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Development of VAT Legislation and Practice

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3 April , 2012

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Chaired by Dr. Alina Lavrentieva,

*partner, PwC, chairperson of the AEB Taxation
Committee*



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Resolution № 1137 – New procedure of VAT invoicing

Irina Popova, Senior Manager, PwC

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3 April 2012

Content

- Legal background
- Overview of major changes
 - Format of a VAT invoice
 - Formats of VAT registers

VAT invoice – main stages of the development

- Resolution # 914 of 29 July 1996
- Resolution # 914 of 2 December 2000
- Resolution # 1137 of 26 December 2011

2012: Types of VAT invoices

Forms

- VAT invoice
- Correction VAT invoice

Nature

- Original
- Amended
- On advance payment
- Issued by intermediary
- «Self issued»

Type of issuance

- Paper
- Electronic

Legal background

- **Federal law of 27 July 2010 № 229-FZ**
 - Possibility to issue electronic VAT invoices
 - Indication of currency in the VAT invoice
 - Introduction of obligatory **forms** of VAT invoice, Register of incoming and outgoing VAT invoices, Purchase book and Sales book
- **Federal law of 19 July 2011 r № 245-FZ**
 - Introduction of the concept regarding the correction of VAT base and new form of a VAT invoice (correction VAT invoice)

Resolution № 1137 – effective date

- Resolution was published in “Sobranye Zakonodatelstva RF” № 3 of 16 January 2012
- Effective date - ?
 - **24 January 2012** (point 6 of the President Decree № 763 of 23 May 1996)
 - **1 April 2012** (Letter of the RF Ministry of Finance № 03-07-15/11 of 31 January 2012)

Overview of major changes – VAT invoice format

- Generally the “new” format is close to the “old” one
- Adaptation to the requirements of article 169 of the Tax Code
 - Reference to the currency
- Additional details:
 - Date of introduction of changes into the VAT invoice
 - Different codes (currency, unit of measurement, country of origin)

Overview of major changes – VAT invoice filling out (1 of 2)

- Full **or** short name of the counterparties
- The procedure of filling out of VAT invoices on advance payments now is more detailed
- The procedure of filling out of VAT invoices by tax agents is slightly amended
- Use of codes for issuance of VAT invoices by different subdivisions (under simple partnership agreements)

Overview of major changes – VAT invoice filling out (2 of 2)

- If obligation nominated in foreign currency (standard units) is to be paid in roubles – Russian currency is indicated in VAT invoice
- The procedure of issuance of VAT invoices in case of agency arrangements is amended
- Certain “old” issues have not been eliminated
 - indication of name of goods (works, services) in case of advance payments
 - issuance of VAT invoices in case of non-monetary advances
 - no regulation on issuance of consolidated VAT invoices

Overview of major changes – amended VAT invoice

- New procedure of introduction of changes in a VAT invoice – new document (i.e. amended VAT invoice) should be issued
- Amended VAT invoices can be issued in respect of both original VAT invoices and correction VAT invoices
- No amended VAT invoice is issued in case of insignificant mistakes / changes

Overview of major changes – correction VAT invoice

- Separate format and procedure of filling out
- There is no straight forward distinguish between cases when correction VAT invoice is issued and cases when amended VAT invoice is issued

Overview of major changes – VAT registers (1 of 2)

- New document – Register of incoming and outgoing VAT invoices
 - Significant number of details
 - Specific detail – date of receipt of VAT invoice
 - VAT invoice can be registered in the Purchase book only if it is registered in the Register

Overview of major changes – VAT registers (2 of 2)

- Purchase book and Sales book
 - No significant changes to the formats – modification in accordance with the new rules on VAT invoice issuance
 - VAT invoice is registered in the Purchase book only in the amount subject to recovery

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Association of European Businesses in the
Russian Federation



Electronic Invoicing

Mikhail Orlov

3rd of April 2012

Relevant legislation:

- *Tax Code;*
- *Government Decree #1137 of 26th of December 2011;*
- *Order of Ministry of Finance of 25th of April 2011 #50n “The Procedure for the Sending and Reception of Invoices in the Electronic Form over Telecommunication Communication Channels with the Application of the Electronic Digital Signature”.*

General requirements:

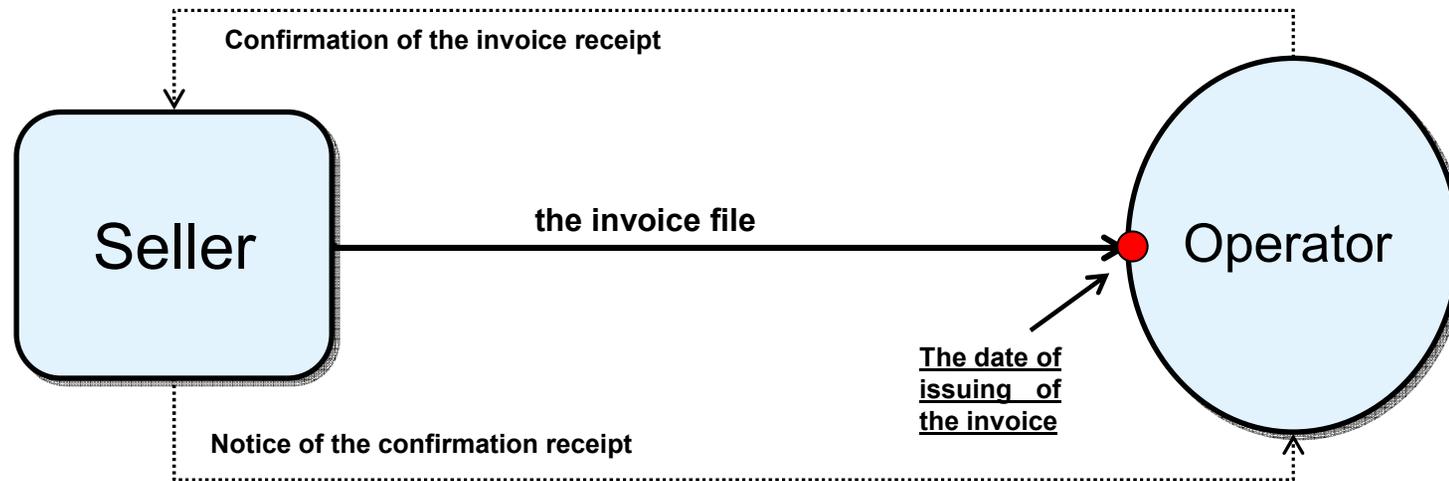
- Both parties should be registered as participants of the electronic invoicing circulation.
- Mutual consent of both participants and availability of compatible technical means to process electronic invoices.
- Means of protection of the information which allow to identify the owner of the certificate of the key of the signature.
(Certificates of the keys for the participants are issued by special certifying centers included in the network of certifying centers of the Federal Tax Service).
- The electronic invoicing circulation is carried out through Operators of the electronic document circulation.

What do you need to do to become a participant of the electronic invoicing circulation

- Get a certificate of key of signature
- Submit an application for the participation to the Operator
- Receive from the Operator the identifier of the participant and other data required to access the circulation

The Operator submits information about participant to the tax authority at the location of the participant.

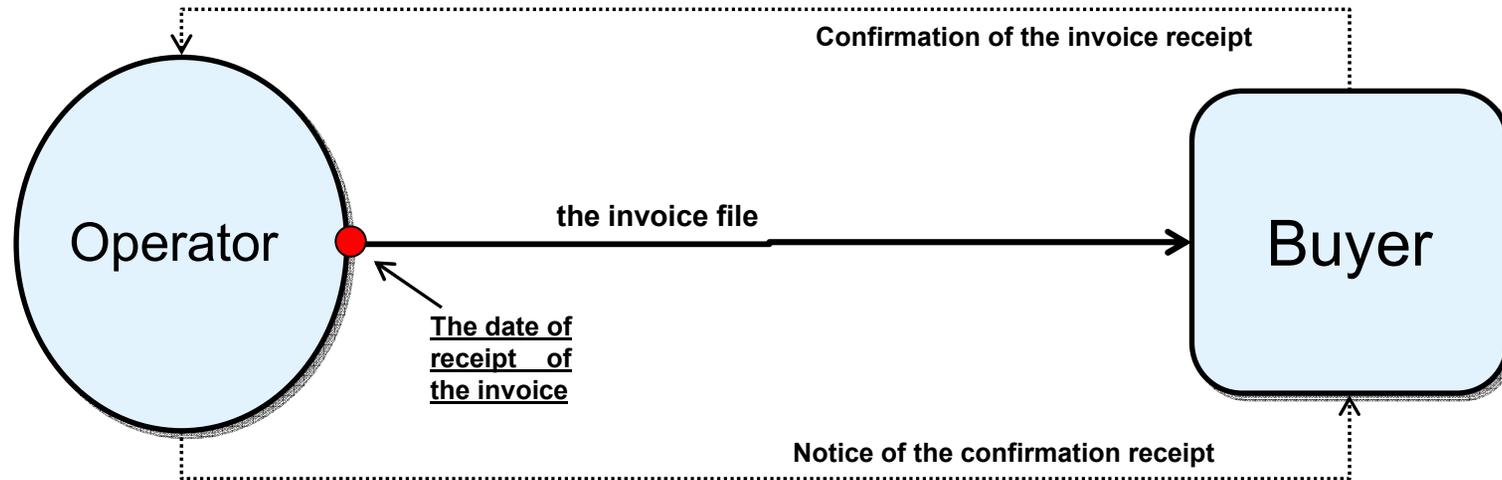
The Procedure



Seller sends the invoice to Buyer through Operator.

The date of issuing of the invoice is the date when Operator gets the invoice file from Seller.

The invoice is considered as issued if the Seller has a confirmation from Operator upon receiving the invoice and a confirmation from Buyer upon receiving the invoice sent through Operator.



The date of receipt of the invoice is the date when Operator sends the invoice file to the Buyer.



New scope
of e-documents turnover



The primary accounting documents exchange via the internet is a **reality!**



- Tax Code of the Russian Federation
- Federal Law №229 dated 27.07.2010 «Amendments to Part One and Part Two of the Tax Code of the Russian Federation and some other legislative acts of the Russian Federation»
- Federal Law №149 dated 27.07.2006 «About information, information technologies and information protection»
- Federal Law №129 dated 21.11.1996 «About accounting»
- Federal Law №1-Φ3 dated 10.01.2002 «About digital signature»
- Order of Ministry of Finance of Russian Federation № 50N dated 20.04.2011 «On the approval of the Order on issuing and receiving VAT invoices electronically via telecommunication channels using digital signatures"
- Order of the Russian Federal Tax Service dated 17.02.2011 № MMV-7-2/168 "On the approval of the procedure of sending a request for documents (information) delivery and the procedure of the documents (information) delivery at the request of the tax authority electronically via telecommunication channels"

Transition from paper-based to electronic documents turnover of Russia

The “E-Russia” project has begun the process of transition from paper-based to electronic documents turnover (EDT) in enterprises and state authorities of Russian Federation

Tendencies of development:

- The certification centers network development
- The EDT-operators institution development
- Financial statements for the main controlling and statistics state authorities
- Electronic documents turnover between contractors (B2B) systems development
- Electronic documents turnover between taxpayers and tax authorities development applicable to representation of reclaimed documents (The “E-VAT-invoices” project)



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Certification center

The created certification centers network ensures issuing the key for the electronic digital signature for using it in the following electronic documents turnover:

- ✓ Reports submission to the main controlling and statistics state authorities
- ✓ Electronic documents turnover between taxpayers and tax authorities applicable to representation of reclaimed documents (The “E-VAT-invoices” project)
- ✓ E-trading participation
- ✓ Electronic documents turnover between contractors (B2B)



Electronic documents turnover operator

The EDT-operators institution was created according to the legislation.

The professional activity of EDT-operators is controlled by the Federal Ministry of Telecommunications, Informational technologies and mass communication (Roskomnadzor) and Federal Bureau of Security (FSB) of Russian Federation.

The EDT-operator provides the possibility and implementation of the Regulations for the following types of electronic documents turnover:

- Reports submission to the main controlling and statistics state authorities
- Electronic documents turnover between taxpayers and tax authorities development applicable to representation of reclaimed documents (The “E-VAT-invoices” project)





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Reporting to the main controlling and statistics state authorities B2G

How does the system works?

In the system of reporting via Internet are operated the following:

- ✓ Subscriber (the user of the system- tax payer, policy holder, respondent)
- ✓ EDT- operator
- ✓ Controlling authority (FNS of RF, Pension Fund, FSS and Statistics)

Every participant has its own certified software package.



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Росстат



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Electronic documents turnover B2B

How does the system works?

In the system of reporting via Internet are operated the following:

- ✓ Subscriber (the user of the system-the subscribers can use different EDT- operators)
- ✓ EDT- operator



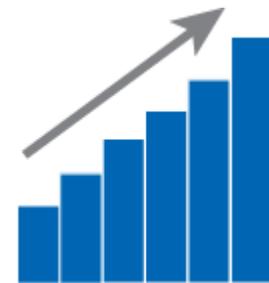
Every participant has its own certified software package.



Results of the first decade

The success which was achieved on the first stage- the electronic reporting to the main controlling and statistics state authorities - has become the framework for new technologies development:

- Electronic documents turnover between contractors (B2B)
- Electronic documents turnover between taxpayers and tax authorities applicable to representation of reclaimed documents (The “E-VAT-invoices” project)





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News of e-documents turnover: e-VAT-Invoices



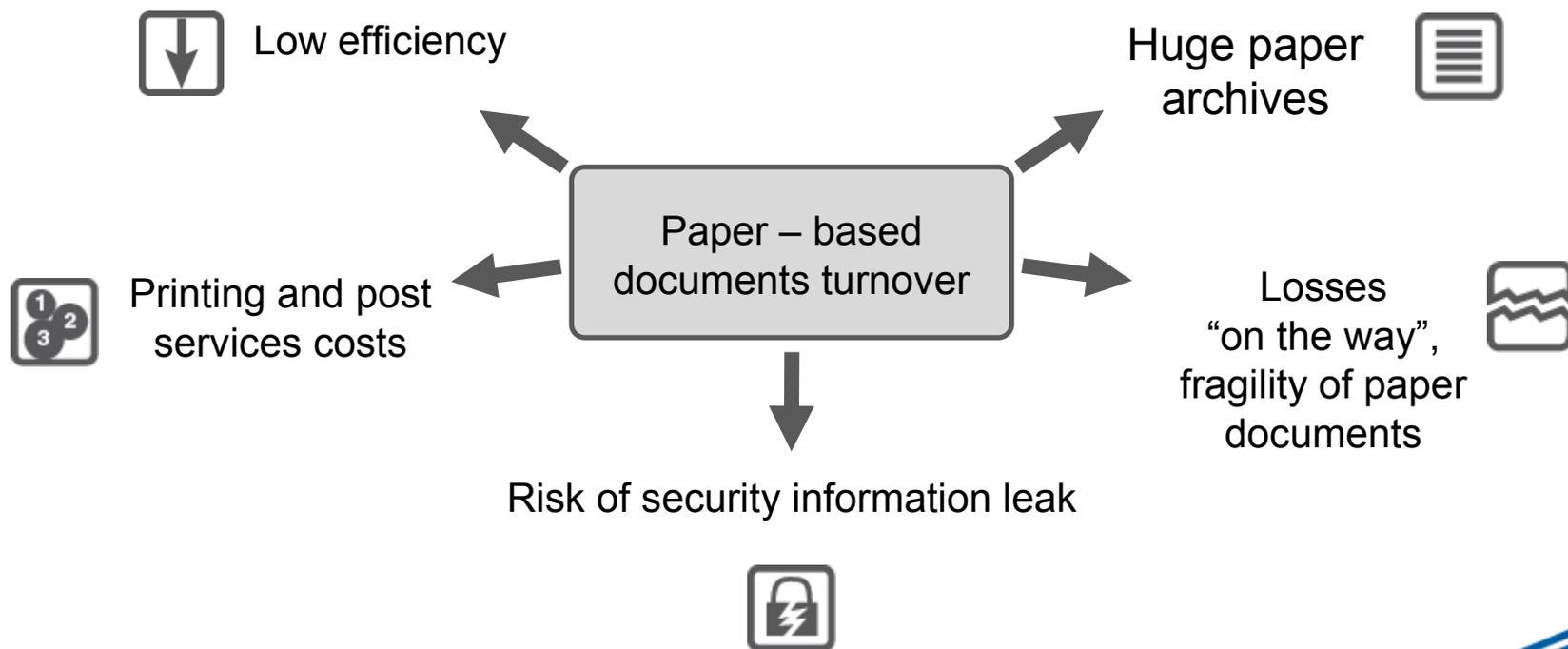
Taxcom developed and approved the e-VAT-invoices exchange system in 2009 being the key concept developer and operator of the e-VAT-invoices exchange pilot project organized by the Ministry of Finance and FTS of Russian Federation by order of the Government of Russia

As a result the existing legislation was changed (*Federal Law № 229 dated 27.07.2010 "On Amendments to Part One and Part Two of the Tax Code of the Russian Federation"*), and e-VAT-invoices implementation **on a mass scale** has begun



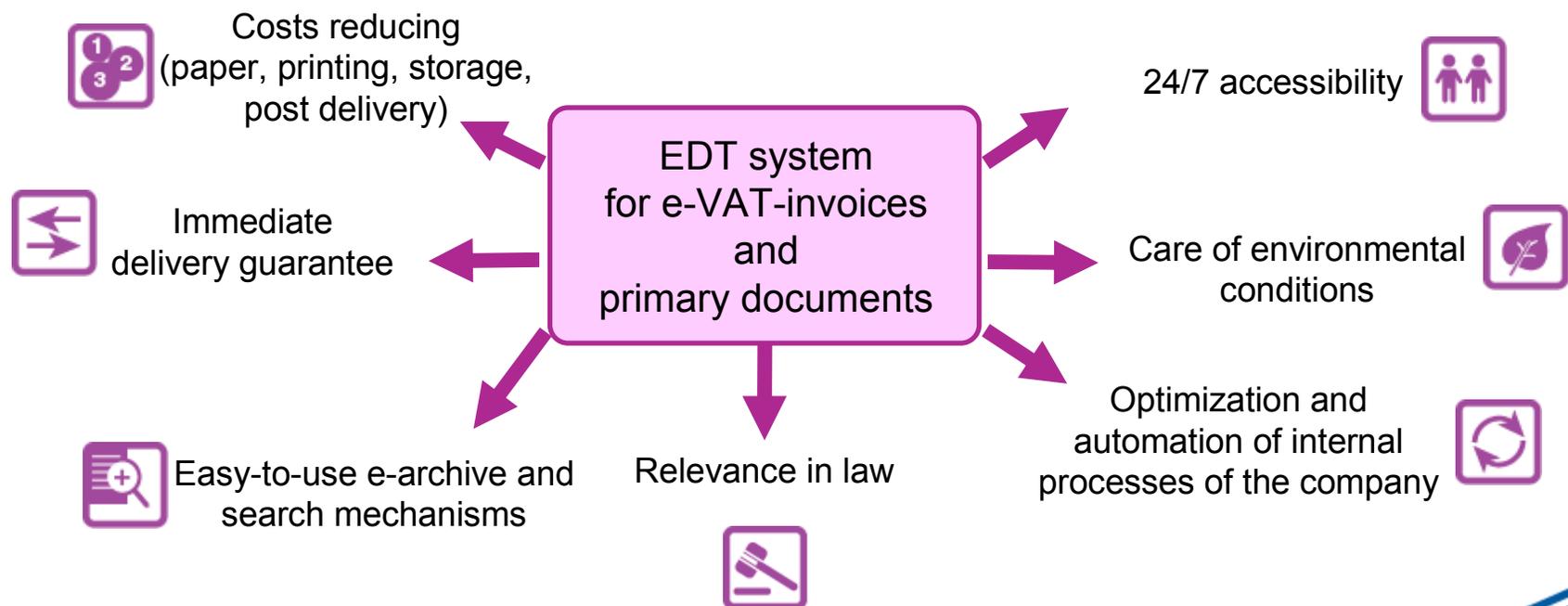
Paper-based documents turnover disadvantages

In the digital technologies age the paper-based documents turnover becomes a burden for the business, has a negative effect on efficiency and development of the business.



E-VAT-Invoices – total abandonment of the paper-based documents turnover

System of the primary accounting documents exchange with contractors through the internet optimize various business processes, allows to increase the profitability of business



Thereby e-documents turnover **fully complies** with existing legislation:



- E-documents exchange between economic entities is provided by the legislation
- Invoices can be transmitted in the electronic form
- An EDT operator presence is obligatory
- The procedure of e-documents reclamation by a tax authority is approved by FTS
- E-VAT-invoice, purchase ledger, sales ledger formats and book-keeping rules are at the approval stage

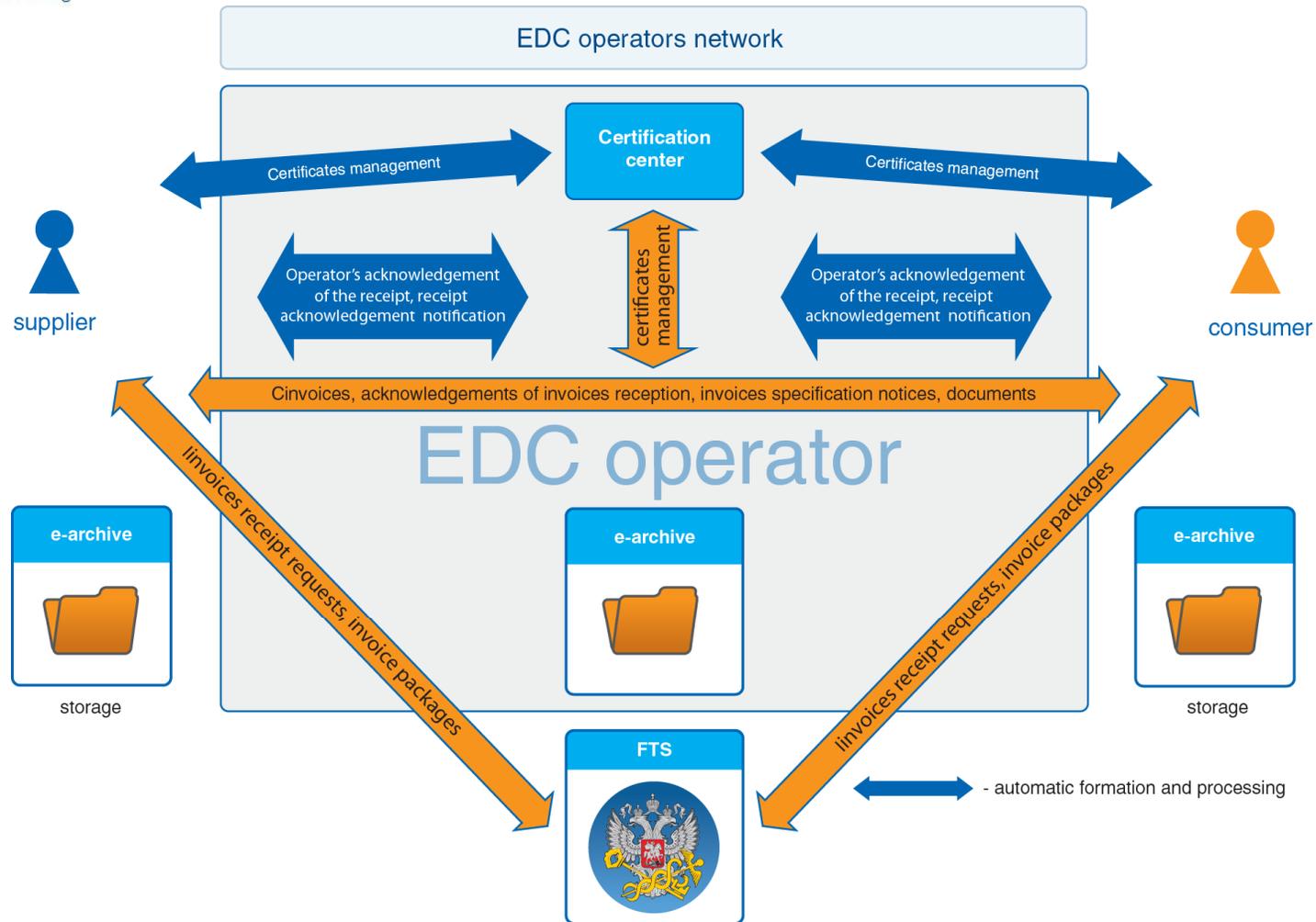
E-VAT-invoices exchange mechanism

The EDT operator **guarantees and provides documentary evidence** of e-documents delivery including the date and the time of the documents sending;

E-documents delivery and reception principles are similar to electronic financial statements reporting principles: every e-VAT-invoice **must be signed by EDS using certified cryptographic tools** of information security.



The e-VAT-invoices turnover diagram





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To participate in e-documents turnover



Electronic digital signature certificate



CryptoPRO



The internet access



Agreement with EDT operator



Electronic Documents Turnover- complete failure of the traditional paper flow

Electronic documents turnover system allows send instantly the e-VAT invoices and other documents signed with the electronic signature which would be relevance in law.

Types of the documents can be sent via the system:



Primary accounting documents

- Agreements
- Acts of acceptance
- Payment orders
- VAT-nvoices**



Organizational documents

- Orders
- Instructions
- Regulations
- Powers of Attorney



Supporting documents

- Informational letters
- Reports
- Orders, Regulations
- POS and other documents



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The Taxcom Company

Taxcom Company specializes in creating, implementation and supporting of secure e-documents turnover systems of any complexity level

- More than 10 years experience
- The largest EDT operator in Russia
- More than 300 000 subscribers
- 5 branches and regional representative offices system in all regions of Russia
- One of the largest certification authorities of Russia (accredited by FTS, PFR, SIF, FSSS)



State authorities:

- The President of Russia Administration, The State Duma of RF, The Soviet Federation
- The Ministries of Defense, Foreign Affairs, Economic Development, Industry and Trade, Agriculture, Federal Tax Service, Federal Customs Service and others
- The Supreme Court, The Central Election Committee, The Chamber of Accounts of Russian Federation

Enterprises:

- The Central Bank of RF, The Bank of China, The Bank of New-York, The Royal Bank of Scotland, Sberbank
- ***Svyazinvest, Rostelecom, Russian Post, Rospechat Agency, Mosenergo, Mosenergosbyt, Mosnefteproduct, Mezhregionenergosbyt***
- HP, Intel, Microsoft, SAP, Oracle, Samsung, HITACHI, BMW, Mercedes, Boeing, DH
- IT, LANIT, Systematic, Optima, TECHNOSERV, Merlion, Inline



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Contacts

Thank you
for your attention!





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VAT invoices

Fetisova Elena, Procter & Gamble

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3 April 2012

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Types of VAT-invoices

- Primary VAT-invoices
- Correcting VAT-invoices
- Adjusting VAT-invoices
- Correction of adjusting VAT-invoices
- Adjustment of correcting VAT-invoices

Why important

- To claim VAT refund
- To calculate VAT liabilities correctly
- To automate process

Adjusting VAT-invoice

- Resulted from **the seller's mistake**
- only **critical** mistakes in the primary VAT-invoice
- agreement with customer **is not required**
- conditions of the deal are **not revised**

Adjusting VAT-invoice

- Traditional accounting logic
- Elimination of primary VAT-invoice, recognition of adjusting one
- Tax return resubmission

Correcting VAT-invoice

- Resulted from **intention of the parties**
- **to revise** mutual obligation
- fixed in **documentary** form

Correcting VAT-invoice

- Date of shipment vs date of ownership transfer
- Non-traditional accounting logic
- Separate analysis of “positive” and “negative’ corrections

Corrective VS Adjusting

	Adjusting VAT-invoice	Correcting VAT-invoice
Output VAT	Period of shipment Correction for whole amount	Period of shipment Correction for difference
Input VAT	Period of initial refund Correction for whole amount	Period of correction Correction for difference

Type of VAT-invoice

Type of the deal	Primary VAT-invoice	Adjusting VAT-invoice	Correcting VAT-invoice
Technical mistakes		X	
Calculations mistakes		X	
Price discrepancies		X	
Price revision			X
Quantitative discrepancies	X		X
Returns before acceptance			X
Returns after acceptance	X		

Official Clarifications

- FNS dated 12.03.2012 г. №ED-4-3/4143
- MinFin dated 10.02.12 №03-07-09/05
- MinFin dated 27.02.2012 г. №03-07-09/11
- MinFin dated 02.03.2012 г. №03-07-09/17



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The application of VAT to bonuses received by a retail store

Sergey Savseris, PhD in Law

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April 2012

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Types of bonuses:

1. A bonus as a payment for services.
2. A bonus as an unconditional discount on the price.
3. A bonus as a stimulus to encourage 'high quality' performance of the relevant obligations.
4. A bonus as a stimulus to encourage 'high quality' performance of defined actions



Resolution No. 11175/09 of the Presidium of the Supreme Arbitration Court (SAC) dated 22 December 2009 regarding OOO Dirol Cadbury: Discounts and bonuses paid by a supplier change the price of goods, and therefore the VAT base

Irrespective of how parties to a distribution agreement define the incentive system:

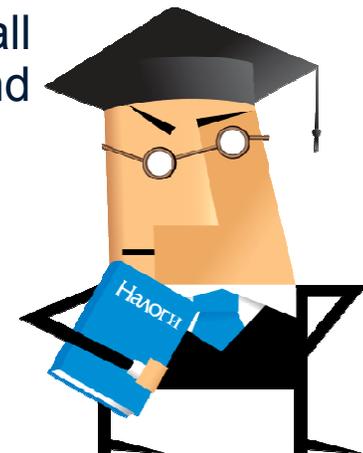
- whether by granting a **discount** that defines the amount of a possible reduction in the base price of a product,
- or granting a **bonus** giving additional remuneration,
- or by a **premium being** granted by the seller to the buyer for performing the terms of the transaction,
- and also **irrespective of the procedure** for granting discounts and bonuses when determining the tax base

the amount of proceeds is to be determined taking account of discounts, but if necessary may be adjusted in the period in which the sale of the goods is booked.



The SAC's Ruling No. VAS-5185/10 dated 30 June 2010 in the OAO Orton case:
Bonuses (discounts) received by a buyer are not subject to VAT

- When bonuses (discounts) are received by the Company (the buyer of goods) from the seller as a result of its purchasing the goods and duly performing its obligations under the contract, the buyer is not liable to VAT.
- Such a transaction may not be regarded as remuneration for services performed and does not fall within a sale of goods as defined in articles 39(1) and 146(1) of the Tax Code.



Ruling No. VAS-11637/11 of the SAC's panel of judges dated 17 November 2011 in relation to Leroy Merlin:

“Bonuses received by a buyer are a payment for sellers being granted the possibility of being able to sell their goods in a retail chain of stores”



Opinion of a Federal Tax Service Expert (an associate professor of Moscow State Institute of International Relations):

“Bonuses paid by a seller to a hypermarket under a supply agreement are a hidden form of increasing the value of the hypermarket's principal services

The principal services are services that involve including suppliers' goods in an assortment of stores, maintaining a defined level of stocks of goods, strengthening commitment to a brand, and so on”.

The arguments against this position:

1. The actions of a store (the buyer) are an element of the subject matter of a supply agreement (to buy and then sell)
2. The store does not allow suppliers the possibility of selling their goods (it is not a 'farmers' market'), but itself sells the goods it has bought
3. If there are no bonuses, the service remains in any case! In other words, if the contract does not contain bonuses, the store is providing suppliers with a service free of charge!
4. Resolution of the Presidium of the SAC in the Dirol Cadbury case

**Resolution No. 11637/11 of the Presidium of the SAC
dated 7 February 2011 (the Leroy Merlin case):**

1. Since bonuses are directly associated with supplies of goods, they need to be recognised as being a form of trade discount which are applied to the cost of goods and affect the tax base for value added tax.
2. As a result of suppliers paying bonuses, a reduction in the cost of goods occurs, and this results in suppliers adjusting the tax base for VAT in relation to transactions where the goods are sold.
3. The above means that the amount of tax deductions in relation to VAT that the buyer previously declared should also be proportionally reduced in the relevant tax periods.



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Tax Disputes - Case Law

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Evgeny Timofeev, BLP, Partner

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SibKhlebProm v MinFin

- **VAT credited by supplier on re-purchase does not have to be reinstated regardless of “best before” term expiry**
 - SAC invalidated Art. 4 of the MinFin’s basic VAT letter on returns (03-07-15/29 dated 07.03.2007)
 - SAC confirmed the validity of “closed list” of reinstatement cases approach
 - And lack of necessity to reinstate correctly credited VAT
 - Meaning that VAT credit on re-purchase of FMCG that cannot be sold anymore is correct and should be peacefully enjoyed

North Kuzbass Energy Co

- **Tax authorities have full right to offset late payment interest against VAT recoverable due even before payment demand expires**
 - However, this is only so as regards the interest debt confirmed by a court
 - Meaning that interest just recognized in the tax account by tax authorities cannot be collected this way

Vankorneft & Tulatsement

- **Link between expenses and VATable activity does not need to be immediate**
 - Vankorneft – capital investment department costs capitalized
 - Tulatsement – public road repaired

BIRYUSA

- **No facsimile VAT invoices allowed**
 - Must be signed in original

Modul-A в Областной центр лечебной физкультуры и спортивной медицины

- **It is true that where VAT applies it can be claimed from the purchaser irrespective of whether the tax was included into the price or not**
 - However, there is one exception: Not if the supplier wrongly claimed to benefit from a VAT exemption to gain the contract
 - Abuse of right
 - Basically: misrepresentation

AERO-Gruz v Vladivostok International Airport

- **Servicing aircraft of all kinds in the airports and in the air is exempt from VAT**
 - The old dispute of services subject to
 - Chapters II (aero navigation charges) and III (airport charges) or
 - Also Chapter III (on-land aircraft service charges)
 - of Mintrans list (2000) finally resolved

Avtoproekt v Econombank

- **If VAT invoice is provided for a lesser amount than paid per contract, the difference can be claimed from the supplier**
 - unjust enrichment

*VAT implications for foreign
companies operating on Russian
market*

Yulia Kolesnikova,

Ernst & Young

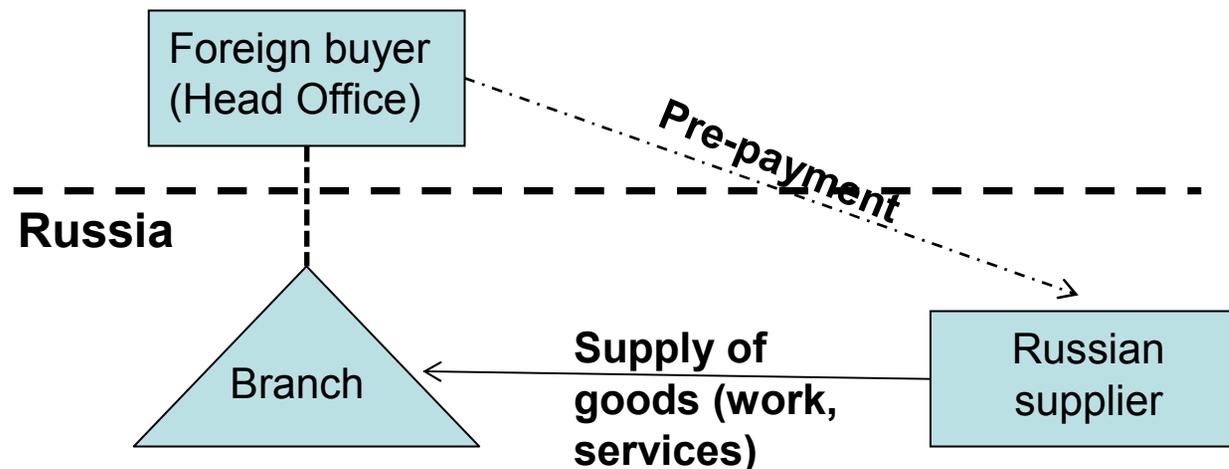
Export: Restoration of VAT

- From 1 October 2011 taxpayers are required to restore previously offset VAT if goods (work, services), including fixed and intangible assets, on which the VAT arose, are used for performance of operations subject to VAT at a zero rate (subpara 5 para 3 article 170 of the Tax Code)
- Various clarifications of the Russian Ministry of Finance:
 - The obligations to restore VAT arise in case of irregular export activity;
 - VAT restoration in relation to goods (work, services), including fixed and intangible assets acquired after 1 October 2011

Export: Restoration of VAT (cont.)

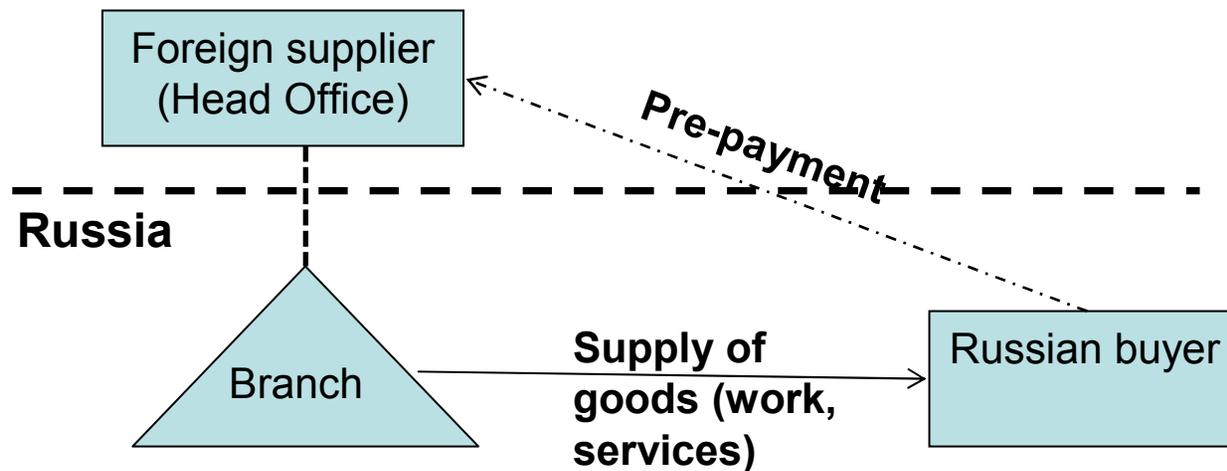
- Open questions:
 - Irregular export activity vs. regular export activity;
 - How much input VAT should be restored;
 - How many times VAT restoration should be performed;
 - Purpose of usage of goods (work, services), including fixed and intangible assets (production / realisation);
- Practical steps:
 - Tax accounting policy describing a particular approach of a taxpayer for input VAT restoration;
 - The Russian Ministry of Finance promised to issue a clear guidance what to do;
 - A private request for clarification on the matter to the Ministry of Finance;

Russian VAT for foreign companies: Payments through Head office



- Whether VAT on pre-payment is offset by Branch?
- Current position of the Ministry of Finance on the matter

Russian VAT for foreign companies: Payments through Head office (cont.)



- Whether VAT on pre-payment should be charged by Branch?
- Current position of the Ministry of Finance on the matter

Russian VAT for foreign companies: New place of supply rules

Place of economic activity of a buyer



- ▶ Audit services
- ▶ Provision of emission reduction units granted under the Kyoto Protocol

The territory of continental shelf and the exclusive economic zone of Russia



- ▶ Works (services) aimed at the performance of geological study, exploration and production of hydrocarbons in the territory of continental shelf and the exclusive economic zone of the Russian Federation

Transportation and services related to transportation



- ▶ Inland Russian transportation



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VAT implications for foreign companies operating on Russian market

Tatiana Kirgetova,

Senior Tax Lawyer, Head of Tax Practice, Gide Loyrette Nouel

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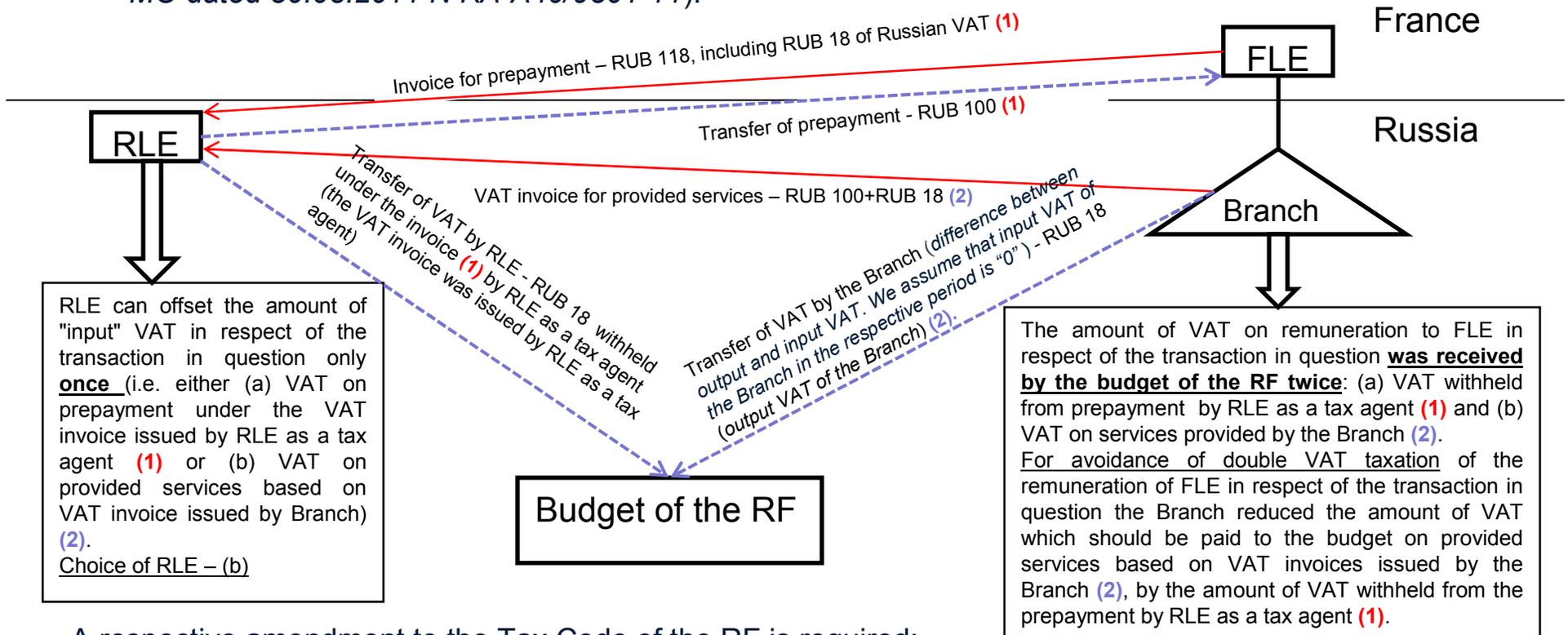
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Outstanding VAT issues for FLEs

- Prepayment to a FLE for an onshore VATable part of a project to be carried out through a Russian branch of the FLE (*not tax registered in Russia at the moment of obtaining of the prepayment*) leads to a risk of double VAT on the remuneration of the FLE for such onshore part (*the Decision of FAS MO dated 30.08.2011 N KA-A40/9501-11*).



A respective amendment to the Tax Code of the RF is required;

Outstanding VAT issues for FLEs

- A number of issues related to consolidation of separate subdivisions of a foreign legal entity for VAT purposes (Article 174.7 of the Tax Code of the RF) are not clarified in the tax legislation, in particular:
 - ✓ should each subdivision transfer by an internal act only the figures required for filling in the unified VAT declaration and should the originals of the confirmation documents related to transactions of each subdivision be kept by each of them (including contracts, act of acceptances, VAT invoices, etc.)? Should each subdivision have its own sales and purchase books as well as the journals of incoming and outgoing VAT invoices? Introduction of respective amendments to the Tax Code of the RF is required;
 - ✓ no limitations relating to consolidation for VAT purposes are adopted by the Tax Code of the RF, in particular, related to the application of point 2 of Article 173 of the Tax Code of the RF, however, in practice, the tax authorities do not allow the inclusion in the unified VAT declaration of input VAT, the right for offset of which the respective subdivision already had before the consolidation was announced.

Event Name



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