



## Press-release

11 June 2014

### **The Association of European Businesses Is Worried about the Discriminatory Approach to VAT Deduction from Advance Payments Made to Foreign Sellers**

The Association of European Businesses (AEB), which brings together more than 600 European companies doing business in Russia, is worried about the discriminatory approach in court practice to collect value-added tax from Russian buyers acquiring products (work, services) from foreign sellers on pre-payment terms.

By Letter No. ShS-22-3/634, dated August 12, 2009, "On Preparation of Invoices by Tax Agents," the Federal Tax Service of Russia explained that provisions of Clause 12 of Article 171 and Clause 9 of Article 172 of the RF Tax Code (regarding the buyer's right to deduct VAT from pre-payment amounts in the period when the advance payment is made in favor of the seller) do not apply to tax agents. By Resolution No. 10992/13 dated September 12, 2013, the Supreme Arbitration Court of the RF recognized this letter as complying with the respective legislation. Thus, the court concedes that the tax agent has the right to deduction only after the goods (work, services) are taken account of.

According to the AEB's Taxation Committee, such approach implies inequality in taxation with no legal or economic ground.

When the taxpayer makes an advance payment to Russian organizations, the former deducts the VAT transferred to the contractor as part of the advance payment immediately, without waiting for delivery of the goods (performance of work, rendering of services) and taking account of them. However, when making an advance payment to a foreign vendor on identical economic terms, the taxpayer is deprived of the right to such deduction.

According to the Association, the stance of tax authorities and courts leads to discrimination against Russian companies interacting with foreign business partners, especially companies that are participants of multinational corporations.

Foreign sellers are also discriminated against, as the Russian suppliers of similar goods get a competitive edge — the buyer finds it more economically reasonable to execute a contract on advance payment terms with a Russian vendor and get VAT deduction from the advance payment amounts immediately in the period when it is paid to the seller.

Members of the AEB are worried that the court practice currently forming may trigger significant negative consequences for the entire market and for the Russian investment climate. In particular, this will inevitably lead to an economically unjustified withdrawal of corporate funds from commercial turnover for a long enough period of time. This being the case, the problem becomes especially relevant during implementation of long-term projects aimed at modernization and renovation of industries and sectors of the Russian economy and introduction of the best global achievements in their practices.

The Association hopes that the issue concerning the right of tax agents to apply VAT tax deductions to effected advance payments in the period when such advance payment is transferred to the seller and the tax is paid to the state budget will be clarified in the nearest period in the RF Supreme Arbitration Court Plenary Assembly's resolution, currently being prepared for adoption regarding VAT; or if Case No. A55-3209/2012 is transferred for revision to the Presidium of the Supreme Arbitration Court of the Russian Federation in the exercise of supervisory functions.

- ends -

*For more information please contact Julia Bendel, [julia.bendel@aebrus.ru](mailto:julia.bendel@aebrus.ru), tel. +7 (495) 234 27 64*

#### AEB SPONSORS 2014 – СПОНСОРЫ АЕБ 2014

• Allianz IC OJSC • Alstom • ASAP Transportation Company LLC • Atos • Awara Group • Bank Credit Suisse (Moscow) • BP • BSH Group • Cargill Enterprises Inc.  
• Caverion Elmek OOO • Clifford Chance • Continental Tires RUS LLC • Crocus International • Deloitte • DHL • DuPont Science & Technologies  
• E.ON Global Commodities SE • Enel OGC 5 • Eni S.p.A • EY • GDF SUEZ • Gestamp Russia • HeidelbergCement • ING Commercial Banking  
• John Deere Agricultural Holdings, Inc. • KPMG • LEROY MERLIN Russia • MAN Truck & Bus AG • Mercedes-Benz Russia • Merck LLC • Messe Frankfurt Rus, O.O.O  
• METRO Group • Michelin • MOL Plc • Novartis Group • OBI Russia • Oranta • Pepeliaev Group, LLC • PwC • Procter & Gamble • Raiffeisenbank ZAO  
• ROCA • Shell Exploration & Production Services (RF) B.V. • Statoil ASA • Stupino 1 Industrial Park • Telenor Russia AS • TMF Russia • Total E&P Russie  
• Volkswagen Group Rus OOO • Volvo Cars LLC • VSK • YIT Rakennus Representative Office • YOKOHAMA RUSSIA LLC



Association  
of European  
Businesses

AEB SPONSORS 2014 – СПОНСОРЫ АЕБ 2014

Allianz IC OJSC • Alstom • Aon Hewitt • Atos • Awara Group • Bank Credit Suisse (Moscow) • BNP Paribas • BP • BSH Group • Cargill Enterprises Inc.  
Caverion Elmek OOO • Clifford Chance • CMS, Russia • Continental Tires RUS LLC • Deloitte • DHL • DuPont Science & Technologies • E.ON Global Commodities SE  
Enel OGK 5 • Eni S.p.A • Ernst & Young • GDF SUEZ • Gestamp Russia • Heidelberg Cement • ING Commercial Banking • INVESTMENT COMPANY IC RUSS-INVEST  
John Deere Agricultural Holdings, Inc. • KPMG • LEROY MERLIN Russia • MAN Truck & Bus AG • Mercedes-Benz Russia • Messe Frankfurt Rus, O.O.O • METRO Group  
Michelin MOL Plc • Novartis Group • OBI Russia • Oranta • Pepeliaev Group, LLC • Pirelli Tyre Russia • PwC • Procter & Gamble • Raiffeisenbank ZAO • ROCA • SERVIER  
Shell Exploration & Production Services (RF) B.V. • Statoil ASA • Stanton Chase International • Telenor Russia AS • TMF Russia • Total E&P Russie  
Volkswagen Group Rus OOO • Volvo Cars LLC • VSK YIT Rakennus Representative Office • YOKOHAMA RUSSIA LLC