

The Russian Constitutional Court has accepted for prosecution an appeal from Sony Mobile, filed in conjunction with lawyers from Pepeliaev Group

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The Russian Constitutional Court has accepted for prosecution an appeal by LLC Sony Mobile Communications Rus, which is represented by law firm Pepeliaev Group.

In the appellant's opinion, article 162(1)(4) of the Russian Tax Code needs to be checked for compliance with the Russian Constitution. Under this provision, the tax base for VAT is increased by the amount of insurance payouts received under contracts to insure the risk of non-compliance with contractual obligations.

In 2013, the tax authorities accused the company of failing to include in its returns insurance payouts received by way of compensation when it had not been paid for goods it had supplied. The amount charged additionally taking account of penalties and default interest was in the region of RUB 50 million.

In its appeal, the company put forward several arguments to justify its position that, in its case, constitutional tax principles were violated. Particular emphasis was placed on the fact that the rule of the Tax Code that was being appealed against led to double taxation. The company paid tax for the first time when the goods were shipped, but the tax authorities required that VAT be paid on a second occasion – after the insurance payout was received.

The company also pointed that such taxation becomes discriminatory in relation to insurance as a method of securing property interests. In other cases (such as when a bank guarantee is enforced), obtaining payment for goods sold on credit does not entail similar tax consequences. Therefore, the provision of the Tax Code that is being appealed against can be said to violate the principle of tax neutrality.

Sony Mobile is represented by Pepeliaev Group senior associate Vlaimir Voinov, who noted that situations involving double taxation are common in practice. As a result, the Constitutional Court's decision could also be significant in terms of developing court and administrative decisions in Russia. The principle of tax neutrality is no less important: "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," commented the lawyer. "This is because tax legislation does not regulate the procedure or conditions for taxpayers to carry out financial and business operations."

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