

Russia upholds Sony appeal in insurance case

Russia's Constitutional Court has found a section of the Russian Tax Code to be invalid during a dispute between Sony Mobile and the Russian tax authorities.

The ruling affects VAT paid on insurance taken out to guard against non-payment for goods or services, and will save taxpayers 18% on such insurance payouts. The decision is likely to be most beneficial for companies selling consumer goods.

"Companies that defer payments for goods, work and services they have sold and insure against the risk of non-payment... will save 18% on amounts of insurance payouts they receive," said Natalia Faizrakhmanova, a senior associate at Pepeliaev Group.

The ruling means that companies paying VAT on shipments of goods should not include insurance payouts received for goods which were not paid for by debtors.

Under the old rules, VAT was paid twice – once when the goods were shipped, and again when an insurance payout was made if payment was not received. It is this double taxation against which the Court has now ruled.

Faizrakhmanova, who worked on the case, said that the new case law will "without doubt" provide more certainty for taxpayers.

"The Constitutional Court voiced its position unequivocally: if VAT is paid when goods (work, services) are shipped, then it should not be paid when the corresponding insurance payout is received," she added.

The case stemmed from a challenge by the tax authorities, which are typically aggressive in Russia. Sony will now take the Constitutional Court's judgment back to the state commercial court – which previously ruled in favour of the authorities – to be re-examined.

"In litigation, we do fairly frequently encounter strategy on the part of the tax authorities that is not altogether appropriate," said Faizrakhmanova. "Nonetheless, in the situation in question, it is difficult to imagine how the tax authorities can find a way round the Constitutional Court's legal position. There was no room for doubt in the way it was expressed."

She also believes that the ruling is another example which shows taxpayers should not be afraid to contest the position of the tax authorities before the Constitutional Court – which she said is an effective tool for mounting appeals – if the grounds for litigation appear dubious.

Faizrakhmanova's colleague, Vlaimir Voinov, who also worked on the case, said the decision could take on added significance in terms of developing court and administrative decisions, particularly those in favour of tax neutrality.

"Tax legislation should not have a material influence on a taxpayer's selection of different methods for doing business which lead to the same result," he said. "This is because tax legislation does not regulate the procedure or conditions for taxpayers to carry out financial and business operations."

Tax authorities began applying the legal position from July 3 2015, the date on which Resolution 19-P (which stemmed from the judgment) was published.

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