



October 2016

The Judicial Board for Economic Disputes (“JBED”) of the Supreme Court of the Russian Federation issued a ruling of August 18, 2016, No.309-KГ16-838, which may be of interest to all taxpayers. It formulates certain approaches to resolution of disputes over deductions from taxable profit and VAT offsets under invoices from suppliers who are suspected of tax evasion by tax authorities.

Disallowance of tax offsets on grounds of unfair conduct of suppliers

Where tax authorities find elements of fictitious activity of contracting parties, including second-tier and further suppliers (lack of relevant personal, registered office located at a “mass registration” address, non-acknowledgment by the signatory of his signature on accounting source documents, failure to recognize payments from taxpayer as part of proceeds, etc.), they are inclined to disallow taxpayer’s claims for VAT offsets and deduction of relevant expenses from taxable profit. In some cases courts upheld tax authority’s decision, stating that the taxpayer received unjust tax benefit from relationship with such contracting parties¹.

Legal dispute details

Similar facts were discovered by the tax authority in case No. A60-4982/15, which served the ground for disallowance of tax claims (the Arbitrazh Court of the Urals District dismissed the taxpayer’s claims, although the trial court and the court of appeals decided the case in favor of the taxpayer).

The JBED judges overruled the decision of the Arbitrazh Court of the Urals District and upheld the decisions of the trial court and the court of appeals. JBED held that the tax authority did not doubt that the taxpayer’s transactions with suppliers were real, i.e. that deductibles and tax offsets claimed by the taxpayer related to the products that had actually been purchased by the taxpayer from the suppliers being suspected of unfair conduct. JBED took into account that the taxpayer acted with due care, i.e. collected information on the suppliers (requested them to provide certified copies of their registration and constitutive documents; certified copies of documents evidencing the authority of officers to act on behalf of the contracting parties concerned, passports of such officers; verified records in the Consolidated State Register of Legal Entities relating to registration of such contracting parties), and held that the taxpayer was eligible for the relevant tax offsets and deductions.

Conclusion

The JBED ruling has great significance for court practice relating to tax disputes, as it prompts judges to turn away from imposing on the taxpayer absolute responsibility for payment of taxes by the taxpayer’s contracting parties, to check actual performance of the taxpayer’s transactions and to

¹ E.g, Ruling of the RF Supreme Court of June 29, 2016, No. 305-KГ16-6800; Ruling of the RF Supreme Arbitrazh Court of October 24, 2013, No. BAC-15613/13, etc.

take into account the taxpayer's real ability to verify fairness of conduct its contracting parties. It is important that the ruling sets forth in detail the reasons underlying the conclusion reached by the JBED judges.

Contact information



Valentin Moiseev,
Partner, Attorney-at-Law



Evgeny Kalinin,
Senior Lawyer

*

*

*

This newsletter is not intended to provide legal advice and/or any other form of legal assistance that may be rendered by attorney-at-law to client. The exclusive purpose of this review is to make aware its recipient of certain recent changes in Russian laws and regulations, and of the development of law application practice. Any use of the information contained herein for particular purposes may require more detailed case-specific explanations. Further information can be obtained via +7 (495) 933 75 67 or office@agp.ru



Znamenska 13, bldg. 3, 3rd floor, Moscow, 119019, Russia.

Tel.: +7 (495) 933-75-67, 691-98-13, 697-63-94.

Fax: +7 (495) 697-92-26. E-mail: office@agp.ru. Internet: <http://www.agp.ru>