



VAT CHARGED WHEN NON-PAYMENT UNDER A CONTRACT IS INSURED: THE POSITION OF THE RUSSIAN CONSTITUTIONAL COURT

FAO Heads of legal departments, finance and tax departments

Pepeliaev Group advises that Russian Constitutional Court has held that article 162 of the Russian Tax Code, which in fact establishes double VAT on insurance payouts that a supplier of goods (work, services) receives under a contract insuring default by the buyer, was inconsistent with Russian Constitution

On 1 July 2015, further to an appeal from OOO Sony Mobile Communications Rus, which Pepeliaev Group lawyers drafted, the Constitutional Court issued its Resolution No. 19-P. The Resolution held that article 162(1)(4) of the Tax Code was inconsistent with the Russian Constitution. Under the above rule of law, the VAT base is increased by the amount of insurance payouts received under contracts to insure the risk of a contracting party of the policyholder creditor defaulting on its contractual obligations if such contractual obligations provide for the policyholder to supply goods (work, services) the sale of which is subject to taxation.

The court held that charging VAT on insurance payouts does not have any economic justification. In fact, it results in double taxation of the same transaction when goods (work, services) are sold. The court further pointed out that the rule in dispute violates the principle of equal taxation, because it discriminates against taxpayers who have opted to insure non-payment risks as compared to other taxpayers which secure their property interest in other ways (surety, bank guarantee) when they sell goods (work, services).

The legislature will have to amend tax legislation based on the Resolution under discussion so that double taxation be excluded in the situation in question. Before the corresponding amendments are made, article 162(1)(4) of the Tax Code should be applied subject to the legal positions set out in the Resolution under consideration.



This means that companies paying VAT on a shipment of goods (work, services) should not include in the VAT tax base amounts of insurance payouts received in relation to the risk of goods (work, services) not being paid for to the extent that such payouts do not exceed the value of the goods (work, services) in question. There are reasons to believe that there should be a recalculation of the obligations of taxpayers that included the relevant insurance payouts in their tax base.

The fact that the Constitutional Court confirmed the principles under which double taxation is unacceptable, a tax should be economically justified and the taxation must be on equal terms offers the opportunities to resolve other VAT issues giving rise to a considerable number of lawsuits, including between businesses.

Help from your adviser

Pepeliaev Group is ready to provide you with assistance and to offer you comprehensive support in terms of how the legal positions set out in the Constitutional Court's Resolution No. 19-P dated 1 July 2015 will be applied in practice, including in relation to refunds of overpaid taxes under article 162(1)(4) of the Tax Code.

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