

## TOURIST TAXES IN ITALY AND RUSSIA

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*The article deals with the legal regulation of tourist taxation in Italy with a view to improving the Russian tax system. Many European countries have adopted a tax on accommodation, also known as a tourist tax or a resort fee, in order to facilitate contribution by tourists to tourist infrastructure. This approach is currently being implemented in many countries, including those countries in the European Union which welcome a large number of tourists. Italy is one of the most popular such destinations, and has considerable experience in tourist taxation and regulation of public finances, which can serve as a useful example for the improvement of the Russian tax system. The authors point out that a nation's laws should include a direct link between a tax resident and the location of a vacationer or a tourist. They also conclude that the imposition of the tax may affect the number of tourists in a particular municipality since they may prefer to stay in a place free from resort fees. The paper also examines and supports the imposition of the tax as a reasonable and civilized solution to the problem of damage caused to the environment by a large influx of tourists into particular territories, since it makes it possible to compensate for the damage caused. The research indicates that there is room for improvement with regard to certain provisions of the Law adopted in Russia and coming into force on 1 January 2018. In the authors' view, the better solution would be to transfer resort fees to the budgets of those municipalities where tourists are accommodated. This would ensure the necessary tourist involvement in the public sphere, increase their responsibility and would also provide a direct link between the payment of the tax and the development of resort infrastructure.*

*Keywords: tax; accommodation tax; residence tax; tourist tax; resort fee; local tax; regional tax; regional financial law.*

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## Table of Contents

### Introduction

#### 1. The Structural Elements of the Italian Residence Tax

#### 2. Specific Aspects of Taxation of Tourists in Selected Regions of Russia

### Conclusion

## Introduction

Today, many European countries have imposed a “city tax on the accommodation of tourists (tourist tax or residence tax)”<sup>1</sup> (in Italian – “*imposta di soggiorno*”) in order to involve non-resident hotel guests, who are not tax residents or subject to any other local taxes and not owners or beneficiary owners of residential premises used exclusively for tourism purposes, in the improvement of recreation areas and the elimination of negative consequences caused to utilities and the environment by a large number of visitors.<sup>2</sup>

Although this is a local tax and, therefore, national legislators can theoretically freely determine the criteria for its application in each individual country, there is an obligation to observe the principles enshrined in international treaties that prevent the adoption of discriminatory measures limiting the exercise of fundamental rights and freedoms of citizens of the European Union.<sup>3</sup>

Discrimination may arise when persons who are not subject to taxation enjoy local and regional public benefits, as well as the cultural and environmental heritage of Italy, just like resident citizens, while not participating in the public expenditure aimed at providing those benefits.

It should be noted that the application of this tax is justified if a person stays in a particular municipality solely for tourist purposes. However, an awareness of the tourist tax may lead potential taxpayers to choose other accommodation in order not to pay the tourist tax.

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<sup>1</sup> In Russia, this tax is called a resort fee.

<sup>2</sup> See Enrico Corali, *Cittadini, tariffe e tributi. Principi e vincoli costituzionali in materia di prestazioni patrimoniali imposte* 168 (Milano: Giuffrè Editore, 2009).

<sup>3</sup> See also Franco Picciaredda & F. Peddis, *Individuazione del presupposto del tributo di soggiorno, principi di sistema e principi fondamentali di coordinamento in L'autonomia tributaria delle regioni e degli enti locali tra Corte costituzionale (sentenza n. 102/2008 e ordinanza n. 103/2008) e disegno di legge delega: Un contributo giuridico al dibattito sul federalismo fiscale* 53 (V. Ficari (ed.), Milano: Giuffrè Editore, 2009).

In Italy, the accommodation tax was established in 1910 for thermal baths and bathing resorts and, in 1938, it was extended to other popular tourist destinations. In 1989 (Art. 10 of the Decree-Law of 2 March 1989 No. 66), the tax was suspended in the run-up to the FIFA World Cup in 1990 due to the likelihood of the tax reducing potential tourist numbers.<sup>4</sup>

The tourist accommodation tax (*imposta di soggiorno*) was later reintroduced, though only in Rome, by the Decree-Law of 31 May 2010 No. 78, which made it possible to establish a fixed tax rate. The tax was paid by those who were accommodated in living quarters in Rome, subject to certain criteria being met. A maximum tax of ten euros per night was established in order to ensure the financial and economic sustainability of the municipality.

Finally, within the framework of the implementation of municipal fiscal federalism in Italy, a regulation on the municipal tax was reintroduced by the Decree-Law of 14 March 2011 No. 23. Under the Law, regional centers, provinces, and municipalities included in the regional lists of resorts and cultural centers were authorized to impose the tourist tax upon a decision of municipal councils. This tax is paid by residents of living quarters on the territory of the municipality in proportion to the cost of living but cannot be more than five euros per night.<sup>5</sup>

It is worth noting that, at the regional level, the tourist tax was introduced earlier in Sardinia in accordance with a local Law introduced on 29 May 2007 (in force until 2009). The tax was collected from non-permanent residents living in the municipalities of the Sardinia Region.<sup>6</sup>

The Russian Federation and the former USSR also have some experience with resort fees. A resort fee was introduced as early as in 1933 by the Decree of the Presidium of the Central Executive Committee of the USSR of 17 August 1933 No. 74/1646<sup>7</sup> with a view to reimbursing some of the expenses for the improvement of resorts and upgrading of everyday services for tourists. Subsequently, this resort fee was replaced by a non-tax mandatory payment which was paid by self-supporting sanatoriums and health centers (excluding those for children and tuberculosis patients) to the trade unions rather than the municipal budget. The introduction of resort fees for tourists without health resort vouchers was regulated by legislative

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<sup>4</sup> See Bianca Biagi et al., *La tassazione turistica: il caso della Sardegna* in "Tourism Taxation." *Sostenibilità ambientale e turismo fra fiscalità locale e competitività* 28, 34 (V. Ficari & G. Scanu (eds.), Torino: G. Giappichelli Editore, 2013).

<sup>5</sup> The last decree, which came into force on 5 May 2009 (No. 42), was delegated by the commission on fiscal federalism (Art. 12(d)), it was precisely "the right to introduce one or more municipal taxes thanks to tax autonomy that made it possible to establish and apply them for specific purposes, such as... fees for specific events, such as tourist flows and urban mobility."

<sup>6</sup> Such tax was abolished in 2009 (Legge Regionale 14 maggio 2009, n. 1, Art. 2).

<sup>7</sup> See Постановление Президиума ЦИК СССР от 17 августа 1933 г. № 74/1646 "О курортном сборе," *Собрание законодательства СССР, 1933, № 53, ст. 307* [Decree of the Presidium of the Central Executive Committee of the USSR No. 74/1646 of 17 August 1933. On the Tourist Fee, Collected Acts of the USSR, 1933, No. 53, Art. 307].

acts of the USSR republics. The amounts collected were used to improve and maintain resort zones and beaches, to build hotels and car parks, and to provide catering and consumer services for tourists.<sup>8</sup> In the RSFSR, such fees were established by the Resolution of the Council of Ministers of the RSFSR of 16 August 1963 "On Resort Fees Levied on Citizens Visiting Resort Areas on Non-Organized Trips."<sup>9,10</sup>

As for the Russian Federation, a resort fee was introduced by Law of the RSFSR of 12 December 1991 No. 2018-I "On Resort Fees for Individuals,"<sup>11</sup> which expired on 1 January 2004. This Law provided for a rather complicated procedure, i.e., tourists would pay the fees directly through banks; it authorized law enforcement officers to verify these payments, thereby obliging tourists to keep the receipts on their person at all times.

On 29 July 2017, the Russian Federation adopted the Federal law No. 214-FZ<sup>12</sup> which, from 1 May 2018, will introduce resort fees in the four constituent entities of the Russian Federation most visited by Russian and foreign tourists. According to the Law, this experimental Law is aimed at the development of resort infrastructure in order to preserve, restore and develop the resorts, to create a unified tourist area and favorable conditions for the sustainable development of the tourist industry, and also to assess the effectiveness of the enacted fees.

Italy has gained considerable experience of legal regulation, not only in tourist taxation but also in public finance. Therefore, it is very important to consider the Italian experience of regulation of tourist taxation. It is worth mentioning that Italian academics made a valuable contribution to the theory of public finance which formed the basis of modern financial law in Italy and Russia.

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<sup>8</sup> For more detail, see *Толкушкин А.В. Налоги и налогообложение: Энциклопедический словарь* [Alexander V. Tolkushkin, *Taxes and Taxation: Encyclopaedic Dictionary*] 148 (Moscow: Yurist, 2000).

<sup>9</sup> Постановление Совета Министров РСФСР от 16 августа 1963 г. № 1012 "О курортном сборе с граждан, неорганизованно приезжающих на отдых в курортные местности," СП РСФСР, 1963, № 15, ст. 104 [Resolution of the Council of Ministers of the RSFSR No. 1012 of 16 August 1963. On Resort Fees Levied on Citizens Visiting Resort Areas on Non-Organized Trips, Collected Acts of the RSFSR, 1963, No. 15, Art. 104].

<sup>10</sup> See *Колосов Д.И. Курортный сбор: правовая природа и особенности введения* // *Налоги*. 2016. № 24. С. 6–9 [D.I. Kolosov, *Resort Tax: The Legal Nature and Features of the Introduction*, 24 *Taxes* 6 (2016)].

<sup>11</sup> Закон РСФСР от 12 декабря 1991 г. № 2018-I "О курортном сборе с физических лиц," Ведомости Съезда народных депутатов Российской Федерации и Верховного Совета Российской Федерации, 1992, № 8, ст. 364 [Law of the RSFSR No. 2018-I of 12 December 1991. On Resort Fees for Individuals, Gazette of the Congress of People's Deputies of the Russian Federation and the Supreme Soviet of the Russian Federation, 1992, No. 8, Art. 364].

<sup>12</sup> Федеральный закон от 29 июля 2017 г. № 214-ФЗ "О проведении эксперимента по развитию курортной инфраструктуры в Республике Крым, Алтайском крае, Краснодарском крае и Ставропольском крае," Собрание законодательства РФ, 2017, № 31 (ч. I), ст. 4763 [Federal law No. 214-FZ of 29 July 2017. On the Experiment on the Development of Resort Infrastructure in the Republic of Crimea, the Altai Region, the Krasnodar Region and the Stavropol Region, Legislation Bulletin of the Russian Federation, 2017, No. 31 (Part 1), Art. 4763].

What follows is a detailed analysis of tourist taxation in Italy and, subsequently, we will compare it with the new Law adopted in the Russian Federation. Proposals will be made to improve the legislation regulating tax collection for tourist accommodation in Italy and Russia.

## 1. The Structural Elements of the Italian Residence Tax

It should be noted that the Italian doctrine on public finances is unanimous on the tourist tax, considering it “a new trend aimed at taxing one of richest (and often underestimated) sources of wealth in Italy, i.e., tourism.”<sup>13</sup>

Therefore, the tourist tax on living in Italy (*imposta di soggiorno*) is a tax that is established in the capitals of the Italian provinces, in the associations of municipalities, and in the municipalities included in the regional lists of resorts and cultural centers due to the additional costs they have to bear due to large inflows of tourists.<sup>14</sup>

The decision to levy the tourist tax implies that tourist and hotel services in Italy are very much in demand in tourist areas or cultural centers.<sup>15</sup>

The assumption is that tourists enjoy visiting certain cities but may cause damage to them and that such damage must then be repaired. Therefore, it is necessary to consider how to collect the tax from regular visitors coming to the same regions and cities for just a day and not staying overnight, i.e., non-taxpayers.

Each municipality has the right to determine the amount of tax independently, as well as establish the type and level of benefits on its territory in accordance with applicable procedures in the municipality.

Despite the legislation having been adopted, many hotels do not collect the tax in proportion to the amount actually paid for the duration of a stay at a hotel but in proportion to the number of stars they have.

There are many payment methods and criteria for calculating the tax and these are very diverse: from a fixed amount of five euros<sup>16</sup> to payment at a variable rate based on the type and the category of a hotel, the cost of hotel services, the location or the season.<sup>17</sup> Moreover, there are various exemptions from taxes in different municipalities

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<sup>13</sup> Agostino Ennio La Scala, *La nuova autonomia tributaria dei Comuni*, 6 *Innovazione e Diritto* 3 (2011).

<sup>14</sup> For more detail, see Eugenio Piscino, *L'imposta di soggiorno e l'accisa sull'energia elettrica*, 3 *La finanza locale* 22 (2011).

<sup>15</sup> See Loris Tosi, *La fiscalità delle città d'arte* 71 (Padova: Cedam, 2009).

<sup>16</sup> On 1 September 2014, Rome increased the tourist tax to 7 euros as provided for in a special law (Decree-Law of 31 May 2010 No. 78). Other cities followed suit, e.g., Florence (1 July 2011), Venice (23 August 2011), Catania (1 September 2011), Pisa (1 January 2012), Siena (1 March 2012), Turin (2 April 2012), Vicenza (1 May 2012), Verona (1 August 2012) and many other municipalities.

<sup>17</sup> In a number of municipalities, the tax is paid on the 15<sup>th</sup> day of each month and, in others, quarterly or every three months. Some municipalities provide paper forms for completion, others use special software. In some municipalities, operators indicate the amount of the tourist tax in a separate line in the receipt (invoice) for accommodation.

depending on whether the properties are attached to a particular facility, the season, the length and the purpose of the stay, as well as the visitor's age, disability, etc.<sup>18</sup>

This practice was confirmed by a decision of the Administrative Court of Tuscany (TAR Toscana),<sup>19</sup> which held that municipalities should establish proportional payment rates to be paid by individuals. In this regard, setting the rate based on the star rating of a hotel is justified, since a classification like "stars," "keys" or "ears" indicates the level of service the client has chosen.<sup>20</sup>

It is important to understand that the revenues received from tourist taxes are intended to compensate for the impact of tourism activities, especially by way of restoring cultural and environmental heritage, and maintaining and developing tourist infrastructure, as well as public services that are used by tourists. This will help to eliminate the negative impact on the environment of the tourist influx.<sup>21</sup>

An issue currently under dispute is compliance with the tax rules and responsibility for non-payment of tourist tax by managers of accommodation facilities. A particularly controversial aspect of this dispute relates to the role of the manager of the facility to whom the tourist actually pays the tax, as well as the obligations of the manager and the tourist arising in the case of a delay in payment or failure to pay the relevant tax.

Article 4 of the Decree-Law of 14 March 2011 No. 23, which is in force, does not determine who is responsible for tax payment in lieu of a client, nor does it specify the requirements for tax collection under national legislation.

For example, a decision of the Administrative Court of Tuscany says that the act establishing the residence tax in Florence does not allow hoteliers to be qualified as additional taxpayers. This is probably because they are considered the instrument for introducing the tax, which is completely different from the tax obligation.

Courts themselves can make requests to hotel owners regarding "payable" but not "collected" taxes. Therefore, the owners are not responsible for taxpayers' failure to fulfill the obligation to pay tax.<sup>22</sup>

A similar approach is followed by the Administrative Court of Veneto (TAR Veneto), pursuant to which obligations of hoteliers to collect the residence tax from clients on behalf of the state should not be applied. However, in order to justify its application, some municipal legal acts contain the expression "responsible for collection" with

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<sup>18</sup> For more detail, see *Копина А.А., Копин Д.В. Курортный сбор: история, зарубежный опыт и перспективы // Налоги. 2016. № 20. С. 9* [Anna A. Kopina & Dmitry V. Kopin, *Resort Tax: History, Foreign Experience and Prospects*, 20 Taxes 1, 9 (2016)].

<sup>19</sup> See, e.g., TAR Toscana, sentenze 7 febbraio 2013, n. 200; 24 novembre 2011, n. 1808.

<sup>20</sup> See Marta Basile, *L'imposta di soggiorno quale tributo di scopo tipico del federalismo fiscale municipale in La fiscalità locale tra modelli gestori e nuovi strumenti di prelievo* 139, 143 (A.F. Uricchio (ed.), Santarcangelo di Romagna: Maggioli Editore, 2014).

<sup>21</sup> See Carlo Buratti, *Ragioni e limiti dell'imposizione sui "non residenti," 2 Federalismo fiscale* 207 (2008).

<sup>22</sup> TAR Toscana, sent. n. 1348/2011.

a reference to the method of calculation of “tax charges” contained in Art. 64 of the Decree of the President of the Republic No. 600/1973.<sup>23</sup>

The Administrative Court of Lombardy (TAR Lombardia) takes a different approach, under which hoteliers and owners of premises are not responsible for tax collection, except in cases where such payments were actually made by a client.<sup>24</sup>

## **2. Specific Aspects of Taxation of Tourists in Selected Regions of Russia**

As for the Russian Federation, after 14 years, resort fees will be reintroduced in several regions starting from 1 May 2018. In addition, by 1 December 2017 special laws should be adopted in each of the four regions and in the municipalities collecting resort fees, i.e., local acts.

The situation regarding Russian resort fees significantly differs from that of Italy in that the basic principle of charging, i.e., compensation to the municipality for damage caused by a large number of tourists, was not initially followed. Instead, a fiscal principle, i.e., replenishment of budgets, was applied, and no direct link was established between a tourist, the resort he visited and payment of tax. This is evidenced by Art. 8(4) of the Federal law of 29 July 2017 No. 214-FZ: “Resort fees should be transferred to the budget of the constituent entity of the Russian Federation where the experiment is conducted,” which indicates that the resort fee revenues entering the general budget are spent not only on purposes connected with tourist activity. For example, in the Krasnodar Region of the Russian Federation, the only municipalities that attract a significant number of tourists are those on or close to the Black Sea coast. However, such areas are only a part of the entire region, so the tax revenues paid there will be allocated to the general budget of the region. Moreover, the Law is not clear as to which municipalities in the Krasnodar Region will collect the resort fees. It may even be the case that the resort fees will be collected throughout the region.

Generally, the procedure for resort fee collection will be similar to that in Italy with some minor differences, for example, taxpayers will be adults accommodated for more than a day, and not for a night, as in Italy. Under Art. 7 of the Law, some groups of individuals are exempted from the tax payment and the list is not exhaustive; regional authorities have discretion to release additional groups from such payment. As in Italy, operators of resort fees in Russia will be individuals and legal entities who provide tourist accommodation.

Another possibility proposed by the Russian law is that special funds for the development of resort infrastructure receive part of their revenue from resort fees. However, the Law does not make it clear why the revenues should be accumulated in these funds rather than simply being transferred to the budget of municipalities.

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<sup>23</sup> TAR Veneto, sentt. n. 653/2012, n. 1165/2012.

<sup>24</sup> TAR Lombardia, sent. n. 1824/2013.

Moreover, the amounts of assets allocated to the funds are not specified, it remains unclear how and for what purpose the money will be spent, how and who will control the assets, and, finally, how the funds will be distributed among all the municipalities and on the basis of what criteria.

Detailed analysis of the legislative initiative on the resort fee reveals the following:

Firstly, the experimental resort fee will only apply from 1 May 2018 to 31 December 2022. Depending on the results obtained, a decision will be made either to abolish the resort fee or to introduce it into other regions of the Russian Federation. It is expected that the resort fees will boost the development of the resort infrastructure in order to preserve, restore and develop the resorts, organize a unified tourist space and create favorable conditions for the sustainable development of tourism (Art. 1).

Secondly, the experiment with the resort fee concerns certain municipalities situated in the territory of the experiment. This means that the resort fee will not be applied in all the territories of the federal entities of the Russian Federation mentioned in the Law. Only specific municipalities will be involved and will benefit from financial support for the design, construction, reconstruction, maintenance, improvement and repair of resort infrastructure facilities. For example, the Administration for External Relations, Tourism and Resort Affairs of the Altai Region reported that the authorities of the Altai Region decided to conduct an internal experiment within the framework of the general experiment and introduce a resort fee only in Belokurikha, a resort city of federal significance. If the resort fee experiment proves successful and brings positive changes, the resort fee will be introduced to a number of other municipalities of the Altai Region.<sup>25</sup> It is unclear why the resort fee is paid to the regional budget and not to the budget of Belokurikha, the only municipal entity participating in the experiment in the Altai Region.

Thirdly, the Law prescribes that the experiment costs shall be compensated by the budgets of federal entities of the Russian Federation, rather than the budgets of municipalities where the resort fees are to be charged. Some regions have already calculated the amount of income from the resort fees. For example, if the resort fee in the Altai Region is 30 rubles per person, Belokurikha will receive about 50 million rubles. In the Stavropol Region, income from the resort fee is based on the total number of tourists staying in the resorts for an average of 14 days and a resort fee of 50 rubles per day. It is assumed that the total additional revenue for the budget of the Stavropol Region from 2018 to 2022 will exceed 2.02 billion rubles.<sup>26</sup>

<sup>25</sup> For more detail, see Курортный сбор в Алтайском крае будет взиматься только в Белокурихе // Интерфакс-Туризм. 24 июля 2017 г. [Resort Fee in the Altai Region Will Be Charged Only in Belokurikha, Interfax-Tourism, 24 July 2017] (Dec. 28, 2017), available at <http://tourism.interfax.ru/ru/news/articles/42470>.

<sup>26</sup> Закон о курортном сборе принят // Официальный сайт Думы Ставропольского края. 23 июня 2017 г. [The Law on Resort Fees is Adopted, Official website of the Stavropol Region Duma, 23 July 2017] (Dec. 28, 2017), available at <http://dumask.ru/info/smipublic/sobytiya/item/17930-zakon-o-kurortnom-sbore-prinyat.html>.



However, experts and the official authorities of the regions where the resort fees will be introduced do not agree on future profits. The authorities' believe that only shrewd management of the resort fees will bear fruit. Moreover, in their view, it will enhance the development of domestic resorts, attracting more visitors to them, and, over time, will make it possible to compete with foreign resorts in terms of convenience and comfort.<sup>27</sup> The Governor of the Krasnodar Region is of the same view, believing that the introduction of the resort fee will not deter tourists from resorts. In his opinion, only poor quality service can negatively affect the influx of tourists. He also emphasizes that the Krasnodar Region spends three times more money on preparing for the vacation season than it receives from vacationers. The city of Sochi is allocated 7 billion rubles per year while all the other Black Sea resorts together receive about 6 billion rubles a year. Everybody makes a profit except those who spend money on resort infrastructure such as: facilities for medical, recreational, social, cultural, and sports purposes; parks, public gardens, city forests, boulevards, footpaths, beaches, riverbanks, pedestrian zones, and other facilities located in the territory of the experiment that can meet the spiritual and other needs of tourists, contribute to the maintenance of their livelihoods, recuperation and fitness (except for communal infrastructure facilities and highways). Furthermore, the governor pointed out that revenue from the resort fees and the assistance of the regional authorities will help to repair the municipal infrastructure of the tourist industry of the entire Krasnodar Region. He also says that it is extremely difficult for the municipal authorities to do this alone, and that the result will only be achieved after several decades.<sup>28</sup>

Tourism industry experts believe that the introduction of the fees may adversely affect the tourist influx to the resort areas due to the growth in the value of the tourist product. Owners of hotels agree with them. It is also important to take into account the fact that the resort fee should already be paid in 2018, whereas the development of tourist infrastructure is a matter for the future, meaning that those who come to resorts in 2018 will not see any improvement in the quality of leisure activities just after the introduction of the resort fee. Consequently, the collection of this fee will initially provoke only irritation, which will risk continuing in the future if tourists do not see improvements in service quality, meaning that these changes should be significant. The resort fees will only be considered positive if the changes made using them are significant. It is also important to understand that the refusal to visit the regions where the resort fee is imposed may not occur immediately, but gradually, for example, following an increase in the rate.<sup>29</sup> Another important aspect of the introduction of the

<sup>27</sup> For more detail, see *The Law on Resort Fees is Adopted*, *supra* note 26.

<sup>28</sup> For more detail, see *Размер курортного сбора на Кубани будут устанавливать муниципалитеты // BezFormata.Ru. 23 апреля 2017 г. [The Size of the Resort Fee in the Kuban Will Be Established by Municipalities, BezFormata.Ru, 23 April 2017]* (Dec. 28, 2017), available at <http://krasnodar.bezformata.ru/listnews/razmer-kurortnogo-sbora-na-kubani/56762437/>.

<sup>29</sup> The Law provides that the fee cannot be more than 50 rubles per person per night in a hotel in 2018 and 100 rubles per night in the subsequent years of the experiment. It also specifies that the resort fee

resort fee is the good faith of taxpayers. The Association of Tour Operators of Russia (ATOR) considers the introduction of the resort fee a premature measure which will adversely affect, first and foremost, honest taxpayers, because tourists will chose to stay with private individuals offering accommodation, who, as a rule, evade taxes.<sup>30</sup>

It should also be noted that the laws to be adopted by the federal entities of Russia no later than 1 December 2017 will define the territories of the experiment (at the time of writing, none of the regions included in the experiment had passed such a law).

The Krasnodar Region authorities opted to decentralize the resort fee. It is believed that the amount of the resort fee in Kuban will be established by the municipalities since it is municipalities who best understand what welcoming tourists involves, what investments to make in preparation for the vacation season and the return that will be made on such investment.<sup>31</sup> Therefore, it is at the municipal level that a direct link between the flow of tourists and the effects of their stay exists, which forms the basis of the concept of collecting the resort fee as proven by the Italian experience. Such fee should serve a compensatory function rather than provide the financial returns expected in Russia. However, not all regions of Russia participating in the resort fee experiment follow this approach.

It is important to note that, despite the existing contradictions associated with the introduction of the resort fee, only practice and its implementation in some regions of the Russian Federation will show to what extent the efforts listed above are justified and necessary.

As for the administration of the resort fee, the practice of levying other regional and local taxes shows that Russia has been facing a systemic contradiction. Namely, the Federal Tax Service, with its territorial subdivisions in the federal entities of the Russian Federation and municipalities, being the federal executive body primarily interested in filling the coffers of the federal budget, is solely responsible for administering federal, regional and even local taxes. In view of the above, it is important to understand the following. Firstly, the branches of the Federal Tax Service will not be able to ensure the proper level of control over the payment of the resort fee by all owners of accommodation facilities specified in the Law as “individual buildings or premises providing hotel services, temporary collective or individual accommodation services, as well as accommodation for temporary residence.” Secondly, operators of the resort fee will be “legal entities or entrepreneurs who, according to the legislation of the Russian Federation, provide hotel services and/or temporary collective or individual accommodation services and/or provide temporary residence (including

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can be differentiated depending on the season, days spent in the accommodation facility, the value of the resort according to the legislation of the Russian Federation on natural medical resources, medical rehabilitation centers and resorts, and the location of the municipalities in the experiment territory.

<sup>30</sup> For more detail, see *The Size of the Resort Fee*, *supra* note 28.

<sup>31</sup> *See id.*

living quarters), in residential areas as well.” Taking into account all the relevant conditions, it is important to understand that, at the present time, the Russian Federal Tax Service, having no branches in many of the municipalities participating in the resort fee experiment, lacks the resources (primarily human) necessary for the proper administration of the resort fees. Local authorities performing this function can be a solution but they are not empowered with tax administration and they are not directly interested in the amount of collected funds since the revenues from the resort fees are not allocated to their budgets but to the budget of the federal entity.

As regards the mandate to carry out the experiment, the Law regulates many issues that are not directly related to the collection of resort fees (the form and deadlines for submitting reports on the experiment, the bodies responsible for the preparation of these reports, the maintenance of registries, methodological support for the experiment, and much more) and, at the same time, the Law is silent about the administration of the resort fee, which, in the authors’ view, is a serious omission, since the effectiveness of implementation of the experiment directly depends on the quality of administration of the resort fee.

Another interesting fact is that the municipalities included in the experiment do not actually have any power to implement it but act only as a venue for it. Moreover, the collection of the resort fee in municipalities is effected and may be discontinued solely by a law of a federal entity of the Russian Federation following the application of a municipality participating in the experiment. A federal entity can enact a law whereby the territory of the experiment, the amount of the resort fee, the procedure and terms of its transfer to the budget of the federal entity of the Russian Federation and the procedure for monitoring compliance with the requirements of regulatory legal acts related to the experiment are established.

In order to receive feedback on the implementation of the experiment, the Law provides that information concerning reconstructed, improved and newly built facilities, and about renovated resort infrastructure in each federal entity of the Russian Federation, will be published on the internet.

The Federal law of 29 July 2017 No. 214-FZ sets out the grounds for exemption from payment of the resort fee, whereas this fee is a regional payment pertaining to a specific territory and is paid to the budget of the relevant federal entity of the Russian Federation. Moreover, federal entities of the Russian Federation have the right to define who is exempt from payment of the resort fee on the basis of proposals by municipalities. A similar practice was also employed previously. The Law of the RSFSR of 12 December 1991 No. 2018-I (abolished in 2003), established groups of people exempt from resort fees, including: children under the age of 16; persons with disabilities and persons accompanying them; persons who arrived on vouchers and treatment coupons for sanatoria, vacation centers, boarding houses, recreation centers, etc.; persons in resort areas on a business trip or for study and permanent residence; persons travelling on tourist routes planned by tour and

excursion companies and organizations, as well as those traveling on business trips; men aged 60 and over, women aged 55 and over; children visiting parents of the age specified above. Federal entities of the Russian Federation had discretion to widen concessional categories. For example, the Law of the Krasnodar Region of 3 June 1997 No. 77-KZ "On Resort Collection" (abolished in 2003) exempted children visiting their parents, i.e., men aged 60 and over and women aged 55 and over.

Concessional categories are amply represented in the new Law. Those released from payment of the resort fee are: 1) persons awarded titles of Hero of the Soviet Union, Hero of the Russian Federation, or full knights of the Order of Glory; 2) persons awarded the title of Hero of Socialist Labor or Hero of Labor of the Russian Federation or awarded the Order of Labor Glory third-class; 3) participants in the Great Patriotic War; 4) veterans of military operations; 5) persons awarded the Resident of Besieged Leningrad medal; 6) persons who, during the Great Patriotic War, worked on air defense facilities, local air defense facilities, on the construction of defensive structures, naval bases, airfields and other military facilities behind the front line, in operational zones of active fleets, in the front-line areas of rail and motor roads, as well as crew members on ships of the transport fleet interned at the beginning of the Great Patriotic War in harbors of other states; 7) disabled war veterans; 8) members of families of deceased and disabled war veterans, participants in the Great Patriotic War and combat veterans, members of the families of persons killed in the Great Patriotic War who were members of self-defense groups for the protection of air defense facilities and local emergency air defense teams, and members of families of deceased infirmary and hospital staff in the city of Leningrad; 9) persons exposed to radiation due to the Chernobyl disaster, as well as due to nuclear tests at the Semipalatinsk test site, and persons similarly affected; 10) disabled persons of groups I and II; 11) persons accompanying disabled persons of group I and children with disabilities; 12) poor families, poor single citizens and other categories of citizen with an average per capita income below the subsistence level established at their place of residence in the relevant federal entity of the Russian Federation; 13) persons who arrived on the territory of the experiment in order to obtain specialist, including high-tech, medical assistance or medical rehabilitation after the provision of specialist, including high-tech, medical assistance at sanatorium-resort organizations, as well as the person accompanying them if the patient is a child under the age of 18; 14) patients with tuberculosis; 15) persons under the age of 24 enrolled in full-time education in educational institutions located on the territory of the experiment; 16) persons permanently working on the territory of the experiment on the basis of an employment contract or service contract; 17) owners of residential property in the territory of the experiment; 18) home owners and owners of shares in them and/or of residential premises and shares in them on the territory of the experiment; 19) athletes, coaches, sports judges, as well as other sports and fitness specialists participating in official sports events on the territory of the experiment (Art. 7 of the Federal law of 29 July 2017 No. 214-FZ).

However, the impressive list of persons excluded from payment of resort fees was significantly reduced compared to the Law of the RSFSR of 12 December 1991 No. 2018-I, since the largest groups have been deprived of the benefit, i.e., old age pensioners (men aged 60 and above and women aged 55 and above), as well as children under 16 years of age and persons visiting the territory of the experiment on business trips. Regarding the latter, a question arises as to whether the person himself or the employer that sent him on the business trip will pay the resort fee. As for foreign business trips, the payment of the tourist tax is only reimbursed if the tax is directly indicated in the invoice and the check. Otherwise, the employer may refuse to pay such expenses on behalf of the traveler.

The calculation and payment procedure of the resort fee is as follows:

the amount of the resort fee is calculated as the number of days actually spent at the accommodation facility, except for the day of arrival, multiplied by the appropriate size of the resort fee. Please note that the amount of the resort fee to be paid is not included in the cost of living.

Therefore, the traveler is to pay the above fee himself, which violates his rights as an employee. The resort fee for the same period of residence in the experimental area is collected only once. The fee should be paid upon departure from the accommodation facility; whereas hotels abroad try to receive the tax immediately at the time of arrival. There is reason to believe that Russia will adopt the same method. The Italian case-law on responsibility of hoteliers to collect the tax if the resident refuses to pay it is not yet well-established. In Russia, this issue is also not defined by law. Russian legislators and law enforcers will certainly be faced with several questions in practice:

First, how should the hotelier act if a resident refuses to pay the resort fee?

Second, can the hotelier be held liable in case of a resident's failure to pay the fee?

Third, what kind of responsibility will the resident bear for his/her refusal to pay the resort fee and who will charge him?

Fourth, if the hotel resident has paid the tax but does not require any confirming documents, how can due transfer of the received funds to the budget by the hotelier be ensured?

As we have noted above, in Italy, some courts consider that hoteliers are only responsible for the tax payment to the budget if the tax was actually paid by residents; other courts are of the opinion that a hotelier is not generally responsible for paying such a tax because he only acts as an intermediary. So, in practice, it is unclear how to proceed if there are no documents confirming the payment of the resort fee to the hotel. Previously, the Law of the RSFSR of 12 December 1991 No. 2018-I dealt with this situation by introducing a clause pursuant to which the fee was to be paid directly by vacationers at a bank and the receipt was to be presented on demand to the law enforcement officers. The correct solution would be for the resident to pay

the resort fee himself and present the receipt to the hotelier, or even that the fee would be included in the cost of living, like VAT. By virtue of Art. 10 of the Federal law of 29 July 2017 No. 214-FZ

the operators of the resort fee, as it is prescribed by the law of the federal entity of the Russian Federation, will calculate, collect and transfer the resort fee to the budget of a federal entity of the Russian Federation; furthermore, when collecting the resort fee from the payer, the operator of the resort fee shall issue the payer of the resort fee with a document confirming the fact of payment.

Fifth, what if an individual (not a sole trader) leases housing for residence purposes (whether on a regular basis or not) for payment, and what if he offers it free of charge? In fact, residents, regardless of how and why they came, use the tourist infrastructure and cause damage to the environment and utilities of the municipality like all other holidaymakers. For example, in Italy, even if a person is on an exchange program between educational institutions and lives in a university dormitory for free, he must still pay the tourist tax for all days of residence as he will, in any case, cause some damage to the territory in which he resides.

It may be concluded that empowering owners of accommodation facilities with administrative functions in relation of the resort fee is, in fact, a free transfer of state powers to private individuals, which is common practice now. The trend is followed in the banking sector, where private banks act as state agents and control their clients' cash and other transactions, as well as performing currency exchange control on behalf of the state, and this is done absolutely free-of-charge.

Another controversial issue concerning the introduction of the resort fee in Russia is the creation of the Resort Infrastructure Development Fund (part of the budget belonging to a federal entity of the Russian Federation to be used for the development of resort infrastructure). The question is in what legal form these funds will exist: will it be off-budget funds or private legal entities, and why are they financed by compulsory payments? Moreover, it is important to understand how the assets will be spent, whether these funds fall within the scope of the Federal law of 5 April 2013 No. 44-FZ "On the Contract System,"<sup>32</sup> whether they will be supervised by state financial control bodies such as the chambers of control and accounts in the federal entities of the Russian Federation included in the experiment, and so on. In the authors' view, it would be better not to transfer revenues from the resort fees to a federal entity of Russia and the Resort Infrastructure Development Fund, but to allocate the revenues

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<sup>32</sup> Федеральный закон от 5 апреля 2013 г. № 44-ФЗ "О контрактной системе в сфере закупок товаров, работ, услуг для обеспечения государственных и муниципальных нужд," Собрание законодательства РФ, 2013, № 14, ст. 1652 [Federal law No. 44-FZ of 5 April 2013. On the System of Public Procurement Contracts for Products, Works, Services for State and Municipal Needs, Legislation Bulletin of the Russian Federation, 2013, No. 14, Art. 1652].

to budgets of the federal entity of the Russian Federation and municipalities taking part in the experiment in order to accumulate funds for major projects.

As for control, it should be established over three main areas:

- 1) control over implementation of the experiment;
- 2) control over the payment of the resort fee (revenue control);
- 3) control over the expenditure of funds for the purpose of preserving, restoring and developing resorts, creating unique tourist spaces, and favorable conditions for the sustainable development of tourism (expenditure control).

It should be noted that Art. 12 of the Federal law of 29 July 2017 No. 214-FZ provides for public control in the form of a public council under the competent authority of a federal entity of the Russian Federation for the purpose of public control over intended expenditure of the fund's budgetary allocations. The council will comprise resort fee operators, and public and specialist organizations operating on the territory of the experiment. It remains unclear why the public council was entrusted with control powers. How such council will exercise this control is even more obscure. The Law also does not determine the professional composition of the said council, whether it will include persons who have experience in monitoring and expert-analytical activities, whether the council will conduct on-site inspections, taking into account the fact that, in all federal entities of the Russian Federation, the comptroller-general's offices competently operate in the legislative system, and they can effectively control the funds spent in the course of the experiment.

## Conclusion

In Italy, the introduction of the tourist tax was strongly criticized by associations of hoteliers and a similar criticism is being voiced in Russia. According to Russian hoteliers, the Law on the tax is very unfair because a non-resident person has no good reason to pay for unused services. Moreover, hoteliers already bear the costs of maintaining and developing tourist infrastructure in the form of other taxes.

Another view prevailing in the doctrine is that it is necessary to establish a direct link between a tax resident and the environment. It is therefore necessary to consider such tax patterns for tourist services where an individual tourist or a tour operator assumes that

the forms of consumption and investment indirectly affect potential contribution, the potential is greater when the economic and legal relationship between a person and the environment will be closer from a qualitative and/or quantitative perspective.<sup>33</sup>

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<sup>33</sup> See more Roberta Alfano, *Tributi ambientali. Profili interni ed europei* 276 (Torino: G. Giappichelli Editore, 2012), cited by Valerio Ficari, *Sviluppo del turismo, ambiente e tassazione locale*, 4 Rassegna tributaria 963 (2008), para. 2.1.

In summary, both approaches can be applied. It is true that the introduction of the tax can really induce tourists to choose accommodation in municipalities free from the tax. Another point is that such tax collection in some cultural centers and municipalities with a large influx of non-residents is a reasonable decision since it will allow to them increase operating and environmental costs in order to repair damage caused by a high number of tourists.

As for the Law adopted in Russia providing for the collection of resort fees in certain regions of the Russian Federation from 1 January 2018, it lacks the main principle of charging resort fees, which can also be seen in the Italian experience. The main principle is to compensate for harm caused by tourists to the tourist and communal infrastructure of resort towns. Instead, achieving financial returns takes priority, which does not ensure future expenditure specifically designated for the tourism sector. In this regard, it would be more appropriate to allocate the resort fees to the budgets of the municipal entities welcoming tourists. However, alternatively, an additional intermediary structure has been put in place, i.e., the Resort Infrastructure Development Fund, whose activities further complicate the understanding of the process of resort fee collection in Russia. Moreover, the introduction of the tax only in specific regions may contribute to a substantial outflow of tourists to other regions or even encourage them to visit other countries where such tax is not collected.

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