'gida" the cost of the case in the Court of the first instance is from 30 000 rubles, in the Court of appeal and cassation instances is from 15 000 rub. In 2006-2007, *the cost of participation in the first instance was from 15 000 rub.*

In the case materials LLC EPA (Engels' production association) "Signal" represented the report on the work performed under the contract from 01.10.2006, on legal services, according to which the total value of the executed works (services) was 346 875,40 rub.

In addition, the Organization provides decryption of rendered legal services with the breakdown of the claimed amount in judicial instances, according to which the cost of work performed (services rendered) at the first instance was 263 090 RUR, at the second instance - 35 501 RUR, at the cassation instance - 25 915 RUR.

Instituting the requirement to the tax body to recover court costs in the amount of 136 195 RUR, the Organization grounds on a percentage of the claimed and satisfied the requirements.

Having examined the report of CJSS "Sanar" on performed works (rendered services) on the contract from 01.10.2006, and decryption of these works and their cost the Court found that the list included such service as completing documents

in the total amount of 146 131 RUR, including 129 006 RUR – at the first instance, 17125 RUR – at the second one.

From the explanations of the representative of the LLC EPA «Signal” which have been introduced in oppositions to the withdrawal of the tax body, (vol. 10, sheet 98) follows that the cost of completing documents includes the cost of unsealing and stitching of original documents, copying, certifying of copies for submission of documents to the arbitration court and to the parties of the case.

However, the Court considers that completing of documents does not attribute to services of legal support that requires qualification of a lawyer. In addition, pursuant to sub-paragraph 2 (a) of paragraph 3.1 of the contract No. 024/02/2006 from 01.10.2006, LLC EPA «Signal” undertakes to allocate CJSS «Sanar» all necessary documentation for performance of the contract.

Because of that, the Court concluded that completing of documents was not relevant to the services of the representative who provided legal assistance and as well as legal costs which were to be recovered by the contrary party. In this case only technical work had been carried out.

According to paragraph 6 of the Report on completed work *in the cost of services entered examination of solution* of Interregional Inspection of Federal Tax Service (MRI FNS in Russian) on the largest taxpayers of the Saratov region of 29.09.2006, No. 39/10, that is, *of the contested decision*.

However, *this service does not fall within the list of judicial costs identified by article 106 of the Arbitration and Procedural Code of the Russian Federation, as it is a pre-trial cost associated with payment of legal support.*

In the report of work performed is available a paragraph “the formula of taxpayer protection in a tax dispute” (paragraph 7) with the value of the services in the amount of 1750 RUR.

The Court is of the view that this amount should not be collected *as the nature of the work haven't been specified, that doesn't let to determine what services were provided and adopted on the report.*

In paragraphs 7, 9, 13, 16, 20, 22, 23, 28, 30, 35, 42, 44, 46 of *the decrypt of the cost of performed work* (services rendered) has been indicated the value of the services rendered, which *does not match with the value of the appropriate services* listed in the report on performed work (services rendered).

Thus in paragraph 7 of decryption of the services' cost contain “the application to Arbitration Court of the Saratov region against the decision of Interregional Federal Tax Service on the largest taxpayers of the Saratov region No. 39/10

from 29.09.2006", the value of which is determined in the amount of 3150 RUR. However, in the report the service is estimated at 3000 RUR.

In paragraph 20 of decryption of the value of services is mentioned the following service – "examination of requirement on providing documents, (sheet 59, vol. 2)" by specifying the value in the amount of 2200 RUR, while in the record of completed works (services), this service is valued at 1000 RUR.

In paragraph 42 of decryption of the value of services the service "examination of explanations of Interregional Federal Tax Service on the biggest taxpayers of the Saratov region" was estimated as 1315 RUR, the Report indicated a price – 687 RUR.

A similar discrepancy is seen in the others of the above paragraphs.

Total cost of the services specified in the decryption exceeds the value specified in the report at 2569 RUR.

Since under paragraph 4.1 of the Contract on legal services from 01.10.2006, the cost of services is determined in accordance with the report of completed works, therefore, when evaluating the cost of services, the Court is guided by the Report of completed works, signed by Organization.

Moreover, in paragraph 3 of the decrypt of the services' costs at first instance was specified participation of the general legal adviser of CJSS «Sanar» in 7 court sessions with a total cost of 24 960 RUR. However, in the report of work performed was mentioned another cost of 21 760 RUR.

In the meantime, and this cost is unjustified, since according to the regulation on the determination of prices for services of CJSS «Sanar» upon presentation of interests of the clients in tax disputes and other matters related to tax, approved by order of the Director of CJSS "Sanar" dated 22.01.09, the cost of participation of the general legal adviser at a session of the Arbitration Court of the first instance is 2720 rub. Due to the fact that to the case materials submitted only this provision, the Court applies it when calculating the total cost of services.

Assuming that the general legal adviser has participated in seven trials of the Court of the first instance, the cost of this service is 19040 RUR (2720 RUR x 7 trials).

Consequently, the cost of the service "participation in the Court of the first instance" was overstated at 5920 RUR.

In the light of the foregoing, the Court concluded that *the cost of reasonable court costs at the first instance is 103697 RUR.*

The cost of services according to the Contract from 01.10.2006, No. 024-02/2006 at the second instance also includes *completing of documents with the value of the services in the amount of 17125 RUR, which as have already been stated above,*



*does not apply to legal support services. In addition, a package of documents to the appeal is an essentially evidences' base that substantiates the stated requirement, and therefore must be enclosed to the case materials by the applicant at the stage of consideration in the Court of the first instance, that has not been done that violated article 65 of the Arbitration and Procedural Code of the RF.*

In paragraphs 4 and 5 of the decrypt the cost of service concerning the second instance the value of specified services "preparation of appeal" and "examination of review on the appeal", does not match the value specified in the report of the performed works (rendered services). Unlike the Report the cost of services on the specified paragraphs in the decrypt is overstated at 799 RUR.

In such circumstances *the reasonable cost of service at the second court instance amounted to 16827 RUR.*

In paragraphs 2 and 3 of the decrypt the costs of services on cassation instance the services "examination of Cassation appeal of Interregional Federal Tax Service of the RF on the biggest tax payers in the Saratov region" and "examination of regulation on Interregional Federal Tax Service of the RF on the biggest taxpayers in the Saratov region" were evaluated in 2 622 RUR and 2 185 RUR accordingly, while the report indicate the value in the amount of 1,200 RUR and in the amount of 1000 RUR.

In paragraph 1 of the decryption the cost of service concerning the cassation instance is specified participation of the general legal adviser of CJSS "Sanar" in one session, the cost of the service is defined as 8500 RUR. However, in the statement on determining prices of services of CJSS "Sanar" upon presentation of interests of clients in tax disputes and other matters related to tax, approved by order of the Director of CJSS "Sanar" dated 22.01.09, the cost of participation of the General legal adviser at a session of the Arbitration Court of Cassation Instances defined as 5440 rub.

The cost of services upon Cassation Instance of LLC EPA "Signal" includes traveling expenses which consist of expenses on travel and accommodation. The Court finds these expenses justified and reasonable.

*At all, in the Court's view, the Organization has justified the court costs for the participation of the representative in the Cassation instance in the amount of 20248 RUR.*

*Thus, on the basis of the principle of proportionality of costs distribution, under article 110 of the Arbitration and Procedural Code of the RF, which also formed the basis of the statements of the parties on exaction court costs, the tax authority is to pay the court costs amounting to 59 616 RUR in favor of the Organization.*

In considering the statement of the tax authority for collecting from LLC EPA "Signal" court costs in the amount of 7937 RUR, the Court considers that it shall be satisfied in full.

Tax authority has incurred the court costs in the amount of 12 573 RUR for payment of traveling expenses of the representatives of inspection Kharitonov V.N. and Zhilinskiy V.G. who 07.04.2009 participated in the trial of Federal Arbitration Court of the Volga district.

This amount of traveling expenses comes from travel by rail from the city of Saratov to Kazan and back (6,073RUR), payment of the hotel for one night (5900 RUR), daily allowances from 06.04.2009 till 08.04.2009 (600 RUR)" [17].

Guided by articles 27, 106, 110, 184, 185 of the Arbitration and Procedural Code of the RF, Arbitration Court of the Saratov region has identified:

"To collect from Interregional Federal Tax Service of the RF on the largest taxpayers of the Saratov region in favor of a Limited Liability Company E'ngels Production Association "Signal" court costs amounting to 59 616 RUR.

The rest part of the stated requirement on recovery of court costs must be denied.

To collect from a Limited Liability Company E'ngels Production Association "Signal" in favor of the Interregional Federal Tax Service of the RF on the largest taxpayers of Saratov region court costs in the amount of 7296 RUR.

The ruling may be appealed in the manner and within the time limit laid down in articles 257-272, 273-291 of Arbitration and Procedural Code of the Russian Federation" [17].

Appeals instance of Arbitration Court, having canceled the ruling of the Court of the first instance on procedural violations (consideration of the case in the absence of the party [18]), almost repeated the grounds of the first instance and left the amount of judicial costs to be recovered from the parties at the same amount [19].

12<sup>th</sup> Arbitration Court of Appeals in resolution on case of March 19, 2010, found that "the completing of documents for providing it to the Arbitration Court and to the parties of the case is not relevant to the services of legal support requiring qualification of a lawyer - services on examination of decisions of the Interregional Federal Tax Service of the RF on the largest taxpayers of the Saratov region from 29.09.2006, No. 39/10 are pre-trial costs associated with payment of the legal assistance".

However, the Arbitration Court of Cassation Instance questioned the approach of the first two instances of the Arbitration Court about the evaluation of

the technical work on completing of the evidences base for the Court and estimation of the expenses on the examination of documents of the tax authority.

Due to the resolution of the Arbitration Court of Cassation Instance dated June 24, 2010, case No. A57-13542/06 in part of collecting court costs from the tax authority was sent to new session to Appeals instance of the arbitration court referring to the next:

“In paragraph 3 of Information Letter of Higher Arbitration Court of the RF No 121 of December 05, 2007 “Survey of Court Practice on issues connected with distribution among parties court costs for payment of attorney services and another persons who act as a representative in arbitration courts” explained that *the person requesting compensation for payment of the representative services, should prove its size and the fact of the payment, the other party may prove its excessiveness.* In support of the stated requirements of Organization in the materials of the case were presented a contract dated 01.10.2006 No. 024-02 made with CJSS “Sanar” on legal services, act of performed works dated 25.08.2009 No. 43; reports on completed work (rendered services); railway tickets and traveling certificate for representative; statements and receipt showing the cost of accommodation in the hotel.

Payment of representative services under the above contract is proved by payment order from 09.09.2009 No. 5866 in the amount of 346 875 RUR 40 kopeks that is available in the case materials.

Partially satisfying requirements of the Organization the Court of Appeal reasoned that the claimed court costs are partially disproportionate to the amount of work performed and partly outside the judicial costs, including services of completing of documents for submission to an Arbitration Court; services on examination of the contested non-normative act of the tax authority.

The Court’s conclusion about the mismatch of the court costs to the amount of work performed is based on comparative analysis of the report on completed work on the first appeals and cassation instances together with a breakdown of each instance.

Meanwhile, as can be seen from the case materials, *at the time of the hearing at the Court of first instance, the Organization by way of the article 49 of the Arbitration and Procedural Code of the RF has clarified the stated requirements in connection with an accounting error*, accordingly, the amount of requirements was reduced. When comparing the report of completed works with a breakdown on each instance, was the same amount of legal costs and amounted to 324 506 RUR, 41.97% of which is 136 195 RUR (petition of 09.11.2009 (vol. 10, sheet 101)).

*The Court of Appeals Instance did not take into account this fact and, in fact, the petition for clarification of the stated requirements was not considered.*

Denying compensation for judicial costs on the completing of documents for submitting to the Arbitration Court and the participants of the case, the Court has held that these services do not apply to services of legal support; performing of these services does not require qualification of a lawyer.

As indicated in paragraph 20 of Information Letter of Higher Arbitration Court of the RF No 121 of December 05, 2007 "Survey of Court Practice on issues connected with distribution among parties court costs for payment of attorney services and another persons who act as a representative in arbitration courts", in determining the reasonable cost of representative services may be taken into account, in particular, time that could be spent by qualified specialist for providing documents.

As can be seen from paragraph 1.2 of paragraph 1 of the Contract from 01.10.2006 No. 024-02 on legal services, the objectives of this Contract include the preparation of the evidence base. However, the Court did not assess this circumstance, as did not assess the arguments of society that specialization and qualifications of the executor is not a criterion for the allocation of costs to the judicial costs, *so as judicial costs are any costs if they are involved to the court proceedings.*

The Court denied compensation of judicial fees for services associated with the legal expertise of the contested non-normative act of the tax authority for the Organization, arguing that these services are pre-trial costs.

However, *the provision of this service is the subject of the Contract from 01.10.2006 No. 024-02, and purpose of the Contract is to provide of a legal expertise of the non-legislative acts of the tax authority* (paragraphs 1.1, 1.2, paragraph 1 of the Contract).

The Court didn't research the terms of the Contract on providing legal services and didn't give an appropriate legal valuation.

According to the legal positions of Constitutional Court of the Russian Federation, as set out in the ruling of 21.12.2004 No. 454-O, *the realization of the right to reduce the costs by the Court is possible only if it recognizes those costs excessive because of the particular circumstances of the case.*

According to the legal position of the Higher Arbitration Court of the Russian Federation, as set out in the decision of Presidium of 09.04.2009 No. 6284/07, *the Court does not have the right to reduce the amount of compensation arbitrarily, especially if the other party does not represents evidences of excess of costs exacted from it.*

From the resolution of the Court of Appeals does not follow that the tax authority provided to the materials of the case the evidences of disproportionate amount of work performed which was stated by the Organization to recover the amount of court costs.

Into force of the part 3 of article 286 of the Arbitration and Procedural Code of the Russian Federation in the Arbitration Court of cassation instance is being examined the matching of the conclusions of the Court of the first and appeals instance on the application of the norm of law established by the circumstances of the case and the evidence contained in the records.

Part 3 of article 15 of the Arbitration and Procedural Code of the Russian Federation establishes that the, decisions, resolutions, rulings taken by the Arbitration court should be legal, reasonable and reasoned.

The Judicial Board is of the view that the contested decision cannot be considered as legitimate and justified.

Noting, that during the consideration of the dispute by the Court the actual circumstances of the case which are to be established were not fully investigated, the conclusions do not conform to the evidence gathered, the resolution of the Court of Appeal must be cancelled, and the case is to be sent for a new consideration.

By a new case the Court should determine the amount of court costs that is to be exacted from a party, correctly apply substantive right and not violating Remedial law to make a legitimate and reasonable court's judgment taking into account the research and evaluation of case materials' documents, on the basis of the principle of reasonableness and documentary conformity"[20].

Having regard to the legal position of the Arbitration Court of cassation instance, twelfth arbitration court of appeals issued on the 3<sup>rd</sup> of September, 2010, a new resolution on case No. A57-13542/06, which satisfied the requirements of the taxpayer in the amount of 115115 RUR, motivating its act as follows:

"As evidence of the reasonableness of the costs incurred, E'ngels' Production Association "Signal" in the case materials represented the following documents:

-contract on providing services from 01.10.2006 No. 024-02/2006 on legal support of activity of the applicant relating to the protection of his interests: tax legal relations in the Arbitration Court of the Saratov region in the case of annulment of the decision of the Interregional Federal Tax Service on the largest tax payers of the Saratov region from 29.09.2006 No. 39/10 the contract was made with CJSS "Sanar";

- Act of the executed works of 25.08.2009 No. 43;

- Reports on the completed works (rendered services) on the contract from

01.10.2006 in first instance for the sum of 263090 RUR, in appeals instance for the sum of 35501 RUR, and in cassation instance - 25915 RUR, total- 346875 RUR 40 kopeks;

- The payment order from 09.09.2009 No. 5866 for the amount of 346875 RUR 40 kopeks;

- Imprest account from 10.04.2009 No. 9 at Taraskina M. I.;

- Train tickets from the city of Saratov to Kazan and back from 07.04.2009 to 06.04.2000 for Taraskina M. I.;

- Business travel certificate for Taraskina M.A. from 30.03.2009 No. 2;

- Statements and receipts showing the cost of a representative's accommodation at the hotel Volga in Kazan for one day.

Having evaluated the papers, the court of appeals instance finds that they confirm the actual expenses incurred by LLC "E'ngels Production Association "Signal", the cost of services provided by the representative in the amount of 346875 RUR 40 kopeks...

Organization, based on the percentage of its stated claims and satisfied by the Court of first and appeals instance, has asked the Court to collect from the tax authority court costs in the amount of 136195 RUR, including the payment of representative services and travelling expenses.

The Court of the first instance satisfying Organization's statement at the amount of 59616 RUR, did not take into account the services of completing documents for the court of the first, appeals and cassation instances, having believed that completing documents does not apply to services on legal support that require qualification of a lawyer, because of that it cannot be assigned to services of a representative, who provides legal support and, accordingly, to court costs which are to be compensated.

The Court of appeals instance disagree with this conclusion of the Court

According to paragraph 20 of the Information Letter of Presidium of Higher Arbitration Court of the RF No. 82 "On some issues of application of Arbitration Procedure Code of the RF", in determining the reasonable limits of cost of representative services may be taken into account, in particular, the time that could be spent by qualified specialist to provide materials.

Specialization and qualifications of the executor is not a criterion for the attribution of costs to the court costs, so as judicial costs are any costs if they are involved in the consideration of the case in court.

According to the sub-paragraph 1.2 paragraph 1 of the contract from 01.10.2006 No. 024-02 on providing legal services, in particular, the objective of this Contract

is, the completing of the evidence base. As can be seen from the case, *services of completing documents were provided within the framework of the case of the first, appeals and cassation instances and directly related to the preparation of evidence base, preparing statements on contesting of decisions of the tax authority, preparation of petition, replies which were compiled as part of this case.*

However, the Court of Appeals instance considered the cost of completing documents at the second instance in an amount of 125 sheets and sum of 17125 RUR to be excessive.

As can be seen from the case materials, by the ruling of the twelfth Arbitration Court of appeals from 26.11.2008 taxpayer was requested to submit to the Court a lease agreement of buildings No. 456 dated 30.04.2004, acceptance report – transfer of buildings to the Contract No. 456 dated 30.04.2004, proof of State registration of the Contract No. 456 of 30.04.2004, insurance policies. The taxpayer submitted a petition for the enclosure of documents at 126 pages, of which the lease agreement of buildings and constructions of 30.04.2004 No. 456 at 17 sheets, insurance contracts at 12 sheets, insurance policies at 7 sheets and total at 36 sheets. Additionally the taxpayer submitted to the Appeals instance documents which hadn't been listed in the ruling from 26.11.2008 at 90 sheets which was not examined by appeals instance and were not attached to the case materials.

As there was no need for completing this documents (90 sheets), and they have not been the subject of study in the instant case, the Court considers that claims for recovery of legal costs for completing of this documents in the amount of 12330 (90x137) RUR in the second instance should be denied.

Also the Court of first instance denied the compensation of judicial costs for services associated with the legal expertise of the disputed non-normative document of the tax authority, arguing that these services are pre-trial costs.

Court of appeals instance considers the conclusions of the Court of the first instance to be wrong.

The provision of this service (legal examination of the contested decision of the tax authority) is the subject of a Contract from 01.10.2006 No. 024-02, and purpose of the Contract is the providing of a legal expertise of the non-legislative acts of the tax authority (sub-paragraphs 1.1, 1.2, paragraph 1 of the Contract).

Also the appeals instance notes that *the legal examination of decisions of the tax authority is directly related to the case, since the legal analysis of this non-normative act is needed to determine the feasibility and the need for a statement of its contesting to the Court of the first instance, as well as for application on contesting of non-normative act, as well as for developing of the legal*

*position on the case and further actions.*

However, the appeals instance finds that court costs on the legal expertise of the decision of the tax authority in the first instance in the amount of 40250 RUR are excessive.

In the report of the completed works (services) on the contract No. 024-02/2006 from 01.10.2006 on case No. A57-13542/06-28 in the first instance in the Arbitration Court of the Saratov region is said, that was carried out legal examination of decision of the tax authority in full amount of 46 sheets, the value of which amounted to 40250RUR (46x875).

However, *the decision of the tax authority* No. 39/10 from 29.09.2006 *has not been appealed by the Organization in full, but only in the part* of the calculation of tax on profit on the episodes of the insurance and completion of a production complex, charging VAT on repair-construction works, the calculation of fines for failure to submit documents, *this documents amounted to 36 sheets*. In the rest part the decision of the tax authority was not complained, and wasn't the subject of a study of the court of the first, appeals and cassation instances, and, therefore, costs of the Organization do not belong to the judicial costs in the present case.

In view of the foregoing, the court of appeals instance finds that the services on legal examination of the decisions of the tax authority in the amount of 8750 (10x875) RUR are not compensable.

On the basis of the above stated, the arbitration court of appeals, having evaluated the reasonableness of the limits of legal costs incurred by Organization for the services of representatives through a comparative analysis of the report on completed works (services) on the Contract from 01.10.2006 on first, appeal and cassation instances with relevant explanations of cost of work performed (services rendered), believes that application of the society shall be satisfied in part, and compensation of the court costs must be in the amount of 115115 RUR (136195-8750-12330 = 115115)" [21].

Percentage of exacted costs from the declared by the taxpayer sum of court cost in case No. A57-13542/06 amounted to 84.5%. From the researched dispute with the tax authority specialists of CJSS "Sanar" reached the following conclusions

-costs associated with the provision of the documents to session, not named in the Court, or for the second time (because of a desire of judges to find documents in multiple folders of the case) are excluded by the courts from the court costs to be allocated at the end of the tax dispute;

-costs related to technical work to provide evidence base in court session, may be exacted in the form of legal costs;



-examination of non-legislative acts of tax authorities, statements, complaints, with a purpose to develop a legal position of a defense counsel (representative) of the taxpayer in a Court, is an element of payable legal services and which are to be collected as a part of court costs in a tax dispute.

The following case No. **A57-1490/09-5**, which also dealt with the question of the distribution of court costs according to the application of the LLC EPA "Signal", is characterized by unreasonable decrease of the size of court costs exacted from the losing party of a tax dispute by Court as regards transport costs, and the participation of qualified expert in a court session in the cassation instance.

So the ruling of Arbitration Court of the Saratov region from February 4, 2010 set justified size of the judicial costs in the amount of 54827.80 RUR that represented 55.5% of the claimed cost recovery

Issuing court's judgment on case No. A57-1490/09-5, Arbitration Court of the Saratov region was guided by the following:

"At the court session, as evidence of costs incurred to pay for legal assistance, the applicant submitted: agreement on legal services No. 024-12/2009 from 14.01.2009, report of completed work in the amount of 98761 RUR, payment order (copy) No. 6341 from 25.09.2009, on the payment 98761 RUR, Act No.50 from 21.09.2009, Order No. 2 of CJSS "Sanar" dated 22.01.2009 on approval of the regulations on the determination of prices for services of an Organization, regulation on determination of prices for services of CJSS "Sanar", imprest account (copy) No. 19 from 17.08.2009, traveling certificate w/n for Kizilov V.V. to the city of Kazan, air tickets for Kizilov V.V. Copies of these documents are enclosed to materials of case.

Thus, *the case materials confirm the fact that the costs were incurred by the claimant LLC EPA "Signal" to pay for legal assistance.*

Within the meaning of article 1 of the Civil Code of the RF, the participants of civil legal turnover are free to establish legal relations. In accordance with paragraph 3 article 1 of the Civil Code of the RF products, services and financial resources move freely throughout the territory of the Russian Federation.

In accordance with paragraph 1 of article 421 of the CC of the RF citizens and legal entities are free to conclude a contract.

Under paragraph 4 of article 421 of the CC of the RF terms of a contract are defined at the discretion of the parties, unless the content of the conditions prescribed by law or other legal acts. Accordingly, the claimant was entitled to apply for legal support and make costs on his own.

Under part 2 of article 110 of the Arbitration and Procedural Code of the Russian Federation (hereinafter referred to as the Code), the legal representative's

fees incurred by a person in whose favor was adopted a court's judgment, shall be exacted by the Court from the other party involved in the case, within reasonable limits. On these same rules are being distributed court costs in connection with the consideration of the appeals, cassation complaints (part 5 of article 110 of the Code).

However, following the legal position of Constitutional Court of the Russian Federation that has been set out in the ruling of 21.12.2004 N 454-O, the realization of the right to reduce the cost by Court is possible if it recognizes those costs to be excessive because of the particular circumstances of the case.

The duty of the Court is to exact the cost of representative services within reasonable limits, it is one of the statutory legal means against unjustified overstatement of payment of representative services and thereby - against the implementation of the requirements of article 17 (part 3) of the Constitution of the Russian Federation. That is why in part 2 of article 110 of the code is, indeed, mentioned the duty of the Court to strike a balance between the rights of persons involved in the case.

In paragraph 20 of the Information Letter of Presidium of Higher Arbitration Court of the RF No. 82 is stated:

"In determining the reasonable limits of costs of representative services may be taken into account, in particular: norms of expenditure on business travels vested by legal acts; the cost of budget conscious transport services; time that could be spent on providing materials by a qualified specialist; the current situation in the region on the cost of lawyers' services; evidences of statistical bodies on prices in the market of legal services; the duration and the complexity of the case.

Evidence of the reasonableness of the cost of the representative services must be presented by a party which requires compensating of these costs".

In a court session is established and confirmed by the case materials the reasonableness of costs incurred by LLC EPA "Signal" to pay legal assistance in the amount of 54927 RUR, namely:

1. The participation of the Director of CJSS "Sanar" in the Court session of Cassation instance.

The claimant seeks to collect for the action 17500 RUR.

The Court considers that this amount is overrated and not confirmed with documents on the cost of similar services by other law firms. In view of the current practice in the region on similar cases, *the Court considers it possible to meet the requirements stated in the sum of 10000 RUR.*

2. The participation of the Director's deputy of the CJSS "Sanar" in the Court of appeals instance.

The claimant requests to collect for the action 2550 RUR. Tax authority agrees with the sum specified, the Court accepts this amount as the court costs.

3. The participation of the Chief Legal Adviser of CJSS "Sanar" in the proceedings of the Court of first instance – 3 sessions.

The claimant requests to collect for the action 9360RUR. Tax authority agrees with the sum specified, the Court accepts this amount as the court costs.

4. Examination of the decision of tax authority.

The claimant asks to collect for the action 15200 RUR.

*The Court considers these costs to be not collected, since the examination of the decision of the tax authority did not fall under the list of court costs referred to in article 106 of the Arbitration and Procedural Code of the RF, as it is pre-trial costs associated with payment of legal support.*

5. The preparation of the statements to the Court on the appeal against the decision of the tax authority.

The claimant requests to collect for the action 3500RUR. Tax authority agrees with the sum specified, the Court accepts this amount as the court costs.

6. The compilation of the petition.

The claimant seeks to exact for this action 200 RUR. The complainant has not substantiated, which petition has a cost of 200 RUR. The Court considers that the drafting of petition when filing a claim to the Court is a part of preparation of a statement for taking appeal in the Court. Thus, the Court considers this amount unjustified.

7. Completing of documents.

The claimant asks to collect for the action 7200 RUR.

The Court considers that this amount is justified, since the completing of documents, in this case, includes not only their technical gathering, but the selection and analysis of these documents when filing a claim in court.

8. Examination of a petition.

The claimant requests to collect for the action 200RUR. Tax authority agrees with the sum specified, the Court accepts this amount as the court costs.

9. Examination of explanations.

The claimant requests to collect for the action 400RUR. Tax authority agrees with the sum specified, the Court accepts this amount as the court costs.

10. Preparation of objections.

The claimant requests to collect for the action 600RUR. Tax authority agrees with the sum specified, the Court accepts this amount as the court costs.

11. Examination of the appeal.

The claimant requests to collect for the action 1000RUR. Tax authority agrees with the sum specified, the Court accepts this amount as the court costs.

12. Examination of documents annexed to the appeal – orders on appointment of Chief of the Inspectorate and the provisions on inspection.

The claimant requests to collect for this action 1400 RUR. The Court considers that this amount is unjustified, since the subject matter of the contract No. 024-12/2009 is legal support of a client in connection with the consideration of a tax disputes in court. Orders on appointment of Chief of the Inspectorate and the provisions on inspection had nothing common with the tax dispute and do not require legal examination, and are only of an advisory character.

13. The preparation of the response to appeal.

The claimant requests to collect for the action 1600RUR. Tax authority agrees with the sum specified, the Court accepts this amount as the court costs.

14. Examination of decision of the Court of appeals instance.

The claimant requests to collect for the action 2000RUR

The Court considers that this amount is justified, since the Decision of the Court of appeals instance had overturned the decision of the Court of first instance, which satisfied the claimed requirements of LLC EPA "Signal". Therefore, to appeal the decision to the Court of cassation instance the applicant rightly extended efforts to the examination of court's judgment, which refused satisfying of the stated requirements.

15. The compilation of the cassational appeal.

The claimant requests to collect for the action 1600RUR. Tax authority agrees with the sum specified, the Court accepts this amount as the court costs.

16. Examination of response to the cassational appeal.

The claimant requests to collect for the action 600RUR. Tax authority agrees with the sum specified, the Court accepts this amount as the court costs.

17. The preparation of a petition on suspension of execution of Court's judgments.

The claimant requests to collect for the action 400RUR. Tax authority agrees with the sum specified, the Court accepts this amount as the court costs.

18. Completing of documents.

The claimant requests to collect for the action 4000 RUR. Court considers reasonable and justified amount of 2000 RUR, as most of the documents had already been formed in the process of consideration of the case in the courts of the first and appeals instance. Consequently, the completing of documents to the Court of Cassation instance was not difficult for the applicant.

19. Traveling expenses in connection with the participation of a representative in the Court of Cassation instance.

The claimant request to exact the amount of travel expenses – 29451 RUR, which include: daily allowance -1400 RUR and travel costs on the route Omsk-Moscow – Kazan and back, as well as taxi to airport and back – 28051 RUR. Travel of the representative not from Saratov but from Omsk the claimant proves by the fact that at the time of the session in the Court of Cassation instance, the Director of the CJSS “Sanar” Kizilov V.V. was in the city of Omsk on vacation. Because he is a Director of the CJSS “Sanar” and his participation was necessary in the Court of cassation instance Kizilov V.V. was forced to fly on an airplane on the route to participate in the process in the Court of cassation instance.

*The Court considers these costs in the amount of 29451 RUR to be not reasonable and not justified* on the following grounds.

Contract for legal services No. 024-12/2009 from 14.01.2009, enclosed between the two legal entities – LLC EPA “Signal” and CJSS “Sanar” does not contain provisions obliging CJSS “Sanar” represent the interests of the applicant before the Court of Cassation instance only by the Director of the CJSS “Sanar” Kizilov V.V. His location in another city at the time of the hearing of the case in the Court of cassation instance is not a ground for compensation from the budget of the court costs for a Director’s travel from another city in the city of Kazan and back. *CJSS “Sanar” could send another specialist who took part in the court’s proceedings of the first and appeal instance.*

In accordance with the Labor Code of the Russian Federation and the description on business travels, compensation of travel must be made from the place of employment to the place of mission and back. Workplace of the representative of CJSS “Sanar” is the city of Saratov, and place of the hearing in the Court of cassation instance – the city of Kazan. Thus, travel expenses will conform to the principles of reasonableness, based on the transportation costs on the route Saratov-Saratov-Kazan. *Travel by rail from Saratov to Kazan and back is 3217.80 rubles, which is confirmed by the reference of PJSC “Russian railways”;* daily allowance - 2100 RUR (for three days including time while on the road). Accommodation in hotels of the city of Kazan, according to data provided in the materials of the case is from 3500 to 6500 RUR. *The tax authority does not object to reasonable travel expenses in the amount of 11817.80 RUR, including: 3217.80 RUR - travel on railway transport from Saratov to Kazan and back, 2100 RUR -daily allowance, 6500 – payment of hotel per one day accommodation, taking into account the schedule of the train and the time of the court session on the case. Thus, the Court finds reasonable*

travel expenses to attend the hearing in the Court of cassation instance in the amount of 11817.80 RUR.

The total amount of court costs that should be exacted, which, in the opinion of the Court, is reasonable and justified, is 54827.80 RUR" [22].

Twelfth arbitration Court of appeals dismisses arguments of the appeal of the taxpayer and upheld the contested ruling of Court of first instance, claiming the following:

"The Court of first instance on the basis of the evidence provided by the claimant, proceeding from the nature of the dispute and the degree of complexity of the case, on the basis of the principle of reasonableness, collected from inspection in favor of the claimant 54 827,8 RUR.

The Appeals Board considers the ruling of the Court of the first instance lawful and justified, conclusions – confirmed by the evidences gathered on the case...

The Appeals Chamber considers that the Court of the first instance rightly praised as overstatement the costs of 17 500 RUR, paid for participation of the Director of CJSS "Sanar" in one court session of cassation instance, and found it possible to compensate the applicant's costs in the amount of 10 500 RUR.

The reference in the appeals on the price of the services provided by CJSS "Sanar" in tax disputes, as the evidence confirming the amount of the claimed costs, is invalid. *LLC "Signal" has failed to represent documents confirming compliance of prices of CJSS "Sanar" to prices of similar services provided by other law firms, i.e. the reasonableness of costs in the amount of 17500 RUR is not confirmed.*

The Court of first instance drew a right conclusion that *court costs on examination decisions of the tax authority in the amount of 15200 RUR shall not be subject to exaction as they are not relevant to the Court under article 106 of the Arbitration and Procedural Code of the Russian Federation, as they are pre-trial cost.*

The Court's conclusion corresponds with the position of the Higher Arbitration Court of the Russian Federation, as set out in the resolution of 09.12.2008 No. 9131/08.

In the claimed court costs LLC EPA "Signal" included the cost of compiling a petition in cost of 200 RUR, not basing it, which petition has the specified value. The Court of the first instance made sure conclusion that the petition claimed before the Court had been included in the cost of filing the application.

The applicant's arguments are absent on this issue of the appeals.

The Court of Appeals agreed with the conclusion of the Court of the first instance that costs in the amount of 1400 RUR for examination of documents annexed to the appeals, namely orders on appointment of Chief of the Inspectorate and

the provisions on the tax authority are not subject of exaction. These documents do not need legal assessment by the applicant, since it does not relate to the merits of the tax dispute. In respect of the finding of the Court of first instance arguments on the appeals of LLC EPA "Signal" are absent.

Justified, in the opinion of the Appellate Chamber, reduction by the court of the amount of 4 000 RUR to the amount of 2 000 RUR that is the subject to exaction the cost of preparing documents for the Court of Cassation instance in connection with the fact that most documents was prepared for proceedings before the Court of the first and appeal instance. LLC "Signal" hasn't provided any arguments against reducing the amount specified by the court.

LLC EPA "Signal" is disputing the reduction of travel expenses to 11 817,8 RUR.

Director of the CJSS "Sanar" to participate in the court session of appeals instance leaved from Omsk, where he had been on vacation.

In the appeals stated that, since the Labor Code of the Russian Federation does not ban a worker to leave for a business travel from the place of residence, including being not in a place of his work, the travel costs not from place of his permanent work are to be included in travelling expenses and should be compensated at the time of exaction of judicial costs.

Court of appeals instance considers the given conclusion to be unreasonable. On the basis of an express statement of the law, namely article 166 of the Labor Code of the Russian Federation, under the official business trip is referred an employee's travel on instructions of the employer for a certain period of time for the execution of a service order out the place of permanent employment.

In accordance with paragraph 7 of the Instruction of Ministry of Finance of the USSR and ACCTU (All-Union Central Council of Trade Unions, VCzSPS in Russian) No 62 "On Official business travel within the USSR" of April 07, 1988, the day of departure on mission is considered the day of the departure of the train, plane, bus or other vehicle from a place of constant work of employee, and day of arrival – is arrival of the vehicle to the place of permanent employment.

Including that the Contract on legal assistance concluded with legal entity and does not have the conditions for compulsory performance by the Director, the Court of the first instance correctly considered the inclusion in travel expenses the payment of travel on the route Omsk – Moscow – Kazan to be unfounded. The Court stated that because the place of work of Director of CJSS "Sanar" is the city of Saratov, and the point of destination of the business travel is the city of Kazan, so travel expenses shall be calculated on the basis of the route Saratov – Kazan – Saratov.

Regarding arguments of LLC EPA "Signal" that the Court of the first instance in calculating the amount of travel expenses accounted the cost of travel by rail and the cost of hotel services which are not related to the case, the court of appeals instance considers it necessary to specify that judicial costs are to be collected within reasonable limits in order to ensure a balance of interests of parties involved in the case.

The Court of first instance in the calculation of the cost of travel to and from the place of mission reasonably based on the price of tickets for rail transportation, confirmed by the reference of PJSC "Russian railways" (vol. 3, sheets 116-117) and which amounted 3217,8 RUR. The Court of the first instance correctly determined daily allowances - 2100 RUR, three days, taking into account travel time. In determining the value of hotel services the Court took into account the cost of similar services in the city of Kazan, which ranged from 3,500 up to 6500 RUR.

On the basis of the above by the Court of first instance was made right conclusion on the amount of exacted travel expenses that amounted 11817,8 RUR that the tax authority did not contest.

The Appellate Chamber considers that the ruling of Arbitration Court of the Saratov region to collect court costs in total 54 827, 8 RUR is lawful and reasonable" [23].

From the decision of appeals instance is seen that the legal position of judges bases on a reduction the amount of costs for participation of the representative in the session of Arbitration Court of cassation instance, and exclusion of the costs of the examination (expertise) by the representative of appealable non-legislative acts of the tax authority.

As we see it, the judicial bodies had showed the liberty in using of discretionary powers in part of determining the reasonableness of court costs of the taxpayer having identified the costs of the representative according to the report of the services provided to the taxpayer with the taxpayer's judicial costs. The courts of the first two instances had gone beyond its powers by making restrictive output in part of right of the taxpayer and the person providing legal services to define their own specialist who can represent the interests of the taxpayer in the Court, pointing to the inadvisability of participation of the Director of CJSS "Sanar" in the Court session of cassation instance.

The courts have also allowed incorrect interpretation of the law with regard to the assignment to business travel of worker not staying at the time at place of work.



Going beyond the discretionary powers of arbitration courts in the first two instances led to repealing of court's judgments of the Court of cassation instance. The Federal Arbitration Court of the Volga district on July 23, 2010 issued a resolution on case No. A57-1490/2009 with the following motivation:

"In paragraph 3 of Information Letter of Higher Arbitration Court of the RF No 121 of December 05, 2007 "Survey of Court Practice on issues connected with distribution among parties court costs for payment of attorney services and another persons who act as a representative in arbitration courts" explained that *the person, requesting compensation for the services of a representative, proofs its size and the fact of the payment, the other party may prove its excessiveness*. In support of the stated requirements of Organization in the materials of the case were presented a contract dated 04.01.2009 No. 024-02/2009 made with CJSS "Sanar" on legal services, act of performed works dated 21.09.2009 No. 50; reports on completed work (rendered services); air tickets and a traveling certificate for a representative.

Payment of representative services under the above contract is proved by payment order from 25.09.2009 No. 6341.

Partially satisfying requirements of the Organization the Courts reasoned that the claimed court costs are partially disproportionate to the amount of work performed and partly outside the judicial costs.

Courts have considered the sum for participation of the Directors of CJSS "Sanar" in the session of Court of Cassation instance as overstated on the grounds that an amount of 17500 RUR is unreasonably overestimated and is unsupported by documents.

According to the legal positions of Constitutional Court of the Russian Federation, as set out in the ruling of 21.12.2004 No. 454-O, the realization of the right to reduce the costs by the Court is possible only *if it recognizes those costs excessive because of the particular circumstances of the case*.

According to the legal position of the Higher Arbitration Court of the Russian Federation, as set out in the decision of Presidium of 09.04.2009 No. 6284/07, *the Court does not have the right to reduce the amount of compensation arbitrarily, especially if the other party does not represent evidences of excess of costs exacted from it*.

*From the appealed court's judgments does not follow that the tax authority provided to the materials of the case the evidences of disproportionate amount of work performed which was stated by the Organization to recover the disputed amount of court costs.*

The Courts refused to compensate to the Organization judicial costs for services associated with the legal expertise of the contested non-normative act of the tax authority, arguing that these services are pre-trial costs.

However, the provision of this service is the subject of the Contract from 14.01.2009 No. 024-12/2009, and purpose of the Contract is to provide of a legal expertise of the non-legislative acts of the tax authority (sub-paragraphs 1.1, 1.2, paragraph 1 of the Contract).

The Courts didn't research the terms of the Contract on providing legal services and didn't give an appropriate legal valuation.

The Courts having reduced the amount of travel costs to 11817,80 RUR, considered that the disputed costs will conform to the principles of reasonableness, based on transportation costs on the route Saratov - Kazan - Saratov, as the place of work of the Director of CJSS "Sanar" is not the city of Omsk but Saratov.

As stated in paragraph 20 of the Information Letter of Presidium of Higher Arbitration Court of the RF No. 82 "On some issues of application of Arbitration Procedure Code of the RF", in determining the reasonable limits of costs of representative services may be taken into account, in particular: norms of expenditure on business travels vested by legal acts; the cost of budget conscious transport services; time that could be spent on providing materials by a qualified specialist; the current situation in the region on the cost of lawyers' services; evidences of statistical bodies on prices in the market of legal services; the duration and the complexity of the case.

The procedure of secondment and payment for stay on mission is defined by Instruction of Ministry of Finance of the USSR, The USSR State Committee for Labor and Social Affairs, ACCTU (All-Union Central Council of Trade Unions, VCzSPS in Russian) - instruction No 62 dated April 07, 1988 "On Official business travel within the USSR" (hereinafter referred to as instruction No. 62) developed and approved in accordance with paragraph 9 of resolution of the Council of Ministers of the USSR dated 18.03.1988 No. 351.

Instruction No. 62 operates on the territory of the Russian Federation in part that does not contradict the legislation in force.

On the basis of article 166 of the Labor Code of the Russian Federation, *under the official business travel is referred an employee's travel on instructions of the employer for a certain period of time for the execution of a service order out the place of permanent employment.*

By virtue of article 168 of the Labor Code of the Russian Federation when sending to an official business travel the employer must pay the employee travel

expenses, the cost of hiring premises, the extra cost of living away from home (daily-allowance), or other expenses incurred by an employee with the authorization or consent of the employer. The order and size of the reimbursement of costs incurred while official business travel are determined by the collective agreement or a local normative act.

The Courts do not take into account that any restrictions in payment of costs for travel, when sending an employee to official business travel from not the place of permanent employment, are not installed by articles 166 and 168 of the Labor Code of the Russian Federation.

The courts also do not take into account that in paragraph 7 instruction No. 62 are given clarifications concerning accounting of business days (days of departure and arrival) to reimburse the employee costs of living outside their place of permanent residence (daily-allowances) ...

The Judicial Chamber is of the view that *complained judicial acts cannot be considered legitimate and justified*.

Noting, that during the consideration of the dispute by the Court the actual circumstances of the case which are to be established was not fully investigated, the conclusions do not conform to the evidence gathered, complained court's judgments are subject of cancellation, the case is to be sent for a new consideration to the Court of the first instance.

As a new consideration of the case the Court, taking into account existing researches and evaluation of documents enclosed to materials of the case, on the basis of the principle of reasonableness and documentary confirmed, have to determine the amount of costs to collect from a party, by correct applying norms substantive right and not violating norms of remedial right to give a legitimate and justified court's judgment" [24].

Re-examining the statement of the taxpayer about exaction of court costs from the tax authority, Arbitration Court of the Saratov region issued a ruling on the case on October 25, 2010, increasing the amount of the satisfied requirements of the taxpayer on 35633 ruble. Court's judgment was motivated by the following:

"From the case materials is seen that in support of the stated requirements the Organization has provided to the materials of the case the following documents: agreement on legal services No. 024-12/2009 from 14.01.2009, report of completed work in the amount of 98761 RUR, payment order (copy) No. 6341 from 25.09.2009, on the payment 98761 RUR, Act No.50 from 21.09.2009, Order No. 2 of CJSS "Sanar" dated 22.01.2009 on approval of the regulations on the determination of prices for services of an Organization, regulation on determination of prices for services

of CJSS "Sanar", imprest account (copy) No. 19 from 17.08.2009, traveling certificate w/n for Kizilov V.V. to the city of Kazan, air tickets for Kizilov V.V. Copies of these documents are enclosed to materials of case.

According to the legal position of the Higher Arbitration Court of the Russian Federation, as set out in the decision of Presidium of 09.04.2009 No. 6284/07, *the Court does not have the right to reduce the amount of compensation arbitrarily*, especially if the other party does not represents evidences of excess of costs exacted from it.

Tax Inspectorate found the participation of the Directors of CJSS "Sanar" in the Court of Cassation instance as overrated, having motivated this conclusion that an amount of 17 500 is unreasonably overestimated and unsupported by documents.

As you can see from the case materials, this amount is stated by the Organization for participation in the hearing of the Arbitration Court of Cassation instance representative of the taxpayer Kizilov V.V. (Director of the CJSS "SANAR").

According to the tax authority the price of participation of this representative is overstated because it does not correspond to the expenditure of effort and time of the representative for this service. Inspectorate believes that the complexity of the case did not require the personal participation of the Director of the organization that provides legal protection for the taxpayer.

Having researched objections of the tax authority and evidences submitted to the case materials the Court could not agree with the stated position on the following grounds.

In accordance with "the regulation on the determination of prices for services of CJSS "SANAR" upon presentation of interests of clients in tax disputes and other matters related to the tax area" the price of participation of a Director in one court session amounts: in the first instance 5 250 RUR., in the second instance, 4 250 RUR, the third instance of 17,500 RUR.

From paragraph 1 of the report on completed work on the Contract No. 024-12/2009 from 14.01.2009 (hereinafter Report) indicated that the cost of the participation of the Director of CJSC «SANAR» in Court of cassation instance is 17 500 RUR.

In accordance with article 48 of the Constitution of the RF, everyone has the right to receive qualified legal assistance. In connection with the constitutional guarantee, *the Court at its discretion cannot deprive parties of the arbitration process, the right to apply for legal support.*

The applicant having applied for assistance, independently decide on the extent to which he should be provided with the legal support and to whom to turn for assistance.

In view of the rule of law, the Court finds that the taxpayer in accordance with the law is given the right to choose the representative of their interests and ways of their protection.

Within the meaning of article 1 of the Civil Code of the RF, the participants of civil legal circulation are free to establish legal relations. In accordance with paragraph 3 article 1 of the Civil Code of the RF products, services and financial resources move freely throughout the territory of the Russian Federation.

In accordance with paragraph 1 article 421 of the Civil Code of the RF citizens and legal entities are free to conclude a contract.

Under paragraph 4 of article 421 of the CC of the RF terms of a contract are defined at the discretion of the parties, unless the content of the conditions prescribed by law or other legal acts. Accordingly, the claimant was entitled to apply for legal support and make costs on his own.

The Court established that the Director of CJSS "SANAR" Kizilov V.V. participated in the Arbitration Court of third instance with the consent of the customer acquainted with the value of this service.

According to part 1 article 65 of the Arbitration and Procedural Code of the RF every person involved in the case, must prove the circumstances on which it relied to justify their claims and objections.

The cost of the services is fixed in the regulation on determining prices of services of CJSS "SANAR" upon presentation of interests of clients in tax disputes and other matters related to the tax sphere", the fact of the payment of service is confirmed by a payment order from 25.09.2009 No. 6341 (sheet 69 vol. 3).

From the case materials is seen that the amount of claimed travel expenses - 29451 RUR has been reduced to 11817,80 RUR, and it was considered that the disputed costs complying with the principles of reasonableness in the amount of 11817,80 RUR are based on transportation costs on the route: Saratov - Kazan - Saratov as place of work of the Director of CJSS "SANAR" was not the city of Omsk but Saratov.

Having examined the materials of the case, the Court came to the following conclusions.

The procedure of secondment and payment for stay on mission is defined by Instruction of Ministry of Finance of the USSR, The USSR State Committee for Labor and Social Affairs, ACCTU (All-Union Central Council of Trade Unions,

VCzSPS in Russian) - instruction No 62 dated April 07, 1988 "On Official business travel within the USSR" (hereinafter referred to as instruction No. 62) developed and approved in accordance with paragraph 9 of resolution of the Council of Ministers of the USSR dated 18.03.1988 No. 351.

Instruction No. 62 operates on the territory of the Russian Federation in part that does not contradict the legislation in force.

On the basis of article 166 of the Labor Code of the Russian Federation, under the official business travel is referred an employee's travel on instructions of the employer for a certain period of time for the execution of a service order out the place of permanent employment.

By virtue of article 168 of the Labor Code of the Russian Federation when sending to an official business travel the employer must pay the employee travel expenses, the cost of hiring premises, the extra cost of living away from home (daily-allowance), or other expenses incurred by an employee with the authorization or consent of the employer. The order and size of the reimbursement of costs incurred while official business travel are determined by the collective agreement or a local normative act.

Articles 166 and 168 of the Labor Code of the Russian Federation do not establish any restrictions in payment of costs for travel, when sending an employee to official business travel from not the place of permanent employment.

In paragraph 7 instruction No. 62 are given clarifications concerning accounting of business days (days of departure and arrival) to reimburse the employee costs of living outside their place of permanent residence (daily-allowances).

*The participation of a representative of a party in the proceeding is a procedural right of a person involved in the case; the method of transportation to the location of the Court is determined by the economic unit itself and based on the need to ensure the presence of a representative at the meeting.*

During the trial, the Court held that in the present case, the tax authority does not deny that the contested costs directly associated with the proceedings on the present case and are necessary to protect the interests of the Organization in court.

Amount of claimed travel expenses 29 451 RUR consists of: daily allowances at the rate of 1 400 RUR and payment of transportation 28051 RUR on the route Omsk-Moscow -Kazan and back, as well as travel by taxi to an airport and back.

Travel of the representative not from Saratov but from Omsk the claimant proves with that at the time of the session in the Court of Cassation instance, the Director of the CJSS "Sanar" Kizilov V.V. was in the city of Omsk on vacation. Because he is a Director of the CJSS "Sanar" and his participation was necessary in

the Court of cassation instance, Kizilov V.V. was forced to fly on an airplane on the route to participate in the process in the Court of cassation instance.

The Court considers that the applicant's argument is justified. In doing so, the Court considers that State Authority has tried to control the rationality of costs of the company what contradict to the freedom of entrepreneurial activity and to the principle of placing the business risk to the business entities themselves (article 2 of the CC of the RF).

The Constitutional Court of the Russian Federation explained in the ruling of 21.12.2004 No. 454-O, that the realization of the right to reduce the costs by the Court is possible only if it recognizes those costs as excessive because of the particular circumstances of the case.

Having examined the documentation submitted to the materials of the case, the Court concluded that the tax authority having complained against satisfying of applicant's claims did not lodged evidences of excess costs incurred by the Organization, that is why the claimant's requirement on this episode in the amount of 17634 RUR (29451 RUR- 11817,80 RUR.) shall be satisfied.

As can be seen from materials of the case, the Court of first and appellate instance refused compensation of legal costs to Organization for services connected with the legal expertise of the disputed decision of the tax authority from 30.12.2008 No. 16/08, arguing that these services are pre-trial costs.

Having examined the materials of the case, the Court found that the provision of such services as examination of the non-normative act of the tax authority is the subject matter of the contract from 14.01.2009 No. 024-12/2009 (paragraphs 1.1, 1.2, paragraph 1 of the Contract).

Amount of compensation stated by the Organization for expertise of the decision of the tax body is 15 200 RUR. The calculation of this amount includes the number of sheets of the contested non-normative act, the cost of examination for a single worksheet with taking into account the elapsed time in accordance with the provisions of the Organization.

Having examined the materials of the case, the Court found that in this case the decision of the tax authority from 30.12.2008 № 16/08 was disputed by the Society not in full.

Under these circumstances, the Court found that the object of examination were 24 sheets of the contested non-normative act of Inspection, therefore the Organization should be compensated 10 500 RUR instead of 15 200 RUR.

Thus, the total amount of exacted court costs, which, in the opinion of the Court, is reasonable and justified, is 35 633 RUR, consisting of travel expenses in

the amount of 17 633 RUR, 10 500 RUR – legal expertise, 7500 RUR – participation of the Director.

The Court having examined and evaluated in accordance with the requirements of article 71 of the Arbitration and Procedural Code of the RF represented by Society evidences of actual costs incurred (payment order No. 6341 of 25.09.2009), being guided by the principle of reasonableness, and taking into account the nature of the dispute, the degree of complexity of the case, considers that the judicial costs for the services provided by the representative in the amount of 35 633 RUR are reasonable and sufficiently documented”.

Twelfth Arbitration Court of appeals instance upheld the ruling of the Court of the first instance, having considered the appeals of the tax authority [25].

By decision of the cassation instance of the arbitration court from March 29, 2011, court’s judgments of the first two instances were upheld. Thus, taking into account all of judicial acts on exaction of court costs, the amount of satisfied taxpayer’s judicial costs amounted to 90 460 RUR 80 kopeks, that amounted 91.6% of requirements that had been claimed by the taxpayer.

As a result of the resolving of the question of distribution of court costs after tax dispute in favor of the taxpayer in case No. A57-1490/09 arbitration courts positioned in the city of Saratov, finally concluded that the examination of non-legislative acts and other documents of the tax body, which are subject to appeal to the Arbitration Court, is an integral part of the legal services of a representative for the protection of the interests of the taxpayer in tax dispute, and accordingly the payment of examination is not unreasonable and excessive, in the context of determining judicial cost.

Legal position taken by the cassation instance of Arbitration Court in case No. A57-1490/09 prevented the courts of the first two instances to go beyond the discretion powers in determining the way of arrival of the representative to the court session, and apply the limit in part of the place of departure of the representative to the court session.

In our view, the above examples involve filing of judicial costs to collect from a party, although not in material dispute (from a formal point of view – in the Court was being considered a statement on acceptance of the decision of the tax authority invalid), but still have the material binding. Therefore the application of the principle of proportionality in the allocation of court costs is, in our opinion, justified.

The next case of the arbitration practice of CJSS “Sanar” is connected with the disputing by taxpayer of tax authority’s requirements on representing documents, not related to the activities of the being implemented tax control. In case



No. **A57-19253/08** Arbitration court partially satisfied the claims made by the taxpayer and then the taxpayer instituted claim to collect from the tax authority the amount of incurred judicial costs. The ruling of the Arbitration Court of the Saratov region from June 17, 2010, satisfied the requirements of the taxpayer in the amount of 22 427 RUR were met with the following motivation:

“The complainant alleges that, in connection with the consideration of the case by the Arbitration Court of the first instance by the Arbitration Court of appeals instance and the Court of cassation instance, he incurred court costs associated with payment of services of representatives Rubcov D. V., Gussyatnikova K. A., Markar'yan A. V., acting in the interests of the complainant on the basis of the Contract No. 024-20-07/2008 from 20.07.2008.

Total sum of court costs amounted to 43 878.09 RUR, which the applicant confirms by the contract No. 024-20-07/2008 on the provision of legal services from 20.07.2008, report on work performed under the contract No. 024-20-07/2008 from 20.07.2008, Act No. 000012 from 02.04.2010, imprest account No. 14A from 19.06.2009, travel documents, travel certificate no. 14A from 15.06.2009, invoice from 18.06.2009 and cash cheque from 08.06.2009, payment order No. 561 of 02.04.2010.

According to the report on the work performed under contract No. 024-20-07/2008 from 20.07.2008, the claimant's court costs consist of:

In the first instance:

- payment for the preparation of a statement in the Arbitration Court of the Saratov region in the amount of 3150 RUR;

- payment of representatives' services for participation in the Court of the first instance in the amount of 14 090 RUR;

  - payment of response examination in the amount of 1578 RUR;

  - payment of preparing of objections in the amount of 789 RUR;

  - payment of examination of explanations in the amount of 1578 RUR;

  - payment of completing of documents in the amount of 1507 RUR;

In the second instance:

- payment of representative's services for participation in the Court of appeals in the amount of 1740 RUR;

- payment of the examination of the decision of the Arbitration Court of the Saratov region in the amount 1841 RUR;

  - payment for preparation of the appeals in the amount of 1100 RUR;

  - payment of responses' examination in the amount of 822 RUR.

In the third instance:

-payment of representative's services for participation in the Court of cassation instance in the amount of 3500 RUR;

-payment of examination of the resolution of the twelfth Arbitration Court of appeals in the amount of 600 RUR;

-payment for preparation of the Cassational appeal in the amount of 1000 RUR;

-payment of completing of documents in the amount of 800 RUR;

-payment of petition examination in the amount of 822 RUR;

-payment of business travel expenses related to the participation of the representative in the Court of appeals instance in the amount of 9003.09 RUR.

Court costs in the amount of 43 878.09 RUR the claimant seeks to collect from the tax authority.

Having examined the materials of the case, after having heard the representatives of the parties, having studied existing legislation, Arbitration court came to the following conclusions.

In accordance with article 101 of the Arbitration and Procedural Code of the RF legal costs consist of the state duty and judicial costs, related to the consideration of the case by the Arbitration Court.

According to article 106 of the Code judicial costs associated with the proceedings of the arbitration court are expenses for payment of the services of lawyers or other persons providing legal assistance and other expenses incurred by those who involved in a case in connection with the consideration of the case in court.

Paragraph 1 of article 110 of the Code provides that court costs incurred by those persons who are involved in a case in favor of which was made a court's judgment, are to be collected from a party by the Arbitration court.

In the present case, the parties of the dispute, which are subject of exaction of legal costs, is an Interregional Inspection of the Federal Tax Service in the Saratov region, since a non-normative legal act of the Interregional Inspection of the Federal Tax Service in the Saratov region has been appealed by the applicant and found by the Arbitration Court to be invalid in part.

In addition, the order of the Interregional Inspection of the Federal Tax Service on the largest taxpayers of the Saratov region No. 216 of 15.07.2008, on the basis of which the contested requirement No. 7 was issued by the Interregional Inspection of the Federal Tax Service in the Saratov region, is not a non-normative legal act, since it does not raise any duties for LLC "Signal-Invest".

In accordance with article 112 of the Arbitration and Procedural Code of the Russian Federation, the questions of distribution of costs are settled by arbitration court considering the case in the court's judgment, which ends the proceedings on the merits, or in the definition.

From the Information Letter of Presidium of Higher Arbitration Court of the RF No. 82 of 13.08.2004, the resolution of Presidium of Higher Arbitration Court of the RF of 18.11.2003 No. 10734/03 follows that the issue of allocation of court costs may be resolved by the Arbitration Court in the same case, in which a person involved in a case, has incurred court costs and after it was considered in the courts of the first, appeals and cassation instances.

Under part 5 of article 110 of the Arbitration and Procedural Code of the Russian Federation (APC of the RF) court costs incurred by those involved in a case in connection with the consideration of the appeals, cassation appeal distributed according to the rules established by article 110 of the APC of the RF.

Arbitration Court from the materials of the case found that:

-According to the results of consideration of an appeals of LLC "Signal-Invest" on the decision from 23.12.2008, Twelfth Arbitration court of appeals rendered a resolution from 19.03.2009, which left unchanged the decision of the arbitration court from 23.12.2008, and the appeals was left without satisfaction;

-as a result of consideration of cassation appeal of LLC "Signal-Invest" on the decision from 23.12.2008, and resolution from 19.03.2009 Federal Arbitration Court of the Volga district took a resolution from 25.06.2009, which left unchanged the decision of the arbitration court from 23.12.2008 the and resolution of the twelfth Arbitration court of appeals, the appeals was left without satisfaction.

In view of the above, the Arbitration court concluded that the claimant's requirements to collect legal costs in the amount of 20 606.09 RUR, relating to the consideration of the appeals and cassation appeal and the participation of representatives in the courts of appeals and cassation instances should not be satisfied.

Taking into account the position of the Presidium of the Higher Arbitration Court of the Russian Federation, as set out in paragraph 20 of the Information Letter of Presidium of Higher Arbitration Court of the RF No. 82 of 13.08.2004 "On some issues of application of Arbitration and Procedural Code of the RF", the expenses incurred for payment of the representative of a person in favor of whom was taken a court's judgment, should be exacted by the Arbitration Court from the other person involved in the case, within reasonable limits.

In determining the reasonable limits of costs of representative services may be taken into account, in particular: norms of expenditure on business travels

vested by legal acts; the cost of budget conscious transport services; time that could be spent on providing materials by a qualified specialist; the current situation in the region on the cost of lawyers' services; evidences of statistical bodies on prices in the market of legal services; the duration and the complexity of the case.

Evidence of the reasonableness of the cost of the representative services must be presented by a party which requires compensating of these costs (article 65 of the Code).

In support of the incurred legal costs relating to the consideration of the case by the Arbitration Court of the Saratov region, LLC "Signal-Invest" presented in court the following documents:

-contract No. 024-20-07/2008 from 20.07.2008, concluded between CJSS "SANAR" and LLC "Signal-invest" on rendering of services of legal support on recognition as an invalid the claims of the Interregional Inspection of the Federal Tax Service No. 7 in the Saratov region No. 2569 from 18.07.2008;

-report on the completed works (services) on the contract No. 024-20/07/2008 from 20.07.2008, on case No. 19253-A57/08;

- act No. 000012 from 02.04.2010;

- payment order No. 561 from 02.04.2010;

- order No. 28 from 26.12.2008, in respect of Gusyatnikov K.A.;

- order No. 28 from 26.12.2008, in respect of Rubtsov D.V.;

From the decision of the Arbitration Court of the Saratov region of 23.12.2008 on the present case by the Arbitration Court found that the interests of LLC "Signal-Invest" was represented by of Gusyatnikov K.A., acting by a letter of attorney from 02.12.2008, Rubtsov D.V., acting by a letter of attorney from 12.08.2008.

Under mentioned circumstances the Court has no reason to doubt the reality of the incurred claimant's legal costs. Data on that the representation of LLC "Signal-Invest" in the Court of the first instance by Gusyatnikov K.A. and Rubtsov D.V. was carried out free of charge, absent in the case materials.

The duty of the Court is exaction of incurred expenses on payment of the representative of the person in whose favor was taken a judicial act, from the other person involved in the case, within reasonable limits; this duty is one of the statutory legal means against unjustified overstatement of payment of a representative and thus conducts to the realization of requirements of article 17 (part 3) of the Constitution of the Russian Federation. Therefore, according to the legal position of the Constitutional Court of the Russian Federation, expressed in the ruling from 21.12.2004 No. 454-O, part 2 article 110 of the Arbitration and Procedural Code of

the Russian Federation, in fact, the Court is obliged to strike a balance between the rights of persons involved in the case.

Determining of the size of compensated costs for representation in Court has been granted to the Arbitration court. The legislator has not imposed any restrictions on the amount of compensation for representation in Court of the interests of a person whose right has been violated. The Court, in determining the size of reasonable limits of costs for a representative, is based on an inland view and on the evidences submitted by the parties

Part 2 article 110 of the APC of the RF provides the Arbitration court the right to reduce the exacted amount of costs for payment of representative services.

Implementation of this right by Court is only possible if it recognizes those costs as excessive in force of the particular circumstances of the case.

Making a reasoned decision to change the amounts of exacted sum for compensation of particular costs, the Court cannot reduce them arbitrarily.

In determining the reasonableness of the claimed size of court costs, the Court shall take into account the degree of complexity of the case, the quantity of evidences, the time spent by the representative to participate in the case as well as information about the price of such services on the market.

The need to define the limits of reasonableness of judicial costs for compensation of expenses of representative services is mentioned in article 110 of the APC of the RF and is an evaluation category, therefore, in each case the Court must examine the circumstances pertaining to the participation of the representative in the dispute.

Court costs are to be exacted only when they are proven by the claimant, including their reasonableness.

As noted in paragraph 6 of the Information Letter of Higher Arbitration Court of the RF No 121 of December 05, 2007 "Survey of Court Practice on issues connected with distribution among parties court costs for payment of attorney services and another persons who act as a representative in arbitration courts" when deciding on the allocation of costs should be taken into account the legal position expressed in the Information Letter of Higher Arbitration Court of the RF No. 48 from 29.09.1999, on the basis of which the compensation of the Executor shall be determined pursuant to the procedure provided in article 779 of the Civil Code of the RF, taking into account the fact of his actions (activity).

Estimation of the cost of participation of the representative in a case should be made taking into account the complexity of a case.

In determining the reasonable limits of costs for representative services should be taken into account the situation prevailing in the region at the cost of similar services including the qualification of persons performing services, as well as the time elapsed by the representative to carry out his obligations.

The complainant included the examination of response of the Interregional Inspection of Federal Tax Service of the RF on the largest taxpayers of the Saratov region at the amount of 1052 RUR in court costs related to the consideration of this case by the Court of the first instance.

From the materials of the case Arbitration Court found that the above response by the tax authority consists of three sheets, but not four as stated in the report of work performed under contract No. 024-20-07/2008 from 20.07.2008.

Thus, taking into account the provision on determining prices for services of CJSS "SANAR" upon presentation of interests of clients in tax disputes and other matters related to the tax area, approved by the order of the CJSS "SANAR" dated 22.01.2009, the amount of court costs associated with payment of the examination of the review of the Interregional Inspection of Federal Tax Service of the RF on the largest taxpayers of the Saratov region, shall be reduced to 787 RUR.

In the light of the foregoing, the Arbitration court concluded that *court costs related to the consideration of the case by the Arbitration Court of the first instance and participation of a representative in the court proceedings in the Court of the first instance at the amount of 22427 RUR, in full conform with the criteria of reasonableness, taking into account the complexity of the case, the evidences provided, the time spent by the representative to participate in the case* (paragraph 20 of the Information Letter of Presidium of Higher Arbitration Court of the RF No. 82 from 13.08.2004).

*The tax body's argument that court costs in the present case must be collected in proportion to the amount of the compensated claims is not accepted by the arbitration court* on the basis of the following:

The complainant in the present case disputed the non-normative legal act of the tax authority, namely the requirement No. 2569 on providing documents (information) from 18.07.2008, taken by the Interregional Inspection of Federal Tax Service of the RF No. 7 in the Saratov region.

Thus, the claimant's requirements are of non-property nature, because of that any cases in this category cannot be applied by the provisions of paragraph 1 article 110 of the Arbitration and Procedural Code of the Russian Federation, regulating the distribution of court costs while partial satisfaction of the stated requirements.

In the case of recognition justified, in whole or in part, application on disputing of non-legislative legal acts, decisions and actions (inaction) of State bodies, local self-government bodies, other bodies, officials of the court costs to be compensated accordingly by that body in full.

This corresponds to the legal position of the resolution of the Higher Arbitration Court of the Russian Federation from 13.11.2008 № 7959/08.

The tax authority's argument, about that payment for completing of documents does not apply to judicial costs, since it does not apply to services on legal support that require legal qualifications, is groundless.

Under the terms of the Contract No. 024-20-07/2008 from 20.07.2008, CJSS "SANAR" in the interest of LLC "Signal-Invest" develops and submits a statement on the invalidation of requirements of the Interregional Inspection of Federal Tax Service of the RF No. 7 in the Saratov region from 18.07.2008, provides personnel to perform physical and legal actions for the protection of the interests of the Organization, develops and submits petitions, statements, explanations and exercises other rights and responsibilities on behalf of the company in court sessions, performs other actions contributing to the acceptance of requirements of the Interregional Inspection of Federal Tax Service of the RF No. 7 in the Saratov region from 18.07.2008 to be invalid. The cost of services on the contract shall be determined in accordance with the report of completed works.

In the report of the completed works (services) on the contract No. 024-20-07/2008 from 20.07.2008, was included completing of documents consisting of 11 sheets, the value of which amounted to 1507 RUR.

Thus, from the terms of the Contract No. 024-20-07/2008 from 20.07.2008, and report on the completed work can be seen that the parties of the contract selected technical work with documents to a separate stage. The law does not prohibit an opportunity to provide in a contract on legal support any services related to the court proceeding.

In the present case, the applicant under the contract No. 024-20-07/2008 from 20.07.2008, assumed the obligation to pay for services provided by CJSS "SANAR".

In accordance with the provisions of article 106 of the APC of the RF, court costs are any costs if they are related to the consideration of the dispute in court. Specialization and qualifications of the executor is not a criterion for attributing expenses to court costs.

Performance of technical work on completing documents by a qualified specialist does not affect the possibility of attribution the disputed amount to judicial costs.

In addition, *the tax authority did not prove that performance of works on completing of documents by jurists of CJSS "SANAR" had led to an unwarranted overstatement of the applicant's costs.*

On the basis of the above stated, the Arbitration court concluded that the claimant's requirement to exact court costs from the Interregional Inspection of Federal Tax Service of the RF No. 7 in the Saratov region is a subject of satisfaction in part of exaction of court costs related to the considering of the case by the Arbitration Court of the first instance and to participation of representatives in the court proceedings in the Court of the first instance, in the amount of 22427 RUR.

Ruling of the Arbitration Court of the Saratov region on the case No. A57-19253/08 of June 17, 2010, had not been disputed by the parties. Percentage of satisfaction of claimed to exaction judicial costs amounted 51.1%. Refusal of the Arbitration court in compensation by the tax authority of costs for participation in court proceedings of the second and third instances of the Arbitration court could be regarded as reasonable from the point of view that namely the taxpayer initiated revising of court's judgments on merit of the dispute and took commercial risks associated with the possibility of refusing satisfaction of claimed requirements in a tax dispute. The cost of the taxpayer to appeal court's decision in further instances have not changed the decision of the Arbitration Court of the first instance, therefore, the cost of proceedings on the case in the second and third instance are classified as excessive. It should be noted that if the appealing of court's judgments was carried out by the tax authority, and the taxpayer would only protected his interests, the cost of the representative participating in the proceedings of appeals and cassation instances of the Arbitration court, in our view, would be subject of exaction from the tax authority.

In two identical tax disputes with the same participants of arbitration proceedings (case No. A57-20220/07 and No. A57-20221/07) CJSS "Sanar" has tested tactic of statements to exaction of judicial costs at the same time with the solving of a dispute on the merits (only in the first instance).

It seems to us that it is better to fill the statement on the distribution of court costs only after the resolving of the dispute on the merits otherwise the timing of the consideration of the tax dispute and issue of a court's judgment would be too long. The second argument in favor of the application for compensation of court costs after the consideration of the case on the merits, is a fact that the representative, providing services to the taxpayer, will be able to drill down into all types of performed works related to the presentation and protection of interests of the client, to prepare the documents properly, and the client will be able to settle payments



with the representative. The last argument in favor of application for compensation of judicial costs by the party that has lost the dispute is the absurdity of a situation where a dispute in a particular instance is resolved in favor of the taxpayer but the amount of the court cost awarded to exaction from procedural party is clearly understated. In this case, disputing the amount of legal costs may affect the revision of the court's judgment on the merits.

Obviously, basing on the mentioned positions, that the taxpayer has not disputed the judicial decisions of the Arbitration Court of the Saratov region in cases No. A57-20220/07 and No. A57-20221/07 in part of the amounts of court costs. By separate applications in the mentioned cases the taxpayer claimed for exaction from a party the amount of legal costs incurred in subsequent instances of the Arbitration court. So in case No. A57-20220/07 judicial costs determined by the services of representative in the second instance of the Arbitration court were claimed for exaction. Issuing a court's judgment on July 17, 2009 Arbitration Court of the Saratov region motivated its position as follows:

"Since, in accordance with article 59 of the APC of the RF representatives of an organization in Arbitration Court may be as lawyers and other person providing legal support, LLC "Teploehnergopribor" on August 21, 2007, entered into a contract on legal services No. 024-07-07/TE'P with CJSS "Sanar".

The amount of remuneration for legal support in proceedings of a case in two instances of the Court amounted to 28 8744 RUR.

According to the report on the work performed under contract No. 024-07/07-TE'P, including clarifications thereto, the claimant in proceedings before the Court of the second instance has incurred court costs in the amount of 74 010 RUR.

Court costs are monetary costs associated with the considering of a case in Arbitration court, which are made by persons involved in the case, and consist of, in addition to the state duty, judicial costs, according to article 101 of the APC of the RF.

A list of judicial costs is defined by article 106 of the APC of the RF.

In accordance with article 106 of the APC of the RF judicial costs associated with the proceedings of the Arbitration court include monetary sums payable to experts, witnesses, interpreters, costs of examination of evidence at a place, lawyers and any other persons providing legal support (representatives), and other expenses incurred by persons involved in consideration of the case in the Arbitration court.

On the basis of article 110 of the APC of the RF court costs incurred by persons involved in a case and for which was adopted a judicial act, are collected by the Arbitration court from the other party.

Court costs incurred by those who involved in a case in connection with the consideration of the appeals and cassation appeal are distributed under the rules established by the APC of the RF.

Article 112 of the APC of the RF points out that the issues of the distribution of court costs are settled by Arbitration court, which considers the case in court's judgment which finishes the proceedings on the merits, or in the ruling.

As a proof of incurred expenses LLC "Teploehnergopribor" provided the following documents evidencing the costs: the Contract of 21.08.2007, payment order No. 448 of 23.11.2007 amounts 144372 RUR, payment order No. 106 of 14.09.2007 amounts 144372 RUR, act on works performed of 14.04.2009, report of work performed under the contract No. 024-07/07-TE'P, including refinements to it.

The Contract contains a footnote on the subject of claim; also the parties of arbitration process have been defined.

Under specified circumstances *the Court has no reason to doubt the reality of court costs incurred by the Organization in this case.*

Taking into account the position of the Presidium of the Higher Arbitration Court of the Russian Federation, as set out in paragraph 20 of the Information Letter of Presidium of Higher Arbitration Court of the RF No. 82 of 13.08.2004 "On some issues of application of the Arbitration and Procedural Code of the RF", the expenses incurred for payment of the representative of a person in favor of whom was taken a court's judgment, should be exacted by the Arbitration Court from the other person involved in the case, within reasonable limits.

Evidence of the reasonableness of the cost of the representative services must be presented by a party which requires compensating of these costs (article 65 of the Code).

In determining the reasonableness of the claimed size of court costs, the Court shall take into account the degree of complexity of the case, the quantity of evidences, the time spent by the representative to participate in the case as well as information about the price of such services on the market as well as that the participation in court session involves not only the presence of a representative at the Court proceedings, but also implementation of all necessary procedural rights and duties granted to the plaintiff by the legislation in force.

To support the reasonableness of court costs incurred by the claimant he presented a Regulation on determining the prices for the services of CJSS "Sanar" upon presentation of interests of clients in tax disputes and Report on the performed work on Contract No. 024-07/07-TEP'S, including explanations thereto, according

to which the cost of the expenditure incurred consists of the following services rendered and executed works: participation of a General Legal Adviser – 1 meeting – 5250 RUR, participation of the Head – 4 meetings – 8160 RUR, participation of a leading specialist – 3 meetings – 3150 RUR, examination of the appeals – 1190 RUR, preparation of petition – 1700 RUR, examination and completing of documents – 50 770 RUR, preparation of objections to petition – 170 RUR, preparation of objections to petition – 340 RUR, examination of statement – 170 RUR, examination of notification – 340 RUR, mapping of transactions – 510 RUR, examination of rulings – 510 RUR, taxpayer's protection formula in court– 1750 RUR, and total– 74010 RUR.

*Representative of the Interregional Inspection of the Federal Tax Service of the RF № 7 in the Saratov region finds that the claimant has not established the reasonableness of costs incurred*, because of that the claimed to exaction amount of legal costs should be reduced.

The Inspectorate considers unfounded the inclusion in legal expenses of examination of the payment order, help, notification of the twelfth Court of arbitration, definitions, because the examination was not issued proper documentation, had been included in the cost of drafting motions for the admission of documents for the case and the taxpayer protection formula in a tax dispute.

*The Inspectorate considers unjustified the inclusion in court costs of examination of the payment order, help, notification of the State Ministry of Internal Affairs, rulings of the twelfth Court of arbitration because the examination was not implemented with proper documentation*, illegally was included in the costs the drafting of petition on the admission of documents for the case and the taxpayer's protection formula in a tax dispute.

The duty of the Court to collect expenses for representative's services incurred by the person in whose favor was taken a judicial act, from other person involved in the case, within reasonable limits, is one of the statutory legal methods against unjustified overstatement of representative payment and thus towards the realization of the requirement of article 17 (part 3) of the Constitution of the Russian Federation.

Therefore, according to the legal positions of Constitutional Court of the Russian Federation, expressed in the ruling of 21.12.2004 No. 454-O part 2 article 110 of the Arbitration and Procedural Code of the Russian Federation, in fact, the Court is obliged to strike a balance between the rights of persons involved in a case. Determination of the amount of compensation for representation before the Court was provided to the Arbitration Court. The legislator did not impose any restrictions on

compensation of property expenses for representation interests of a person whose right had been violated.

The Court, in determining the reasonable size of representative expenses, uses Inland view and is based on an assessment of the evidences submitted by the parties. Part 2 of article 110 of APC of the RF provides the Arbitration court the right to reduce the amount of exaction in reimbursement of costs on the payment of representative services. Implementation of this right by the court is possible only if it recognizes those costs as excessive because of the particular circumstances of the case.

From the case materials it is seen that Interregional Inspection of Federal Tax Service of Russia No. 7 in the Saratov region has lodged an appeal. The appeal was adopted by the Twelfth Court of appeals on 10.04.2008 and appointed to hearing for 30.04.2008.

On 30.04.2008, at the hearing, deferred for 14.05.2008, participated LLC "Teploe'nergopribor" - Rubtsov D.V. (Chief of the Economic Security Service, order No. 15-S from 30.11.2004).

On 14.05.2008, at the hearing, deferred for 04.06.2008, participated LLC "Teploe'nergopribor" - Rubtsov D.V. (Chief of the Economic Security Service, order No. 15-S from 30.11.2004), Gusjatnikov K. A. (Chief expert on taxation, order No. 06 o/k from 12.03.2008), Kizilov V.V. (General Legal Adviser, order No. 1-S from 01.10.2003).

On 04.06.2008, at the hearing participated LLC "Teploe'nergopribor" - Rubtsov D.V. (Chief of the Economic Security Service, order No. 15-S from 30.11.2004), Gusjatnikov K. A. (Chief expert on taxation, order No. 06 o/k from 12.03.2008).

Thus, the updated Report wrongly stated that the head of the ESS of CJSS "Sanar" Rubtsov D.V. participated in 4 of trials and Chief Expert on Taxation Gusjatnikov K.A. - in 3 trials. Consequently, the court costs are unduly inflated at 3090 RUR.

However, basing on the workload and time spent by the representative for providing LLC «Teploe'nergopribor» legal advice, the preparation of written response to appeal applied petitions, the collection and presentation of evidences on the case, the Court recognizes to be prudent and justified reimbursement of costs for services of the representative in the amount of 20 000RUR. The remaining amount seems to the Court as an excessive and unnecessarily high.

Submitted by the inspection evidences on the cost of similar services in the region are estimated by the Court as sufficient.

In those circumstances, the Court considers it reasonable to exact from the Interregional Inspection of Federal Tax Service of Russia No. 7 in the Saratov region legal costs in the amount of 20,000 RUR connected with the participation of the representative in the Court of appeals instance in favor of LLC 'Teploe'nergopribor, city of Engels.»[27].

Twelfth Arbitration court of appeals having applied resolution on the case of August 17, 2009, upheld the ruling of the Arbitration court which set the amount of exacted judicial costs in the amount of 20000 RUR [27]. Federal Arbitration Court of the Volga district on November 12, 2009, upheld court's decisions of the first two instances [27].

In case No. A57- 20221/07 in contrast to case No. A57-20220/07 there has been a continuation of consideration of the tax dispute in the cassation instance, that's why Arbitration Court increased the size of satisfied requirements of the taxpayer in part of exaction of judicial costs from the other party by the amount of traveling expenses of the representative – 19 712 RUR 80 kopecks [28]. The total amount of compensated judicial costs in connection with the taxpayer's claims in case No. A57-20220/07 amounted to 35 000 RUR, in case No. 20221-A57/07 – 54 712 RUR 80 kopecks.

Low-interest of satisfaction of the stated requirements under judicial costs in cases No. A57-20220/07 and No. 20221-A57/07 seems related, first, to the subjective attitude of judges towards the taxpayer (LLC «Teploe'nergopribor» is a trading entity and in the tax dispute it was given a shortcut of an unfair taxpayer), and secondly, the lack of arbitration practice in Volga judicial district in part of exaction from the tax authority judicial costs which justified by work of representative of the taxpayer, who provides protection of interests in court.

As we see it in cases No. A57-20220/07 and No. 20221-A57/07 Arbitration court has minimized its argumentation on made court's decisions having determined in advance the sum of judicial costs allowable to satisfy under the taxpayer's application.

As practice shows, the most successful result for a taxpayer took place only in respect of a taxpayer who was a producer of dual-use products.

In case No. **A57-10622/2009** were protected the interests of an enterprise – manufacturer of equipment for the gas industry. Recognized by the court as wrongful the claims of the tax authority were made against an Organization with charge of its unfair tax legal relations. After permission of the tax dispute in its favor, the taxpayer claimed to exaction of judicial costs from the party, having claimed an amount of 491 380 RUR.

August 26, 2010 Arbitration Court of the Saratov region issued a ruling to recover judicial costs from the tax authority in favor of the taxpayer in the amount of 440 000 RUR, motivating its decision as follows:

"April 12, 2011 "ELTON" had appealed to Arbitration court with an application to collect from the Interregional Inspection of Federal Tax Service of the RF No. 7 in the Saratov region court costs in the amount of 491 380 RUR.

According to article 112 of the Arbitration and Procedural Code of the RF issues of judicial costs' distribution are settled by Arbitration court which considers the case, in the court's decision, which ends the proceedings on the merits, or in the ruling. Mentioned ruling may be appealed.

Court costs are made up of State fee and judicial costs, related to consideration of cases before the Arbitration Court (art. 101 of the Arbitration and Procedural Code of the RF).

In article 106 of the APC of the RF is said that judicial costs associated with the proceedings of the Arbitration court include monetary sums payable to experts, witnesses, interpreters, costs of examination of evidence at a place, lawyers and any other persons providing legal support (representatives), and other expenses incurred by persons involved in consideration of the case in the Arbitration court.

Due to parts 1, 2 of article 110 of the APC of the RF court costs incurred by those persons who are involved in a case in favor of which was made a court's judgment, are to be collected from a party by the Arbitration court.

Representative costs incurred by the person in whose favor was taken a judicial act, shall be exacted by the Arbitration Court from the other person involved in the case, within reasonable limits.

In paragraph 3 of Information Letter of Higher Arbitration Court of the RF No 121 of December 05, 2007 "Survey of Court Practice on issues connected with distribution among parties court costs for payment of attorney services and another persons who act as a representative in arbitration courts" explained that the person requesting compensation for the services of a representative, proofs its size and the fact of the payment, the other party may prove its excessiveness.

According to the explanations given in paragraph 20 of the Information Letter of Presidium of Higher Arbitration Court of the RF No. 82 of 13.08.2004 "On some issues of application of the Arbitration and Procedural Code of the RF", in determining the reasonable limits of costs of representative services may be taken into account, in particular: norms of expenditure on business travels vested by legal acts; the cost of budget conscious transport services; time that could be spent on providing materials by a qualified specialist; the current situation in the region

on the cost of lawyers' services; evidences of statistical bodies on prices in the market of legal services; the duration and the complexity of the case.

Presidium of Higher Arbitration Court of the RF in the Information Letter No. 82 of 13.08.2004, explained that APC of the RF does not exclude possibility of consideration by the Arbitration court an application on allocation of court costs in the same case then when it had been filled in after taking of decision by the court of the first instance, resolutions of courts of appeals and cassation instances.

On the basis of the provisions of the Constitution of the Russian Federation providing everyone the right to defend his or her rights and freedoms by any means not prohibited by law (art. 45), and guaranteeing everyone the right to receive qualified legal assistance (art. 48), every person is free to choose a legal representative and any restriction in his choice would be conflict with the Constitution of the Russian Federation.

This statement is supported by the position of the Constitutional Court of the Russian Federation, contained in resolution No. 15- P of 16.07.2004 in which is made a conclusion that the realization of the right to judicial protection, along with other legal means is supported by the Institute of judicial representatives which provides any concerned person with qualified legal assistance (article 48 of the Constitution of the Russian Federation), and, in the event of the impossibility of direct (personal) participation – access to justice.

Since organizations are inherently unable to participate directly in proceedings, the cases of organizations in the Arbitration Court are conducted through their bodies like leaders or other representatives on their choice (part 4 and part 5 article 59 and article 61 of the APC of the Russian Federation).

In determining the possibility of indemnification of court costs, the Court itself in the light of the materials of the case determines reasonable limits of costs' exaction from another person involved in the case, in particular on the basis of an assessment of the necessary vested standards, the prevailing market prices, evidences proving expenses.

From the case materials is seen that in support of the stated requirements the Organization has provided to the materials of the case the following documents: agreement on providing legal services No. 024-11-09 from 03.09.2009, report of completed work in the amount of 491 380 RUR, payment order (copy) No.171 from 17.03.2011 on the payment 241 380 RUR, copy of promissory note No. 0002 to 250 000 RUR, Act No.4/1 from 11.03.2011, Order No. 2 of CJSS "Sanar" dated 22.01.2009 on approval of the regulations on the determination of prices for services of an Organization, regulation on determination of prices for services of CJSS "Sanar",

imprest account (copy) No. 00004 from 14.03.2010, traveling certificate w/n for Taraskina M.I. to the city of Kazan, rail tickets for Taraskina M.I. Copies of these documents are enclosed to materials of case.

In accordance with article 48 of the Constitution of the RF, everyone has the right to receive qualified legal assistance. In connection with the constitutional guarantee, the Court at its discretion cannot deprive parties of the arbitration process, the right to apply for legal support.

The applicant having applied for assistance, independently decide on the extent of legal support which should be provided and whom to turn to for assistance.

In view of this norm of law, the Court finds that the taxpayer in accordance with the law, given the right to choose the representative of his interests and methods of his protection.

Within the meaning of article 1 of the Civil Code of the RF, the participants of civil legal turnover are free to establish legal relations. In accordance with paragraph 3 article 1 of the Civil Code of the RF products, services and financial resources move freely throughout the territory of the Russian Federation.

In accordance with paragraph 1 of article 421 of the CC of the RF citizens and legal entities are free to conclude a contract.

Under paragraph 4 of article 421 of the CC of the RF terms of a contract are defined at the discretion of the parties, unless the content of the conditions prescribed by law or other legal acts. Accordingly, the claimant was entitled to apply for legal support and make costs on his own.

The Court established that representatives of CJSS "SANAR" participated in proceedings of the case before the Arbitration Court with the consent of the customer acquainted with the value of this service.

According to part 1 article 65 of the Arbitration and Procedural Code of the RF every person involved in the case, must prove the circumstances on which it relied to justify their claims and objections.

Cost of services is set out in "the Regulation on the determination of prices for services of CJSS "SANAR" upon presentation of interests of clients in tax disputes and other matters related to the tax area", the fact of payment of the rendered service is confirmed by payment order from 17.03.2011 No. 171, promissory note No. 0002 from 04.03.2011.

During the proceeding the Court held that in the present case, the tax authority does not deny that the contested costs directly associated with the trial on the present case and are necessary to protect the interests of the Organization in court.



The Constitutional Court of the Russian Federation explained in the ruling of 21.12.2004 No. 454-O, that the realization of the right to reduce the costs by the Court is possible only if it recognizes those costs as excessive because of the particular circumstances of the case...

Having examined the materials of the case, the Court concluded that providing of such a service as expertise is a subject matter of the contract No. 024-11-09 of 03.04.2009 and shall be satisfied.

The Court having examined and evaluated in accordance with the requirements of article 71 of the Arbitration and Procedural Code of the RF represented by Society evidences of actual incurred costs, being guided by the principle of reasonableness, and taking into account the nature of the dispute, the degree of complexity of the case, considers that the judicial costs for the services provided by the representative in the amount of 440 000 RUR are reasonable and sufficiently documented" [29].

Percentage of satisfaction of claimed by the tax-payer requirements to exaction judicial costs from a party in case No. A57-10622/09 amounted 89, 5%.

Resolution of the Twelfth Arbitration court of appeals of November 3, 2011 upheld the mentioned ruling of the Arbitration court of the Saratov region. Denying the tax authority in the satisfaction of appeals on the ruling of the Arbitration Court of the Saratov region, appeals instance has been guided by the following

"The Court of first instance on the basis of the evidence provided by the claimant, proceeding from the nature of the dispute and the degree of complexity of the case, on the basis of the principle of reasonableness, collected from inspection in favor of the claimant 54 827,8 RUR.

Claimed requirements of LLC "E'lton" have been partially satisfied by the ruling of the Arbitration court of the Saratov region of August 26, 2011: from the Interregional Inspection of Federal Tax Service of the RF No. 7 in the Saratov region was exacted court costs in the amount of 440 000 RUR, in the rest part - denied ...

As follows from the case materials on April 03, 2009, CJSS "SANAR" (company) and LLC "E'lton" (client) made an agreement No. 024-11-09 on providing legal services (from here onwards - agreement).

In accordance with paragraph 1.1 of the agreement the subject of this contract is the provision of legal support of activity of the client associated with the protection of client's interests in tax matters in the system of arbitration courts of the RF concerning the invalidation of the decision of the Interregional Inspection of Federal Tax Service of the RF No. 7 in the Saratov region No. 11/31 dated 31.03.2009.

Under paragraph 4.1, 4.3 of the Agreement the cost of services is determined in accordance with the report of completed works and shall be paid not later than 30 days after the completion of the consideration of the case.

The fact of providing and payment of services is proved by the following documents: agreement on providing legal services No. 024-11-09 from 03.04.2009, report of completed work in the amount of 491 380 RUR, payment order (copy) No.171 from 17.03.2011 on the payment 241 380 RUR, copy of promissory note No. 0002 to 250 000 RUR, Act No. 4/1 from 11.03.2011, Order No. 2 of CJSS "Sanar" dated 22.01.2009 on approval of the regulations on the determination of prices for services of an Organization, regulation on determination of prices for services of CJSS "Sanar", imprest account (copy) No. 00004 from 14.03.2010, traveling certificate w/n for Taraskina M.I. to the city of Kazan, rail tickets for Taraskina M.I., the order to sending on mission Taraskina M.I. from 26.02.2010.

The Organization provided to the case materials a detailed report on the work performed under the agreement with indication of the rendered service, its volume and cost (vol. 17, sheets 112-116).

The Constitutional Court of the Russian Federation showed in the ruling of 21.12.2004 No. 454-O *that the Court does not have the right to reduce the amount of compensation arbitrarily, especially if the other party does not represent evidences of excess of costs exacted from it.*

*So excessiveness of costs should be proved by the contrary party.*

Inspection, claiming that the cost of legal services is excessive, refers to the materials' of the case statement on the cost of legal support in the Saratov region, pointing to the medium cost of services in the first instance - 21 250 RUR., in the second instance - 25 000 RUR. Therefore considers services of a representative in the sum of 63 550 RUR as inflated.

However, the tax authority has not taken into consideration that the present case took 6 trials in the Court of first instance, in the first consideration of the case, 4 trials in the Court of the first instance in the retrial, a trial in the Court of appeals and one hearing before the Court of Cassation. At all of the proceedings participated representatives of the Organization, they prepared relevant documents: replies, petitions and other documents.

The present case is complicated, lengthy, requiring highly skilled specialists providing legal support to the Organization; that is why the trials involved Deputy Director of CJSS "SANAR" and General Legal Adviser of this Society.

Argument of inspection on unfounded participation in the court proceedings of two representatives of the Organization could not be accepted by the court of

appeals, since participation in the delicate case of several competent employees to ensure that the case materials will be considered in full is a right of a party of the process.

The court of appeals also cannot accept the argument of the inspection about that the Organization has inflated costs for completing the evidence base in the present case, since the same documents have been presented by the Organization in court several times, and has been implemented the legal expertise of the documents submitted by the tax authority.

In accordance with article 65 of the APC of the RF every person involved in case, must prove the circumstances on which it relied to justify their claims and objections.

Preparation and submission to the Court of documents in support of the position in the case, is a duty of the party.

Because the court enclosed to materials of the case the documents provided by the Organization, therefore, the Court considered them relevant and necessary for the proper settlement of the dispute.

Legal expertise of documents submitted by the tax authority, including the contested decision is directly linked to the preparation of the claim to the Court, the proceedings before the Court and the formation by the Organization of legal position on the case.

Thus, the tax authority has not provided evidence of excess exaction of court costs collected by the Court of the first instance in favor of the Organization.

Also cannot be accepted by the court of appeals the argument of tax authorities and the Management that the bill could not constitute a means of payment of court costs incurred for the payment of representative services.

According to article 142 of the Civil Code of the Russian Federation a security is a document evidencing property rights with compliance with the established form and obligatory requisites, the exercise and transfer of these rights are only possible if his presentation.

One of the types of securities is a promissory note (article 143 of the Civil Code of the Russian Federation).

Promissory bills circulation is regulated by law and regulation on simple promissory and transferred promissory bill promulgated by Resolution of CEC (Central Executive Committee, CzIK in Russian) and PCC (Public Commissioner Council, SNK in Russian) of the USSR No. 104/1341 of 07.08.1937 (further – Provision on simple promissory and transferred promissory bill).

As indicated above, the amount of 250 000 RUR for legal services was paid by the claimant of CJSS "SANAR" through promissory note THE' (trade house "E'lton") No. 0002 from 04.03.2011 (vol. 17, sheet 110). The claimant submitted to the Court the act of acceptance-transfer of a promissory note of 07.03.2011, according to which LLC "E'lton" transferred to, and CJSC "SANAR" adopted for legal services under agreement No. 024-11-09 from 03.04.2009, promissory note of LLC "TH "Elton" THE' No. 0002 from 04.03.2011 (vol. 17, sheet of the case 141).

Arguments of the Management that the Promissory Bill has a defect of form, as a condition of payment is not met, as well as that the Bill has not been paid, are untenable.

Promissory note THE' No. 0002 from 04.03.2011, contains information on the term of payment-upon presentation.

In accordance with articles 34, 77 of the Provision a promissory note payable on presentation is should be paid upon presentation. This Bill must be presented for payment within one year from the date of its writing, if that period has not been changed by the promisor or endorsers.

Thus, a year for payment of the promissory note at the time of consideration of dispute has not expired.

On the basis of the provisions of the Constitution of the Russian Federation which provide everyone the right to defend his or her rights and freedoms by any means not prohibited by law (art. 45), and guaranteeing everyone the right to receive qualified legal assistance (art. 48), every person is free to choose a legal representative and any restriction in his choice would be conflict with the Constitution of the Russian Federation. This statement is supported by the resolution of the Constitutional Court of the Russian Federation of 16.07.2004 in which is made a conclusion that the realization of the right to judicial protection, along with other legal means is supported by the Institute of judicial representatives which provides any concerned person with qualified legal assistance (article 48 of the Constitution of the Russian Federation), and, in the event of the impossibility of direct (personal) participation - access to justice.

The Court of appeals examined and assessed all the circumstances of this issue, namely: the time that could be spent on providing materials by a qualified specialist; the current situation in the region on the cost of lawyers' services; the duration and the complexity of the case, that allows to consider the amount of the judicial costs exacted by the Court of the first instance as reasonable and justified under articles 65, 71 of the Arbitration and Procedural Code of the Russian Federation

The Judicial Chamber is of the view that the ruling taken by the court of the first instance is lawful and there are no grounds for its cancelling or amendment. Appeals of Inspection should not be satisfied" [30].

In the decision of the appeals instance on the case No. A57-10622/2009 as opposed to considered earlier court's judgment for the first time had been shown that:

- excessive costs must be proved by the other party;
- the taxpayer shall have the discretion to determine the required number of representatives to participate in the case;

-It is quite possible to submit the same documents in different stages of the process, and because the documents submitted by the taxpayer, attached to the case materials, therefore, the Court considered them relevant and necessary for the proper settlement of the dispute.

Attempts of the tax authority to derail the Arbitration Court away from the subject of the dispute by stating that the promissory note could not constitute a means of payment of court costs incurred for payment of the services of a representative, that the bill has defects of forming and also (once again) about non-conformity to legal services of a representative the service on examination documents of the tax authority, failed in the appeals instance

Despite the fact that the sum of the judicial cost has already been collected from the tax authority and the first cassation appeal has been returned by the arbitration court, the tax authority seeks for consideration by the cassation instance of the arbitration court review of court decisions on exaction of judicial costs.

We believe that there is a possibility of a decision by the Court of higher instance on reducing the amount of costs exacted from a party, in view of the fact that due to illegal actions and decisions of tax authorities in the first place is suffering budget, because there were still in practice no cases of recourse implementation against specific offenders whose actions resulted in damage to the budget. However, giving a court's judgment which changes the amount of judicial costs identified in the first two instances of the arbitration court is problematic in view of the substantiation of these acts and their compliance with established practice, including in the Federal Arbitration Court of the Volga district.

Nevertheless, as practice has shown, there have been only cases when judicial instances of the Court of arbitration lower judicial costs for the exaction from the tax authorities.

The next case of the arbitration practice of CJSS "Sanar" is connected with the protection of interests of an Organization implementing services in real estate area. In case No. **A57-10621/2009** the taxpayer has claimed to exaction from the tax body

judicial costs in the amount of 115 049 RUR. On July 26, 2011 having considered documents and having listened to the arguments of the parties, the Arbitration court of the Saratov region took a motivated act to meet in full the claimed requirements of the taxpayer. Extract from court's judgment contains the necessary justifications which prove its legitimacy:

"Having considered the application of the Organization upon exaction legal costs for the services of a representative at the amount of 115 049 RUR for the conduct of the case in the Court of arbitration, the Court considers it should be satisfied in the light of the following factors.

In accordance with article 106 of the APC of the RF judicial costs associated with the proceedings of the Arbitration court include monetary sums payable to experts, witnesses, interpreters, costs of examination of evidence at a place, lawyers and any other persons providing legal support (representatives), and other expenses incurred by persons involved in consideration of the case in the Arbitration court.

Parts 1, 2 of article 110 of the Arbitration and Procedural Code of the RF provides that *court costs incurred by those persons, who are involved in a case in favor of which was made a court's judgment, are to be collected from a party by the Arbitration court.*

Expenses incurred for payment of the representative of a person in favor of who was taken a court's judgment, *should be exacted by the Arbitration Court from the other person involved in the case, within reasonable limits.*

In accordance with article 112 of the Arbitration and Procedural Code of the Russian Federation, *the questions of distribution of costs are settled by arbitration court* considering the case in the court's judgment, which ends the proceedings on the merits, or *in the definition.*

From paragraph 20 of the Information Letter of Presidium of Higher Arbitration Court of the RF No. 82 of 13.08.04 "On some issues of application of the Arbitration and Procedural Code of the RF" follows that in determining the reasonable limits of costs of representative services may be taken into account, in particular: norms of expenditure on business travels vested by legal acts; the cost of budget conscious transport services; time that could be spent on providing materials by a qualified specialist; the current situation in the region on the cost of lawyers' services; evidences of statistical bodies on prices in the market of legal services; the duration and the complexity of the case.

Since the basis for allocation of court costs is grounded on the principle of its compensation to the right party in the dispute from the wrong one, so the cost of

payment of representative legal support service when considering the above statement should be recovered from the person involved in the case, which is declared by a court as wrong.

According to article 65 of the APC of the RF the evidences proving the reasonableness of costs for payment of representative services should be submitted by a party that requires compensation of mentioned costs.

Filing in the Arbitration court the requirement on exaction court costs for payment of representative's services the organization submitted an agreement on providing legal services No. 024-08-09 of 01.04.2009 made between CJSS "SANAR" hereinafter referred to as company and LLC "Signal-Nedvizhimost" hereinafter referred to as client, also during consideration of the case was submitted a letter in connection with a mistake in the essential elements of the power of attorney. From the terms of the said Agreement follows that the subject of this contract is the provision of legal support of the client's activity related to the protection of client's interests in tax matters in the system of arbitration courts of the Russian Federation concerning the recognition as invalid of decision of the Interregional Inspection of Federal Tax Service of the RF No. 7 in the Saratov region no. 11/26 of 31.03.2009.

Paragraphs 1.2. of the Agreement stipulates that the object of this contract is the legal expertise of the non-normative acts of tax authorities, drawing up and filing of a statement on recognizing the decision of the Interregional Inspection of Federal Tax Service of the RF No. 7 in the Saratov region No. 11/26 of 31.03.2009 as annulled, drafting and filing of a statement on security of claim, the evidence base of a client, client-side participation in court hearings, etc.

Paragraph 4.1 of this Agreement defines that *the price of the services is determined in accordance with the report on works performed.*

According to part 1 of article 65 of the Arbitration and Procedural Code of the Russian Federation, each person involved in the case, shall prove circumstances to which he refers as the basis of their claims and objections.

The applicant required recovering costs incurred for the services of representatives, and he had to prove the fact of implementation of these payments.

The other party has the right to declare excessiveness of required amount and justify a reasonable size of the costs incurred by the claimant in respect of the appropriate category of cases with evaluation, in particular the volume and complexity of work performed by the representative, time that could be spent on providing materials by qualified specialist, the duration of the case, the cost of lawyers payment for similar cases.

At the same time the party claiming for compensation has the right to provide justification and proof refuting the arguments of the other side about excessiveness of costs.

Evidence of the reasonableness of the cost for the representative services must be presented by a party which claims for compensation of these costs (article 65 of the Code).

According to paragraph 3 of Information Letter of Higher Arbitration Court of the RF No 121 of December 05, 2007 "Survey of Court Practice on issues connected with distribution among parties court costs for payment of attorney services and another persons who act as a representative in arbitration courts":

*The person requesting compensation for the services of a representative proves its size and the fact of the payment, the other party may prove its excessiveness.* However, if the sum of the claimed requirement clearly exceeds reasonable limits and the other party had no objection to its excessiveness, the Court, in the absence of evidences of the reasonableness of the costs submitted by the applicant, in accordance with part 2 of article 110 of the APC of the RF shall compensate such expenses in reasonable, in his view, limits".

*In support of the asserted claims the Organization submitted* Agreement No. 024-08-09 on legal services from 01.04.2009, report on the executed works (services) under the contract No. 024-08-09 of April 01, 2009, under case No. A57-10621/2009 in three instances in Arbitration court of the Saratov region and Volga district Federal Arbitration Court, act No. 1/1 of February 24, 2011, from which it follows that the CJSS "SANAR" provided LLC "Signal-Nedvizhimost'" services under Agreement No. 024-08-09 of April 01, 2009, in case No. A57-10621/2009 in three instances in Arbitration courts of the Saratov region and Volga district Federal Arbitration Court at the amount 121749 RUR. The Act contains a reference that services implemented in full and on time, the customer does not have claims for amount of work, quality, time-bound of providing services.

After reviewing the above documents the Court concluded that the requirement of exaction of court costs amounting to 115 049 RUR shall be satisfied, because this amount meets the requirements of validity and reasonableness.

*The sum of 115 049 RUR according to the report of completed works (rendered services)* under the contract No. 024-08-09 of April 01, 2009, in case No. A57-10621/2009 in three instances in Arbitration courts of the Saratov region and Volga district Federal Arbitration Court consist from: participation of the Deputy Director of the CJSS "Sanar" in judicial proceedings on the application for appeal of the decision of the Interregional Inspection of Federal Tax Service of the RF No. 7 in



the Saratov region No. 11/26 of 31.03.2009 (4 sessions: 22.07.09, 20.08.09, 06.10.09, 27.10.09), participation of the general legal adviser of CJSS "SANAR" in court sessions (9 sessions: 22.07.09, 20.08.09, 06.10.09, 27.10.09, 24.11.09, 06.05.10, 31.05.10, 16.06.10, 22.06.10), examination of the decision of the Interregional Inspection of Federal Tax Service of the RF No. 7 in the Saratov region No. 11/26 of 31.03.2009, preparation of the statement to the Arbitration court for appeal of the decision of the Interregional Inspection of Federal Tax Service of the RF No. 7 in the Saratov region No. 11/26 of 31.03.2009; preparation of the statement for acceptance of security measures; completing documents (evidences on the case, contract of work and labor, budget); examination of the reply of the tax authority from 22.07.2009; examination of supplements to the reply from 30.07.2009; preparation of objections to the reply; compilation of comments on the case; completing of documents (evidences on the case) of declaration, payment documents; examination of comments; examination of objections on the case; compilation of comments on the case; examination of additions to the reply; examination comments on the case; completing documents (evidences on the case) of lease agreement, payment documents, acts of transfer of property; preparation of a petition of examination appointment on the case; examination of petition on the case; expertise of an expert conclusion; examination of comments on the case; examination of replies on the case; preparation objections to the reply on the case; examination of additions to the reply; compilation of additional comments on the case; completing documents (evidences on the case) of transaction log, payment documents, acts of reconciliation; compilation of statement on specification of requirements of claim; examination of appeals on the case; examination of the reply on the case of the Management of the Federal Tax Service; compilation of reply to appeals; examination of cassation appeal on the case; compilation of reply to cassation appeal.

Within the framework of the session was found that some of the documents (copies), which had been submitted during the examination, were doubled, therefore, the tax authority stated that requirements of exaction costs for the services of "completing documents" in the part of resubmitted documents are unjustified.

In this part of the objections, the Court appointed mutual check of resubmitted documents, as a result of which was signed a bilateral Act (vol. 8, sheet of the case 151).

As a result of matching *there is no dispute on resubmitted documents among the participants of the process, and the complainant commensurately reduced the amount of the claimed costs, asked the Court to collect expenses amounting to 115 049 RUR.*

The Court considering the argument of the tax authority on excessiveness of stated costs considers that in the mentioned case this argument cannot be accepted by court because the claimed amount of costs for rendered services of a representative in the amount of 115 049 RUR for the conduct of the case in court on the case of recognizing the decision of the Interregional Inspection of Federal Tax Service of the RF No. 7 in the Saratov region No. 11/26 of 31.03.2009 as annulled in part of additional taxation: tax on profit in the amount of 2 599 604 RUR and sums of penalty and fine for untimely payment of the amounts of tax on profit, property tax in the amount of 133 361 RUR and sums of penalty and fine for untimely payment of the amounts of tax on property, is not excessive in light of the following factors.

So the tax authority, declaring excessiveness of the claimed costs, refers to the fact that in proceedings on 22.07.09, 20.08.09, 06.10.09, 27.10.09 participated two representatives of the taxpayer, what in the tax body opinion is not acceptable. Meanwhile, the Court takes into account the taxpayer's arguments that the trial, in which he incurred court costs, has been considered issues that require knowledge of the tax law; to prepare for trial there was needs to study and examine a large number of documents, which, in turn, resulted in the need for the participation of two representatives. The possibility of engaging in proceedings several representatives and exaction of legal costs to pay for their services is confirmed by the information letter of the Presidium of the Higher Arbitration Court of the Russian Federation from 05.12.2007 No. 121. *Paragraph 9 of the letter states that the costs for payment of two representatives shall be collected in full.*

In the present case, the Court does not accept the arguments of the tax authority of excess, and the argument that CJSS "Sanar" is the sole executive body and therefore does not have the legal authority to enter into a contract with the applicant, because this argument is not confirmed and is not based on the rule of law.

The claimant also submitted data on the average market price of legal services in the city of Saratov, whereby *the average initial market value of legal services in the city of Saratov on tax disputes is not less than 40 000 RUR for the conduct of a case only in Court of one instance.*

As set out in the decision of Presidium of the Higher Arbitration Court of the Russian Federation No. 18118/07 of 20.05.2008, *the realization of the right to reduce the sum of costs by the Court is possible only if it recognizes those costs as excessive because of the particular circumstances of the case.*

Since the basis for allocation of court costs is grounded on the principle of its compensation to the right party in the dispute by the wrong one, so the cost of payment of representative legal support service when considering the above statement

should be recovered from the person involved in the case, which is declared by a court as wrong.

Part 2 of article 110 of the APC of the RF provides the Arbitration court the right to reduce the exacted amount of costs collected for compensation payment of representative services.

Since the realization of this right by the Court is only possible if it recognizes those costs as excessive because of the particular circumstances of the case, and as has been repeatedly pointed out by the Constitutional Court of the Russian Federation the Court must establish the conditions under which will be respected the necessary balance of procedural rights and obligations of the parties, this norm cannot be regarded as violating the constitutional rights and freedoms of the applicant.

The duty of the Court to collect expenses for representative's services incurred by the person in whose favor was taken a judicial act, from the other person involved in the case, within reasonable limits, is one of the statutory legal methods against unjustified overstatement of representative payment and thus towards the realization of the requirement of article 17 (part 3) of the Constitution of the Russian Federation. That is why in part 2 of article 110 of the APC of the Russian Federation is said that it is an essential responsibility of the Court to strike a balance between the rights of persons involved in a case.

*The Court recognizes the fact of providing legal services*, because from the materials of the case follows that in the Arbitration Court of the Saratov region on case No. 10621-A57/2019 on the statement of recognizing the decision of the Inter-regional Inspection of Federal Tax Service of the RF No. 7 in the Saratov region No. 11/26 of 31.03.2009 as annulled in part of additional taxation: tax on profit in the amount of 2 599 604 RUR and sums of penalty and fine for untimely payment of the amounts of tax on profit, property tax in the amount of 133 361 RUR and sums of penalty and fine for untimely payment of the amounts of tax on property were held trials in the Court of the first instance, Court of appeals, Court of cassation instance. In these court proceedings participated representatives of the applicant - Taraskina M.I., Rubtsov D.V.

Thus, in considering application for exaction of court costs, the Court found that *the actual payment of the provided legal services is confirmed documentary in the case materials*.

The Court, in considering the questions of proportionality and reasonableness of legal costs for payment the services of a representative, which are subject of exaction, comes to the following.

The reasonableness of the limit of judicial costs for compensation of payment for representative services, requirement which is explicitly vested in article 110 of the Arbitration and Procedural Code of the Russian Federation, is an assessment category.

On the basis of the provisions of the Constitution of the Russian Federation which provide everyone the right to defend his or her rights and freedoms by any means not prohibited by law (art. 45), and guaranteeing everyone the right to receive qualified legal assistance (art. 48), every person is free to choose a legal representative and any restriction in his choice would be conflict with the Constitution of the Russian Federation.

This statement is supported by the resolution of the Constitutional Court of the Russian Federation No. 15 of 16.07.2004 in which is made a conclusion that the realization of the right to judicial protection, along with other legal means is supported by the Institute of judicial representatives which provides any concerned person with qualified legal assistance (article 48 of the Constitution of the Russian Federation), and, in the event of the impossibility of direct (personal) participation – access to justice.

According to paragraph 20 of the Information Letter of Presidium of Higher Arbitration Court of the RF No. 82 of 13.08.2004 “On some issues of application of the Arbitration and Procedural Code of the RF”, evidences of the reasonableness of the costs for payment representative services must be submitted by a party claiming for compensation of these costs.

Exaction of costs for payment of representative services within reasonable limits is referred by procedural law to the competence of the arbitration court and is aimed at curbing the abuse of right and preventing exaction of amounts disproportionate to the breached right.

In accordance with resolution of Presidium of Higher Arbitration Court of the RF No. 12088/05 of 07.02.2006 and according to the practice of arbitration courts of the Russian Federation while determination the reasonable limits of cost for payment representative services and reasonableness of these costs the following shall be taken into account: relevance of costs to the case; the volume and complexity of work performed; norms of expenses for business travels stipulated by legal acts; the cost of budget conscious transport services; the time that could be spent by qualified specialist to provide materials; the current situation in the region on the cost of similar services taking into account the qualification of persons rendering these services; evidences of statistical bodies on prices in the market of legal services; the duration of the case; other circumstances, proving of the reasonableness of the costs.

According to the legal positions of Constitutional Court of the Russian Federation, expressed in the ruling of 21.12.2004 No. 454-O, part 2 of article 110 of the Arbitration and Procedural Code of the Russian Federation grants the Arbitration court the right to reduce the sum exacted for compensation of appropriate costs for payment of representative services. Since the realization of this right by the Court is only possible if it recognizes those costs as excessive because of the particular circumstances of the case, and as has been repeatedly pointed out by the Constitutional Court of the Russian Federation the Court must establish the conditions under which will be respected the necessary balance of procedural rights and obligations of the parties, this norm cannot be regarded as violating the constitutional rights and freedoms of the applicant

In addition, the duty of the Court to collect expenses for representative's services incurred by the person in whose favor was taken a judicial act, from the other person involved in the case, within reasonable limits, is one of the statutory legal methods against unjustified overstatement of representative payment and thus towards the realization of the requirement of article 17 (part 3) of the Constitution of the Russian Federation.

That is why in part 2 of article 110 of the APC of the Russian Federation it is essentially said about the duty of the Court to strike a balance between the rights of persons involved in a case.

In this case, the Court takes into account the persons participating in the case, the time that could be spent by qualified specialist to provide materials, the current situation in the region on the cost of similar services taking into account the qualification of persons rendering these services, evidences of statistical bodies on prices in the market of legal services, duration of the case, judicial practice on the similar category of cases, and that the case is significant, difficult in volume and subject of proof, it finds the amount of 115 049 RUR as satisfying the criterion of reasonableness.

Expenses incurred by a person involved in a case, shall be compensated, if they meet the criteria laid down in article 106 of the Arbitration and Procedural Code of the Russian Federation, that is, associated with the proceedings of a case in the Arbitration court.

Under parts 1, 2 of article 110 of the Arbitration and Procedural Code of the Russian Federation has been established that court costs incurred by a person in whose favor was adopted a court's judgment, shall be exacted by the Arbitration Court from the other party involved in the case.

Thus, the Arbitration court considers that the Interregional Inspection of Federal Tax Service of the RF No. 7 in the Saratov region must compensate to LLC "Signal-Nedvizhimost" court costs incurred in connection with the consideration of the case No. A57-10621/2009 - at the rate of 115 049 RUR." [31].

Despite the fact that the motivation part of the ruling contains duplicates in part of references to applicable norms of law and judicial practice, judicial act is welcomed in parts of its content, which shows that for the Arbitration Court of the Saratov region is no longer a new and unusual detailed layout and composition of services of a representative who protects the interests of the taxpayer in court. The process of distribution of court costs demanded by the taxpayer from the tax authority, became commonplace.

By the resolution of appeals instance of October 20, 2011 the mentioned ruling of the Arbitration court of the Saratov region was upheld. Issuing court's judgment on the complaint of the tax authority, the appeals instance has explained its rejection to meet an appeal as follows:

"Having heard the representatives of the Organization and tax authorities, having discussed arguments of the appeal and replies on the appeal, having examined the materials of the case, *the court of appeals finds no reason to cancel the ruling of Court of the first instance and satisfaction of the appeal ...*

On April 01, 2009, between CJSS "SANAR" and LLC "Signal-Nedvizhimost" was made a contract No. 024-08-09 on the provision of legal services, from which it follows that the CJSS "SANAR" provides the Organization services on legal support of activity (actions) of the client related to the protection of client's interests in tax matters in the system of arbitration courts of the Russian Federation on the case of recognition as invalid of the decision of the Interregional Inspection of Federal Tax Service of the RF No. 7 in the Saratov region No. 11/26 of 31.03.2009.

According to paragraph 1.2. of the Agreement the objective of this treaty is providing the legal expertise of the non-legislative acts of tax authorities, drawing up and filing of statement on recognizing the decision of the Interregional Inspection of Federal Tax Service of the RF No. 7 in the Saratov region No. 11/26 of 31.03.2009 as annulled, drafting and filing of the statement on security for a claim, preparation of the client's evidence base, participation in court hearings from the side of the client, etc.

In accordance with paragraph 4.1 of the Agreement the cost of services is determined in accordance with the report on the work performed by CJSS "SANAR" after the end of the consideration of the case in Federal Arbitration Court of the Volga district.

According to the report on the performed works (rendered services) on the agreement No. 024-08-09 of April 01, 2009, the value of services rendered is 121 749 RUR.

*For providing services on the Agreement LLC "Signal-Nedvizhimost" transferred 121 749 RUR to the bank account of CJSS "SANAR", as confirmed by payment order No. 110 dated March 01, 2011.*

Enumerated circumstances on March 4, 2011 encouraged LLC "Signal-Nedvizhimost" to file to the Arbitration court of the Saratov region with a statement on exaction from the Interregional Inspection of Federal Tax Service of the RF No. 7 in the Saratov region court costs incurred in connection with the consideration of the case No. A57-10621/2009.

By the ruling of the Arbitration court of the Saratov region of July 26, 2011 in favor of LLC "Signal-Nedvizhimost" from the Interregional Inspection of Federal Tax Service of the RF No. 7 in the Saratov region were exacted court costs incurred in connection with the consideration of the case No. A57-10621/2009 in the amount of 115 049 RUR.

The Court of first instance meeting the stated requirements of the organization and exacting from the tax authority court costs amounting to 115 049 RUR, has based on that this amount meets the requirements of validity and reasonableness.

In accordance with article 106 of the APC of the RF judicial costs associated with the proceedings of the Arbitration court include monetary sums payable to experts, witnesses, interpreters, costs of examination of evidence at a place, lawyers and any other persons providing legal support (representatives), and other expenses incurred by persons involved in consideration of the case in the Arbitration court.

Parts 1, 2 of article 110 of the Arbitration and Procedural Code of the RF provides that court costs incurred by those persons, who are involved in a case in favor of which was made a court's judgment, are to be collected from a party by the Arbitration court.

Expenses incurred for payment of the representative of a person in favor of who was taken a court's judgment, should be exacted by the Arbitration Court from the other person involved in the case, within reasonable limits.

In paragraph 3 of Information Letter of Higher Arbitration Court of the RF No 121 of December 05, 2007 "Survey of Court Practice on issues connected with distribution among parties court costs for payment of attorney services and another persons who act as a representative in arbitration courts" explained that *the person requesting compensation for payment of the representative services, should prove*

*its size and the fact of the payment, the other party may prove its excessiveness.*

Agreement between CJSS "SANAR" and LLC "Signal-Nedvizhimost" was made on legal support of activity (actions) of the client related to the protection by the client his interests in tax legal relations in the system of arbitration courts of the Russian Federation on the case of recognition as invalid of the decision of the Inter-regional Inspection of Federal Tax Service of the RF No. 7 in the Saratov region no. 11/26 of 31.03.2009, including representation of client's interests in court proceedings.

*The fact of providing representative services in accordance with the considered agreement has been established.* Representation of interests of the trustee in trials in the Court of the first instance is not contested by the tax authority. *Acting under a power of attorney Rubtsov D.V. and Taraskina M.I. represented the interest of trustee - LLC "Signal-Nedvizhimost" in the proceedings on the present case, that is affirmed by the trial protocols and judicial acts adopted by the Court of the first instance. The argument of the complainant of appeal on that the Court of the first instance wrongly collected court costs related to participation in court hearings Rubtsov D.V., the court of appeals rejects.*

Court of the first instance rightly pointed out that in the course of the trial in respect of which were incurred court costs, has been considered issues that require knowledge of the tax law; to prepare for proceedings there was need to study and examine a large number of documents, which, in turn, resulted in the need for the participation of two representatives. *The fact that Rubtsov D.V. did not attend the court proceedings does not show that he was not involved in the study of normative and documental databases, in the formation of the taxpayer's position on the present case, as well as in the preparation of the objections to the tax authorities' replies and to appeal and cassational appeal.*

*The actual payment by LLC "Signal-Nedvizhimost" of rendered legal services is documented and not challenged by the tax authority.*

From paragraph 20 of the Information Letter of Presidium of Higher Arbitration Court of the RF No. 82 of 13.08.04 "On some issues of application of the Arbitration and Procedural Code of the RF", follows that in determining the reasonable limits of costs of representative services may be taken into account, in particular: norms of expenditure on business travels vested by legal acts; the cost of budget conscious transport services; time that could be spent on providing materials by a qualified specialist; the current situation in the region on the cost of lawyers' services; evidences of statistical bodies on prices in the market of legal services; the duration and the complexity of the case.



*The sum of stated court cost in the amount of 115 049 RUR* under the report of performed works (rendered services) under the contract No. 024-08-09 of April 01, 2009, on the case No. A57-10621/2009 consists including from: participation of the Deputy Director of the CJSS "Sanar" in judicial proceedings on the application for appeal of the decision of the Interregional Inspection of Federal Tax Service of the RF No. 7 in the Saratov region No. 11/26 of 31.03.2009 (4 sessions: 22.07.09, 20.08.09, 06.10.09, 27.10.09), participation of the general legal adviser of CJSS "SANAR" in court sessions (9 sessions: 22.07.09, 20.08.09, 06.10.09, 27.10.09, 24.11.09, 06.05.10, 31.05.10, 16.06.10, 22.06.10), examination of the decision of the Interregional Inspection of Federal Tax Service of the RF No. 7 in the Saratov region No. 11/26 of 31.03.2009, preparation of the statement to the Arbitration court for appeal of the decision of the Interregional Inspection of Federal Tax Service of the RF No. 7 in the Saratov region No. 11/26 of 31.03.2009; preparation of the statement for acceptance of security measures; completing documents (evidences on the case, contract of work and labor, budget); examination of the reply of the tax authority from 22.07.2009; examination of supplements to the reply from 30.07.2009; preparation of objections to the reply; compilation of comments on the case; completing of documents (evidences on the case) of declaration, payment documents; examination of comments; examination of objections on the case; compilation of comments on the case; examination of additions to the reply; examination comments on the case; completing documents (evidences on the case) of lease agreement, payment documents, acts of transfer of property; preparation of a petition of examination appointment on the case; examination of petition on the case; expertise of an expert conclusion; examination of comments on the case; examination of replies on the case; preparation objections to the reply on the case; examination of additions to the reply; compilation of additional comments on the case; completing documents (evidences on the case) of transaction log, payment documents, acts of reconciliation; compilation of statement on specification of requirements of claim; examination of appeals on the case; examination of the reply on the case of the Management of the Federal Tax Service; compilation of reply to appeals; examination of cassation appeal on the case; compilation of reply to cassation appeal.

The claimant of appeal believes that the exaction of the costs associated with completing of documents is unjustified because manning of documents is a technical work that does not apply to services of legal support which require legal qualifications.

The court of appeals instance rejects these arguments.

As can be seen from paragraph 1.2 of paragraph 1 of the Agreement on providing legal services No. 024-02 from 01.10.2006, the objective of this contract include the preparation of the evidence base.

*Services on manning documents were provided within the framework of the considered case in the first instance and directly relate to the preparation of evidence base, preparing statement on contesting the decision of the tax authority, preparation of petitions, responses, which were compiled within the framework of the case.*

Specialization and qualifications of the executor is not a criterion for the attribution of costs to the court costs, so as by virtue of article 106 of the APC of the RF judicial costs are any costs if they are involved in the consideration of the case in court.

This legal position is reflected in resolution of the Federal Arbitration Court of the Volga district from June 24, 2010 on the case No. A57-13542/2006 and in decision of the Twelfth of the Arbitration Court of appeals from September 03, 2010 on the same case.

The applicant of the appeal also disagrees with the exaction as part of court costs related to the examination of documents.

However, the provision of this service is the subject of the contract No. 024-08-09 of April 01, 2009, and purpose of the agreement is a legal expertise of the non-normative legal acts of the tax authority.

*Legal examination of the decision of the tax authority is directly related to the case, since the legal analysis of this non-normative legal act is needed to determine the feasibility and the need of application with a statement of its disputing to the Court of the first instance. Legal examination of other documents, received from the tax authorities, was carried out within the framework of the consideration of the case and is associated with a developing of position on the case and further actions.*

*The result of legal expertise, which is essentially an intellectual activity of the Executor of services, became drawn up statements, objections and responses of the taxpayer.*

The claim that the tax authority was unreasonably ordered to compensate costs in the amount of 1000 RUR for examination of response of the Management of the Federal Tax Service of Saratov region, is rejected by the court of appeals.

LLC "Signal-Nedvizhimost'" has requested to the Arbitration court with a statement on contesting the decision of the Interregional Inspection of Federal Tax

Service of the RF No. 7 in the Saratov region. The adoption of court decision on the invalidity of the shown non-normative legal act of tax body as not conforming the provisions of the Tax Code of the RF and violating the rights and legal interests of taxpayers is confirmed with a circumstance that the Organization reasonably filed a statement to the Arbitration court. Also the Organization incurred certain court costs, including connected with legal expertise of response of the Management, that was a consequence from adoption of unlawful decision by the Interregional Inspection of Federal Tax Service of the RF No. 7 in the Saratov region and, therefore, the Court of the first instance rightly exacted these court costs from inspection.

According to part 2 of article 110 of the Arbitration and Procedural Code of the Russian Federation the costs for payment representative services incurred by a person in whose favor was adopted a court's judgment, shall be exacted by the Court from the other party involved in the case, within reasonable limits.

*Reasonableness of limits of judicial costs for compensation of expenses for payment of representative services, the requirement of which is expressly established in article 110 of the APC of the RF, it is an evaluation category and is applied on the discretion of the Court, coupled with the evidences gathered on the case.*

According to paragraph 20 of the Information Letter of Presidium of Higher Arbitration Court of the RF No. 82 of 13.08.2004 "On some issues of application of the Arbitration and Procedural Code of the RF", in determining the reasonable limits of costs for payment of representative services may be taken into account, in particular: norms of expenditure on business travels vested by legal acts; the cost of budget conscious transport services; time that could be spent on providing materials by a qualified specialist; the current situation in the region on the cost of lawyers' services; evidences of statistical bodies on prices in the market of legal services; the duration and the complexity of the case.

The duty of the Court to exact the costs for payment of representative services incurred by a person in whose favor was adopted a court's judgment from the other party involved in the case within reasonable limits is one of the statutory legal means against unjustified overstatement of payment of representative services and thereby – against the implementation of the requirements of article 17 (part 3) of the Constitution of the Russian Federation.

That is why according to the legal position of Constitutional Court of the RF expressed in the ruling No. 454-O of 21.12.2004, part 2 of article 110 of the APC of the RF, indeed, the Court is obliged to strike a balance between the rights of persons involved in the case.

On the basis of the provisions of the Constitution of the Russian Federation which provide everyone the right to defend his or her rights and freedoms by any means not prohibited by law (art. 45), and guaranteeing everyone the right to receive qualified legal assistance (art. 48), every person is free to choose a legal representative and any restriction in his choice would be conflict with the Constitution of the Russian Federation. This statement is supported by the resolution of the Constitutional Court of the Russian Federation of 16.07.2004 in which is made a conclusion that the realization of the right to judicial protection, along with other legal means is supported by the Institute of judicial representatives which provides a concerned person with qualified legal assistance (article 48 of the Constitution of the Russian Federation), and, in the event of the impossibility of direct (personal) participation in court proceedings – access to justice...

*The need for participation of a qualified representative in arbitration court's proceedings does not need any proofs.*

According to the law-enforcement practice of the European Court on human rights the claimant is entitled to compensation for judicial costs and court costs if he proves that they were actually incurred on the need and are reasonable in amount. European Court is based on the assumption that if the case was conducted through a representative, it is assumed that in connection with this one of the parties incurred certain expenses, and these costs should to be paid by the losing party within reasonable limits.

The excessiveness of costs must be proved by the other party.

Constitutional Court of the Russian Federation, in the ruling No. 454-O of 21.12.2004 showed, that the Court does not have the right to reduce the amount of exaction for compensation of legal support arbitrarily, if the other party does not represents evidences of excess of costs exacted from it.

Court of the first instance having evaluated documents on providing legal services submitted by an entrepreneur, and having estimated the evidences properly in accordance with article 71 of the Arbitration and Procedural Code of the RF, set the size of the court costs exacted from the Interregional Inspection of Federal Tax Service of the RF No. 7 in the Saratov region within reasonable limits.

*In addition, the tax authority, declaring excessiveness of the stated judicial costs has not indicated the sum it considers reasonable, proportionate and justified.*

The complainant's argument that the CJSS "Sanar" is the sole executive body of LLC "Signal-Nedvizhimost'" and therefore does not have the legal authority to enter into a contract with the applicant is disallowed because of the next.

The Contract on legal support of activity (actions) of the client related to the protection of client's interests in tax matters in the system of arbitration courts of the Russian Federation on the case on recognizing the decision of the Interregional Inspection of Federal Tax Service of the RF No. 7 in the Saratov region No. 11/26 of 31.03.2009 as invalid, including representation of client's interests in court proceedings, was concluded between two legal entities with legal capacity.

From LLC "Signal-Nedvizhimost" the contract was signed by the executive body of a legal entity – by the Director of CJSS "SANAR" acting under the contract on the transfer of powers of the individual executive body.

*Thus, the director of the management company CJSS "SANAR" concluding a contract with CJSS "SANAR" on providing legal services acted on behalf and in the interest of the LLC "Signal-Nedvizhimost" on the basis of the Charter of this Organization and the contract on the transfer of powers of a sole executive body.*

*CJSS "SANAR" in the role of a Management company, has only those powers that are given to it by the Contract and provided by the current legislation on limited liability companies. Concluding a civil legal transaction, these persons are acting only on their own interests. The fact that one of the activities of CJSS "SANAR" is provision of legal services, as well as its staff are qualified specialists in the field of jurisprudence, does not show that CJSS "SANAR" is obliged to render "Signal-Nedvizhimost" legal services, which are not the subject of the contract on the transfer of functions of a sole executive body.*

*Arguments of the appeal do not refute the validity of conclusions made by the Court of the first instance and confirmed by the materials of the case.*

Under such circumstances, the Court of Appeals considers that the Court of the first instance gave correct and objective assessment of the size of the compensated costs and adopted the legitimate and justified ruling which did not have grounds for cancelation" [32].

It should be noted that in case No. A57-10621/09 first time in practice of CJSS "Sanar" arbitration court satisfied the taxpayer's claim on exaction of legal costs in full. Attempts of the tax body to identify services of CJSS "Sanar", rendered to the taxpayer within the contract on the performance of functions of a sole executive body of a legal entity, with the contract on rendering of legal services on a tax dispute, failed in this case.

As we see it, participating in protection the interests of taxpayers in the system of arbitration courts of the Volga Federal District, CJSS "Sanar" has formed some sort of arbitration practice in part of exaction of judicial costs in favor of a taxpayer, having proved in practice:

- substantiation of the payment as a part of court costs participation from the taxpayer's side of several representatives;
- substantiation of representative services and work of specialists (representatives), that should be paid as a part of judicial costs, with non-normative acts and other documents of the tax authority, which are referred in the contracts on rendering legal services as an examination of documents;
- substantiation of payment as a part of court costs work for completing of documents incoming the evidence base of the taxpayer;
- taxpayer's right to determine qualification of a representative who is to participate in the protection of his interests before the courts.

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**EVIDENCES OF THE REASONABLENESS OF THE ORGANIZATIONS'  
JUDICIAL COSTS IN TAX DISPUTES.**

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Discusses issues related to evaluation category of reasonable limits of court costs. Having allocated the judicial cost from court costs, including such judicial costs as payment of a representative services which raise the largest objections of parties about their size, in the article there is offered a mechanism of forming the costs of representative services as an evidence of the reasonable-ness of the judicial costs, this mechanism is based on time-rating of committed legal and physical actions of the representative. Supports necessary evidences of the reasonable-ness of judicial costs of organizations in tax disputes.

**Keywords:** judicial costs, tax dispute, evidences, reasonableness of judicial costs.

It is no secret that the decision on the tax dispute could have three variants of the exodus:

- issue of a judgment in full in favor of a taxpayer (tax agent),
- issue of a judgment in full in favor of a tax authority,
- issue of a judgment in favor of a taxpayer (tax agent) in part determined by the court.

The possibility of exaction of court costs from the tax authority is granted by law to the taxpayer (tax agent) only in case of full or partial satisfaction of his stated requirements.

The reason for an issue of decision in favor of the taxpayer (tax agent) is establishment during the court proceedings of circumstances, that the contested non-normative act, decisions and actions (inactions) of tax authorities or their officials do not conform to the law or other normative legal act and violate the rights and lawful interests of the taxpayer (tax agent) [1].

Introducing a tax dispute for resolving to the Court, the parties consciously go to cost-sharing of expenses in the form of court costs, expecting its compensation

depending on the taken court's judgment on the merit of the dispute [1]. However, the fact of existence of proven and paid expenses does not mean that they should be collected from the party which loses a dispute in full.

Due to objective circumstances (absence of imperious powers) in the court proceedings the taxpayer (tax agent) spends more money on providing evidences (for example, obtaining documents from third parties, an examination, copy of multiple documents for submission to case materials, and so on) and on the participation of competent representatives (lawyers, authorized representatives of the taxpayer). Therefore, the maximum compensation of court costs is a very important issue for a tax payer (tax agent).

Generally, the tax authority provides in court proceedings participation of two to four its representatives, with different competencies. In composition of mentioned representatives are included lawyers, tax inspectors and specialists of audit department, of registration division (keeper of the United State Register of Legal Entities) and other persons. Taxpayer (tax agent) could not afford without jeopardizing ongoing production (commercial) activity to send for participation in court proceedings an equal in number and competence team from its staff. Therefore, the taxpayer (tax agent), in most cases, sends to tax disputes authorized representatives of workers of specializing in tax disputes law offices, legal and audit firms, providing appropriate services to the taxpayer (tax agent). It is no secret that the cost of services rendered varies greatly, and depends on the image and qualifications of the representative.

Court costs are to be collected in favor of the taxpayer (tax agent) not only in case of adoption the decision in his favor, but also in case of partial satisfaction of the requirements if the tax dispute falls within the category of non-property nature. This is confirmed by the position the Higher Arbitration Court of the Russian Federation, which defines that "if the statements on disputing non-normative acts, decisions and actions (inactions) of state bodies, local self-government bodies, other bodies, officials are justified in whole or in part the court costs should be compensated accordingly by that body in full" [2]. The concept of full size in this case is not the same as the amount of judicial costs claimed for compensation from the State body, because the norm of part 2 of article 110 of the Arbitration and Procedural Code of the RF established that:

"2. The expenses for payment of representative services incurred by a party in whose favor was taken a court's judgment are to be exacted by the Arbitration court *within reasonable limits* from the other party involved in the case.

As seen from the text of the norm of law, this norm contains determination of discretionary powers of the court, and evaluation category “reasonable limits” has no decryption of its content in the APC of the RF. Therefore, judicial practice has developed some provisions from which can be deduced, by what judicial community is guided in the system of arbitration courts in resolving issues of the allocation of costs within reasonable limits.

**First**, the courts of arbitration take into account the legal position of the Constitutional court of the RF, which is set out in the ruling of 21.12.2004, No. 454-O “on the refusal of admission for consideration of the appeal of the limited liability company “Trast” against violation of the constitutional rights and freedoms in part 2 of article 110 of the Arbitration and Procedural Code of the Russian Federation”:

“Part 2 of article 110 of the APC of the RF contested by the applicant provides the arbitration court the right to reduce the amount of exacted costs to be paid in reimbursement of expenditure on the payment of representative services. Since the realization of this right by the Court is only possible if it recognizes those costs as excessive because of the particular circumstances of the case this norm cannot be regarded as violating the constitutional rights and freedoms of complainant, taking in account that as has been repeatedly pointed out by the Constitutional Court of the RF, the Court must establish the conditions under which would respected the necessary balance of procedural rights and obligations of the parties.

The duty of the Court is to collect expenses for representative’s services incurred by the person in whose favor was taken a judicial act, from the other person involved in the case, within reasonable limits, is one of the statutory legal methods against unjustified overstatement of representative payment and thus towards the realization of the requirement of article 17 (part 3) of the Constitution of the Russian Federation. That is why in part 2 of article 110 of the APC of the Russian Federation is said that it is an essential responsibility of the Court to strike a balance between the rights of persons involved in a case.

However, in making a motivated decision to change the amount of exaction for compensation of relevant costs, *the Court is not entitled to reduce it arbitrarily, especially if the other party fails to object and does not submit evidence of excessiveness of costs exacted from it” [8].*

**Secondly**, According to paragraph 20 of the Information Letter of Presidium of Higher Arbitration Court of the RF No. 82 of 13.08.2004 “On some issues of application of the Arbitration and Procedural Code of the RF”, in determining the reasonable limits of costs of representative services may be taken into account, in particular: norms of expenditure on business travels vested by legal acts; the cost

of budget conscious transport services; time that could be spent on providing materials by a qualified specialist; the current situation in the region on the cost of lawyers' services; evidences of statistical bodies on prices in the market of legal services; the duration and the complexity of the case.

However, as noted by K. Sasov "today the size of travel expenses for commercial organizations is not limited normatively and the cost of legal services is not tracked by the statistical bodies. The cheapest transport is not necessarily the best for the client and his or her representative. Public transport is not always convenient. Sometimes it does not provide confidentiality, safety of documents or the convenience of delivery to the Court" [7].

Should be accepted the other assertion of K. Sasov that under a qualified specialist should be understood a person that can win in a tax dispute. Thus, in the event of a dispute on the term of time spent on preparation of documents, the Court should focus on time spent by party that has won but not lost that tax dispute" [7].

**Thirdly**, in accordance with a norm vested in article 65 of the APC of the RF on obligation of proving in a dispute, arbitration courts assign the obligation of submission of evidences proving the reasonableness of costs for payment of representative services to the party claiming compensation of the mentioned costs. In the absence of normative criteria of reasonableness and a presence of a subjective approach of the parties, the taxpayer (tax agent) will take as reasonable costs all expenses which helped him to win in the tax dispute. That is confirmed by the opinion expressed by K. Sasov: "it appears that the reasonableness of the costs can be proved by transaction documents, confirming the fact and amount of real costs incurred. Reasonableness (or substantiation) of these costs is confirmed by the fact of victory in a tax dispute" [7].

**Fourthly**, the compensation is possible and when participating in court proceedings of several representatives of one party, as well as compensation of representative services if the taxpayer (tax agent) has a staff of the legal service [3].

**Fifthly**, meeting the requirements for reimbursement of court costs for representative services does not depend on the size of remuneration established by the State for payment of a lawyer participating in the criminal process on the appointment of inquest bodies, preliminary investigation, the Prosecutor or the Court [3].

**Sixth**, if the sum of claimed requirement clearly exceeds reasonable limits and the other party does not object to the excessiveness, the Court in the absence of evidences of the reasonableness of the costs submitted by the applicant, in ac-

cordance with part 2 of article 110 of the Arbitration and Procedural Code of the RF compensates such costs within reasonable, in his view, limits [3].

The authors of the commentary to the Arbitration and Procedural Code of the Russian Federation, based on an analysis of arbitration practice of applying article 110 of the APC of the RF, note the following points in determining by courts the reasonableness of the court costs:

“determining the reasonableness of limits of satisfying the requirements for reimbursement of court costs for payment of representative services does not depend on the size of remuneration established by the State for payment of a lawyer participating in the criminal process on the appointment of inquest bodies, preliminary investigation, the Prosecutor or the Court;

- the amount of payment for consultations which are not specified in the agreement on representation in court shall not be included in the court costs;

- the exaction of the costs of food and taxis should be denied, as these costs are not confirmed;

- the cost of real estate which is the subject of the dispute, does not affect the cost of legal services;

- court, establishing a balance between the rights of persons involved in the case, determines a reasonable amount of compensation. This obligation does not imply the right of the Court, taking into account the specific circumstances of the case and the appropriate evidences to deny reimbursement of costs in case if they have been really incurred by the claimant;

- data, submitted by the claimant in confirmation of regional practice of payment for representative services in cases of comparable complexity, are not an unconditional ground for recognition of actually incurred costs for payment of representative services as relevant to the reasonable limits of such costs. The plaintiff submitted other data that illustrate the different approaches in resolving issues related to the exaction of court costs for the payment of representative services;

- the Court of the first instance, recognizing the costs for payment of representative services as exceeding reasonable limits, rightly refers to such circumstances as low complexity of the case, a small amount of actions committed by the representative. Plaintiff in breach of article 65 of the APC of the RF has not proved that the cost of communication services and services on storage of baggage is directly linked to the representation of interests in Arbitration Court on the considered case. There is no evidence in the case materials that mobile calls have been precisely addressed to the heads of a legal firm and on issues related to the case. Moreover, as follows from the evidences, services of baggage storage were provided to the

representative of the applicant during his staying in the hotel, therefore, are not obviously necessary and are not linked to the appearance before the Court of arbitration. The argument of the plaintiff's against unreasonable deletion from court costs of incurred expenses for early check-in and late check-out from hotel should be recognized as justified" [5].

As we see it, the main questions of distribution court costs are associated with the determination of reasonableness only of a certain part of the judicial costs – the costs associated with the payment of attorneys' fees and other persons providing legal assistance (representatives). I.V. Reshetnikova and I. V. Kurgannikova also noted that exactly compensation of the costs for payment of representative services incurred by the person in whose favor was made a court's judgment, in practice has been causing a lot of questions [6].

In our view, the existence of a contract for services of a representative, its actual submission and the fact of payment does not guarantee a taxpayer (tax agent) compensation of spent money in case of resolving a tax dispute in his favor. This happens because part 2 of article 110 of the APC of the RF provides the arbitration court the right to reduce the amount of exaction for reimbursement of representative services payment, if it recognizes those costs as excessive because of the particular circumstances of the case. As practice shows, the reasonableness of the expenditures in the understanding of judges is always associated with their subjective evaluation of the amounts spent on representative services. By the way this evaluation at different times and in different cases may differ significantly.

Unfortunately, the current arbitration practice in part of exaction court costs, comments of legal scholars to this practice, as well as scientific articles on the issues of determining reasonable limits and exaction of court costs, do not give a clear answer regarding the limits of judicial discretion in this part. In our view, there are no logical conclusions from the synthesis of arbitration practice concerning the categories of reasonableness and excessiveness.

In such circumstances, the taxpayer (tax agent) should not expect exaction of the amounts claimed for compensation of court costs if he has limited his evidences by proving of the fact of costs-sharing for payment of representative services. Despite the fact that the burden of proving of excessive amounts of compensated costs is laid on the losing party, when the taxpayer (tax agent) occupies a passive position the amount of judicial costs can be significantly reduced, especially if the remuneration of a representative is calculated from the sum of the tax claims in a dispute or determined on principles of an hourly payment of services without reference to physical and legal actions of a representative.

As noted by K. Sasov, even when a representative counts his remuneration on the basis of the hourly rate, the following variants of arguments on the unreasonableness of costs with disputing are possible:

- remuneration rates and the number of representatives from the tax payer (tax agent);

- the wisdom of individual actions of the person providing services to the taxpayer (tax agent) during considering a tax dispute in arbitration;

- time needed for implementation of services [7].

In our view, when considering the category of reasonableness of expenses should be noted two points – the reasonableness of the representative actions (i.e. what, where and when the representative does), the reasonableness of the time spending for implementing his actions and, accordingly, the adequate valuation of representative services. As we see it, cannot be justified the position according to which all actions are reasonable, if they have led to the victory of the taxpayer in tax dispute. Only physical or legal actions of a representative, committed without violation of laws and of direct relevance to forming of an evidence base and contesting acts of tax authorities, as well as participation in court proceedings, participation in committed within a framework of a tax dispute procedural actions (Inspection of premises, expertise, ensuring the participation of third parties, etc.), drafting of procedural documents is reasonable for representation of the interests of the taxpayer (tax agent) in a tax dispute.

Committed actions of a representative should contain usefulness, common sense, logical sequence. It is no secret that the Court and the tax authority will compare the intellectual qualities of a representative, his proposed solution to the dispute, the strategy and tactics in comparison with the possible conduct of a lawyer – a mid-level professional. However, such a comparison cannot lead to the determination of excessiveness of costs for a representative if representative's actions are digitized – determined norms of work-time with documents, determined hourly rates for representatives of different professional skills and training, determined the types of committed legally significant actions. The reasonableness of actions of the representative of a taxpayer (tax agent) in a tax dispute manifests, including in cases, when a representative minimizes the possible adverse effects of the other side of a dispute.

Edge of reasonableness, in our view, should rightly take into account the interests of both sides of a tax dispute, because the basis of the principle of reasonableness is the idea of a compromise among the various legitimate interests. The reasonableness of actions of the representative of a taxpayer (tax agent) is the real-



ization of his objectives in an optimal way. And the aim should meet the criteria of the truth, i.e. the contested decision (action) of the tax authority (its official) should be illegal.

It seems to us that if law firms, tax lawyers, other legal scholars, representing the interests of the taxpayer (tax agent) in tax disputes begin to use an unified approach to the determination of the composition of necessary actions at each stage of the consideration of a tax dispute in the Arbitration Court, it will allow judges to develop a common understanding of the category of reasonableness. In this context, seems to be interesting practical activity of CJSS "Sanar", which offers its potential customers unified principles of determining the costs for its services in tax and other disputes with public authorities.

For example, in the first instance of arbitration courts, contesting the decision of the tax authority, CJSS "Sanar" identifies the following types of executed works:

1. Compilation of a formula of protection the interests of a taxpayer (in disputing each decision of the tax authority, this work is exclusive).

*Appealing a non-normative legal act of the tax authority, it must be remembered that in a court proceeding consideration of legitimacy of its acceptance will be limited only with those grounds which are certified by the tax authority in the motivation part of the decision. The norms of law during the consideration of a case in the Arbitration court do not let the tax authorities to add to their decisions other grounds and evidences which do not form the basis of the taken decision. On the contrary, the taxpayer has the possibility to supplement its legal position with additional evidences, claiming that the tax authority either ignored or not requested it from the taxpayer's contractor or did not properly conduct procedure of tax control.*

*In case of application by the tax authority of such grounds as bad faith of a taxpayer, always should be required determination of that fact in court as legal one. It must be remembered that the guilt of a legal entity (and hence bad faith) is directly connected and is secondary on the relation to the taxpayer's official and his fault. Determination of official's guilt should be conducted according to the norms of the Code on Administrative Offences of the Russian Federation, which identifies all kinds of guilt of an individual. Bad faith of counterparty is not an evidence of guilt of a taxpayer's official. The concept of due diligence in the Code on Administrative Offences of the Russian Federation, is also missing. Article 2.2. of the Code provides only an intent and negligence. Tax authority cannot prove both forms of guilt, unless he proves that the taxpayer's official had knowingly known that the counterparty is unscrupulous.*

*While contesting a decision of a tax authority it is possible to bring the introduced grounds to absurdity, what focuses attention of judges on them. For example, you can explain to the Court how the tax authority applies the policy of double standards in respect of one and the same norm of law, as compiles economically unjustified claims on tax payments, etc.*

*During writing formulas of protection one should focus attention on violation of procedural norms by the tax authority (procedures for the implementation of tax control and making a decision). Despite the fact that the breach of procedural norms is not sufficient grounds for revocation of the contested decision, the reference to these violations can help to identify dishonesty of the tax authority.*

*While writing protection formulas one should not dwell only on norms of tax law. It is recommend that you make use of all existing similar cases on a tax dispute, find out the views of the court community, including the Constitutional Court, the position of the Ministry of Finance, legal practitioners, auditors, tax lawyers. Should be kept in mind that tax implications arise from the transactions committed by a taxpayer and changes in conditions of an unfinished transaction can lead to other consequences and nullify all claims of the tax authority. For example, recognition of a transaction as invalid with the restitution, matching of the creditor and the debtor in one person etc.*

*Formula of protection should include warning in future of similar tax claims to the taxpayer or using by the tax authority of "grey schemes" to increase the tax burden.*

*Formula of Protection – this is the adopted course of action in order to protect the interests of the taxpayer.*

2. Preparing of a statement on disputed decisions of tax authorities and filing it to the Court.
3. Preparation of a statement for adoption security measures and filing it to the Court.
4. Participation in court proceedings.
5. Completing (selection) of judicial practice on similar tax disputes.
6. Preparation of the evidence base (completing, copying, stapling and certification of documents of the taxpayer, requests of missing documentation from contractors, banks and other persons) of the taxpayer.
7. Support of performance by the tax authority of adopted ruling on security measures: getting of writ of execution, transfer to the tax authority and tracking of suspension of order for collection of the tax authority.

8. Preparation of explanations, supplements to a statement. Enclosure of documents required by a judge to the case materials. Clarification of requirements (if needed). Preparation of objections to the response of the tax authority.
9. Statement of a petition to appoint a judicial examination (if necessary). Working with a judicial expert.
10. Statement of a petition to call a witness, providing appearance of witness to the court proceeding.
11. Work with a third party, not stating a separate requirement, but participating in the case (to ensure sending of petitions, responses, letters, etc. to the Court), with an aim to eliminate procedural aspects of abolishing the Court's decision on the dispute.
12. Getting acquainted with materials of the case, getting copies of the sheets of the case.

Types of work performed by the representative on the stage of appeal of the decision of the Arbitration Court issued on the tax dispute depend on the fact in whose favor was made a court's judgment.

When making a decision in favor of a taxpayer the objective of a representative is to support the Court's decision and provide evidences, the arguments in part of groundlessness of the complaint from a tax authority on the made judgment of the Court of the first instance. In this regard, the reasonable actions of a representative are:

1. Examination of the appeal of a tax authority to verify its compliance with the requirements of the APC (Arbitration and Procedural Code), the validity of the represented arguments, and so on.
2. Preparation of a response to the appeal of a tax authority.
3. Participation in court proceedings (with the arrival on the mission to the location of the Arbitration Court).
4. Preparation of the evidence base to the counterargument of a taxpayer against the appeal of a tax authority (if the necessary documents have not been laid down to the basis of the decision of the Arbitration court or missing in the case materials).
5. Preparation of explanations, supplements to response. Enclosure to the case materials of documents requested by court. Clarification of stated requirements (if needed).

When making a decision in favor of a tax authority the objective of a representative is to provide to the court evidences, arguments for changing the decision

of the Court of first instance in favor of a taxpayer. In this regard, the reasonable actions of a representative are:

1. Expertize (examination) of the decision of the Court of the first instance for the prospects of its appeal.
2. Preparation and filing of an appeal to court.
3. Participation in court proceedings (with the arrival on the mission to the location of the Arbitration Court).
4. Preparation of the evidence base in support of the arguments represented in an appeal.
5. Preparation of explanations, supplements to the appeal. Enclosure to the case materials of documents requested by court. Clarification of stated requirements (if needed).

Similar to the types of reasonable actions of the representative of a taxpayer in the appeals instance of arbitration court, actions of a representative under consideration of a tax dispute in cassation instance are defined.

For example, if resolution of appeals instance was made in favor of a taxpayer, the representative may exercise:

1. Expertize (examination) of the cassation appeal of a tax authority to verify its compliance with the requirements of the APC and justification of arguments.
2. Preparation of a response and supplements to it against the cassation appeal of a tax authority.
3. Participation in court proceedings (with the arrival on the mission to the location of the Arbitration Court).
4. Preparation of explanations with pictures and tables on the merits of tax claims.

When making a resolution by the appeals instance of arbitration court in favor of a taxpayer, the reasonable actions of a representative are:

1. Expertize (examination) of the decision of the Court of appeals instance for the prospects of its appeal.
2. Preparation and filling of a cassation appeal (with the arrival on the mission to the location of the Arbitration Court of the respective District).
3. Participation in court proceedings.
4. Preparation of explanations, supplements to a complaint, a petition on

enclosure to the case materials, documents which were missing at the time of consideration of a case in the first two instances of arbitration court.

It is easy to identify a list of reasonable actions of the representative of a taxpayer aimed at ensuring revision of the judicial acts by way of supervision. Sometimes it is possible to continue the contesting of court's judgments made not in favor of a taxpayer under the procedure of review of a case on new circumstances.

A positive impact on the subjective attitude of the Court to a taxpayer and his representative is caused by the fact of minimization of the taxpayer's costs (and hence reduce of judicial costs) in part of the involvement for work with a contract of specialists of different qualification (look table 1). As we see it, there is no need to involve a highly-paid specialist for all kinds of works during the protection of the taxpayer's interests. For example, in preparing evidence base, writing petitions and other specific procedural actions.

If there exists a practice of the Court of arbitration on certain issues, and a specialist of lower qualification can protect the interest of a taxpayer there is no need of carrying out these works by a specialist of higher qualification. In our view, the practice is established only when there are no different outcomes for similar tax disputes.

Table 1

The price of one hour of work of specialist CJSS "Sanar" with documents of a taxpayer (tax authority) and drafting of documents.

Ordinal number	Post title, category	Price in RUR
1.	Director, c.j.s.	1.750
2.	Deputy Director	1.050
3.	General legal adviser	800
4.	Leading legal adviser	550
5.	Legal adviser	400
6.	Chief Accountant	1.000

It is positive to provide open access to information on prices of participation of different specialists in retreats on representation of taxpayer's interests for a wide range of people [9].

Having considered the reasonableness of actions of the taxpayer's representative we should go to the question of the reasonableness of time spending, on the basis of which is determined the cost of legal services of a representative. Though labor of lawyers falls under the category of intellectual work, but contains a lot of elements which can be calculated (able to be accounted). It would be

perfectly feasible to assess the time parameters that can be used to perform certain operations. For example, it is possible to fix the time needed to read a unit of a document (A4 sheet), drafting of a unit of the document, normalize the time needed for legal examination of a non-normative act. Time spent for completing, copying, stapling, certification of documents is also quantifiable.

On the basis of the existing norms on the preparation of a worksheet text document by economic services, design and technology divisions and chronometry, CJSS “Sanar” established the following time standards for work with documents.

Table 2

Standards of time for work with documents

Ordinal number	Name, type of document	Norm of time A4 sheet, in hours
	<u>Examination of documents</u>	
1	Act of a tax check	0.25
2	Decision of a tax authority	0.25
3	Appeal or cassation complaint of a tax authority	0.25
4	Responses of a tax authority to an appeal or cassation complaint	0.25
5.	Report of a judicial expert	0.25
6.	Ruling of arbitration court	0.1
7.	Decision of arbitration court, resolution of the appeals and cassation instances of arbitration court	0.25
8.	Documents of primary accounting: consignment note, payment order, account, invoice	0.15
9.	Taxpayer’s contracts with counterparty	0.25
10.	Claim, order for collection, tax authority notice	0.1
11.	Resolution of a law-enforcement agency	0.25
12.	Other, not listed above documents	0.25
	<u>drafting of documents</u>	
1.	Objection to an act on the result of a tax check	0.5
2.	Letters, including accompanying letters, to tax authorities, law-enforcement agencies, the Treasury	0.25
3.	Completing documents for letters, statements, complaints	0.25
4.	Formula of protection of a taxpayer in a tax dispute	1
5.	Statement to the arbitration court with appeal against non-normative legal act of a tax authority, a complaint to higher instance of a tax authority, claim for compensation of loss, statement to compensation of judicial costs	0.5
6.	Statement on adoption of security measures	0.25

Ordinal number	Name, type of document	Norm of time A4 sheet, in hours
7.	Response to appeals or cassation complaint of a tax authority	0.5
8.	Explanations, supplements to statements on complaining of non-normative acts of a tax authority	0.25
9.	Statement with a petition for appointment of judicial examination, drafting of issues for resolving by an expert	1
10.	Appeals, cassation complaints against court's judgments which do not meet the requirements of a taxpayer	0.5
11.	Other, not listed above documents	0.25

These standards have been tested at the reasonableness in seven cases in which taxpayers required exaction of judicial costs from a tax authority [4]. In any of the cases the Court had not questioned the reality of the spent time calculated with help of these standards, and the percentage of the exacted judicial costs to declared ones amounted to more than 80%.

Summing up set out information, it must be emphasized that the evidence of the reasonableness of judicial costs incurred by an organization in a tax dispute, is not so much the existence of a contract for representative services and fact of payment, but:

- decryption of types of work performed by the representative in the tax dispute;

- cost of one hour of work of specialists of different qualifications (not to be confused with hourly rate of a worker);

- time taken to perform certain types of work, calculated according to standards approved by local act;

- quantitative values on completing of evidence base, participation in court sessions, drafted documents, documents which have passed legal examination of and so on.

A detailed report on the work done by a representative on all the stages of the arbitration process although is cumbersome at first glance, but simplifies the process of evaluation by the Court of the reasonableness of the representative service. In addition, detailed deciphering of the works and the price of service prevents judges sympathizing to the tax authorities from carrying out an arbitrary reduction of the amount of legal costs. Justification of "explicit overstatement" of taxpayer's court costs is quite problematic for them in this case.

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