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Taxpayers of value added tax in situations of performing taxable transactions by public-law entities and their bodies

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ABSTRACT

The article examines the specifics of determining the composition of persons obliged to pay value added tax when performing taxable transactions by public-law entities and their bodies. The author substantiates the conclusion that when determining the composition of value added tax payers, the principles of economic neutrality of value added tax, recognition and protection of private, state, municipal and other forms of ownership are of priority. In this regard, in cases where an object taxable with value added tax is formed, in the absence of exemptions envisaged in the legislation on taxes and fees, the relevant transactions will be taxed either through tax agents (if any) or through public authorities.

Keywords: value added tax; taxpayer; organizations; public-law entity; revenue agent.

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Налогоплательщики налога на добавленную стоимость при совершении облагаемых операций публично-правовыми образованиями и их органами

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АННОТАЦИЯ

В статье рассматриваются особенности определения состава лиц, обязанных уплачивать налог на добавленную стоимость при совершении облагаемых операций публично-правовыми образованиями и их органами. Автором обосновывается вывод, что при определении состава налогоплательщиков НДС приоритет имеют принципы экономической нейтральности НДС, признания и защиты равным образом частной, государственной, муниципальной и иных форм собственности. В связи с этим в тех случаях, когда образуется объект налогообложения НДС, при отсутствии предусмотренных в законодательстве о налогах и сборах освобождений, соответствующие операции будут обложены либо через налоговых агентов (при их наличии), либо через органы публичной власти.

Ключевые слова: налог на добавленную стоимость; налогоплательщик; организация; публично-правовое образование; налоговый агент.

Как цитировать

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Traditionally, tax law is treated as a sub-branch of financial law. In this regard, general provisions and conclusions of the theory of financial law on its subject matter are applicable to tax law.

Subjects of financial law are usually classified into three groups:

- Public-law entities;
- Collective subjects;
- Individual subjects.[1]

Such list of subjects of financial law may be the foundation to determine groups of taxpayers by taxes and fees, including value added tax ("VAT"). At the same time, the general provisions of financial law can be updated by analyzing a specific taxpayer group.

As a rule, public-law entities are identified as the key subject of financial law. The reason is that, on the one hand, they are the holders of sovereign (exclusive) financial rights and, on the other hand, they have ownership in relation to state (municipal) financial resources being the foundation for financial and legal regulation.

Traditionally, in tax and legal regulation, public-law entities are treated as tax creditors for tax liabilities [1] and beneficiaries of taxes and fees. These persons are not identified as taxpayers. This is derived from Article 19 of the Russian Tax Code and Article 143 of the Russian Tax Code, which does not include public-law entities in the VAT payer group. But, as researchers note, "one shall consider that in some cases, the legislature, nevertheless, indirectly expects public-law entities to be taxpayers, which causes certain theoretical and practical difficulties."[2]

It is well-known that public-law entities as subjects of civil relations (Chapter 5 of the Russian Civil Code) may participate in business transactions and make transactions, including those subject to VAT, e.g. sell goods (works, services) in the Russian Federation. In such cases, the question is whether there are grounds for taxing such transactions with VAT, given that a taxable object emerges, or whether there are no such grounds as there is no expressly identified taxpayer.

The situation is complicated by the fact that, on behalf of public-law entities, state authorities (local authorities) may acquire and exercise ownership interest and obligations by their actions in their jurisdiction provided by regulations on the status of such authorities (Article 125 of the Russian Civil Code). At the same time, these state authorities (local authorities) have, in general, the rights of a legal entity (they are institutions). In addition, the sold state (municipal) assets may constitute the treasury or may be under operational management by these persons (Articles 214, 215 of the Russian Civil Code). As a result, it is not always clear who is the actual seller of the goods (works, services) and what are the real rights to such goods.

There are two possible options of public-law entities' being part in relations where they may have a VAT taxable object:

1) Relations of public authorities (state (municipal) institutions) where they acquire an object of VAT taxation, including when goods (works, services) are sold that are related to state or municipal assets assigned to state (municipal) institutions for operational management;

2) Direct relations of a public-law entity, including where they sell goods (works, services) related to state (municipal) assets that are included in the treasury.

In the first case, when selling goods (works, services) related to state or municipal assets assigned to organizations for economic control or operational management, a relevant organization entitled for economic control or operational management is treated as a taxpayer.

Here, the organization that entitled for economic control or operational management shall independently perform its obligations to pay VAT. For example, Clause 1 of Resolution No. 33 of the Plenum of the Supreme Arbitration Court of the Russian Federation, dated May 30, 2014, expressly states that "state (municipal) authorities with a legal entity status (state or municipal institutions), by virtue of Clause 1, Article 143 of the Code (Tax Code of the Russian Federation—*Author's note*) may be taxpayers in their financial and business transactions, if they act for their benefit as independent business entities, do not perform public-law functions of a relevant public-law entity, and do not act on its behalf in civil law relations under Article 125 of the Civil Code of the Russian Federation."[3]

In the second case, with the direct business relations of a public-law entity, including where goods (works, services) related to state (municipal) assets included in the treasury are sold, the object of taxation may occur for these public-law entities. State (municipal) authorities being part of such legal relations act on their behalf.

In such cases of selling goods (works, services) related to state (municipal) assets included in the treasury, tax laws impose the responsibility to calculate, withhold, and pay VAT on tax agents in the first instance. In this regard, for example, researchers note that failure to calculate and pay VAT, when a state institution leases assets that are not assigned to it for operational management and that constitute the municipal treasury, poses a certain risk as the Federal

[1] *Financial Law of the Russian Federation: Textbook* / Karaseva (ed.). 4th edition, revised and enlarged. Moscow: KNORUS, 2012, p. 105.

[2] Tyutin. *Tax Law: Lectures*. ConsultantPlus Law Assistance System, 2020

[3] Resolution No. 33 of the Plenum of the Supreme Arbitration Court of the Russian Federation *On Some Issues Arising in Arbitration Courts in Cases Related to Collection of Value Added Tax*, dated May 30, 2014 // ConsultantPlus Law Assistance System.

Tax Service of Russia and the courts, for the purposes of applying Para. 4.1, Clause 2, Article 146 of the Russian Tax Code to state institutions, distinguish between the activities of a state institution as an independent legal entity and an entity with municipal functions. And in the latter case, according to the courts, the lease of municipal assets is subject to VAT [2].

Below are the cases where obligations to calculate, withhold, and pay VAT are performed by tax agents according to Clause 3, Article 161 of the Russian Tax Code:

- Leasing of federal assets, assets of constituent entities of the Russian Federation and municipal assets, assets owned by Sirius Federal Territory;
- Granting the right of limited use of a land plot (easement) in relation to land plots owned by the federal government, constituent entities of the Russian Federation and municipal authorities, land plots owned by Sirius Federal Territory;
- Sale (transfer) of state (municipal) assets included in the state treasury of the Russian Federation, the treasury of a constituent entity of the Russian Federation, the municipal treasury, the treasury of Sirius Federal Territory.

Tax agents tried to challenge the relevant provisions in court by referring to the fact that public-law entities are not identified as VAT payers; therefore, there cannot be tax agents for the relevant transactions. However, the Constitutional Court of the Russian Federation indicated that "value added tax when leasing public assets is collected due to the fact that this creates an object of taxation, i.e. transactions for sale of services that have a cost attribute, with which the tax laws associate the occurrence of the taxpayer's obligation to pay tax. Tax exemption of such transactions would mean exclusion from the general legal treatment, which is incompatible with constitutional principles of economic neutrality of taxes, recognition and protection of private, state, municipal, and other assets."[4]

In fact, the Constitutional Court of the Russian Federation has identified the principles of economic neutrality of taxes and equality of all types of ownership as a high constitutional value.

We note that this approach is not unique or new. For example, Article 13 of Directive 2006/112/EC of the Council of the European Union *On the Common System of Value Added Tax*[5] provides that states, regional or local authorities, and other bodies performing public functions shall not be regarded as taxable persons with respect to their activities or transactions as public authorities, even if they charge duties, fees, contributions or payments in connection with such activities or transactions. However, in such activities or transactions, they should be treated as taxable persons in relation to those activities or transactions, if their treatment as non-taxable persons would result in material violation of competition.

An interesting question is the compliance of the above position of the Constitutional Court of the Russian Federation with other principles of tax laws. Pursuant to Clause 1, Article 17 of the Russian Tax Code, a tax is considered established only when taxpayers and elements of taxation are identified. At the same time, Clause 6, Article 3 of the Russian Tax Code provides that laws on taxes and fees shall be worded in such a way that everyone knows exactly which, how, and when taxes (fees, insurance premiums) shall be paid.

It does not appear from the literal text of Article 19 of the Russian Tax Code, Article 143 of the Russian Tax Code and other provisions of Chapter 21 of the Russian Tax Code that public-law entities are expressly identified as VAT payers. However, in relation to this issue, the Constitutional Court of the Russian Federation, in the same Ruling No. 384-O of the Constitutional Court of the Russian Federation, dated October 02, 2003, noted that "the law-maker may identify the element of the legal structure of the value-added tax, which is the subject of this tax (taxpayer), in the same way as in Clause 3 of Article 161 of the Tax Code of the Russian Federation because state authorities, administrations, and local authorities are organizations with the rights of a legal entity."[6] in other words, the Constitutional Court of the Russian Federation actually emphasized that a taxpayer is considered identified, if the Tax Code of the Russian Federation identifies a tax agent and, based on this, it is possible to identify a taxpayer using logical methods. It seems that this method of identifying taxpayers and tax elements is not entirely common and, perhaps, it does not entirely comply with the principle of Clause 6, Article 3 of the Russian Tax Code.

In addition, more uncertainty in the above approach was caused by Resolution No. 310-KG16-17804 of the Chamber for Commercial Disputes of the Supreme Court of the Russian Federation, dated May 23, 2017, in case No. A09-10032/2015, where the Supreme Court of the Russian Federation, considering a dispute related to the failure by a tax agent to perform the obligations under Clause 3, Article 161 of the Russian Tax Code and imposing on such a tax agent

[4] Ruling No. 384-O of the Constitutional Court of the Russian Federation *On Dismissal of Claim of Interior Flora Design Group LLC in Relation to the Violation of Constitutional Rights and Freedoms by Clause 3, Article 161 of the Tax Code of the Russian Federation*, dated October 02, 2003.

[5] ConsultantPlus Law Assistance System.

[6] Ruling No. 384-O of the Constitutional Court of the Russian Federation *On Dismissal of Claim of Interior Flora Design Group LLC in Relation to the Violation of Constitutional Rights and Freedoms by Clause 3, Article 161 of the Tax Code of the Russian Federation*, dated October 02, 2003.

the obligation to pay VAT to the budget system, concluded that tax laws do not provide for a system of VAT collections from a municipality that is not a VAT payer when exercising the powers under Federal Law No. 131-FZ *On General Principles of Local Government in the Russian Federation*, dated October 06, 2003. In other words, the Supreme Court of the Russian Federation actually spoke against assigning the taxpayer status (at least actual) directly to a public-law entity, i.e. to a person selling its assets. Following this, tax law enforcement saw a new tax structure without a taxpayer, but with a tax agent. This position has been commented on negatively in the literature.[7]

In all the above cases, organizations and individual entrepreneurs have been identified as tax agents. Individuals who are not individual entrepreneurs are not recognized as tax agents. In this regard, the question is whether there are grounds for imposing on anyone an obligation to calculate and pay VAT when performing the same transactions in relation to individuals who are not individual entrepreneurs.

Initially, there were court positions providing that, in the circumstances, neither an individual who was not an entrepreneur nor public-law entities, including in the person of their bodies, should pay VAT.[8]

However, this practice subsequently changed. The Constitutional Court of the Russian Federation referring to its above position in Ruling No. 384-O of the Constitutional Court of the Russian Federation, dated October 02, 2003, concluded that, in particular, the legal status of local governments allows them to be treated as VAT payers in relation to sales of municipal assets that are not on the books of municipal enterprises and institutions and are included in the municipal treasury of a relevant urban, rural settlement or other municipality and, accordingly, to impose an obligation on them to calculate and pay VAT, if the assets are sold to individuals who are not individual entrepreneurs.[9]

In addition, the Constitutional Court of the Russian Federation referred to similar cases of the Supreme Arbitration Court of the Russian Federation.[10]

It should be noted that it is not entirely clear how this position corresponds to the above position of the Ruling No. 310-KG16-17804 of the Chamber for Economic Disputes of the Supreme Court of the Russian Federation, dated May 23, 2017, in case No. A09-10032/2015, where the Supreme Court of the Russian Federation refused to recognize a taxpayer status of a municipality when selling municipal assets and did not consider it possible to impose such obligation on the local government acting on its behalf.

Taking into account the above position, the experts have made an important conclusion that the law-maker may identify an element of the VAT legal structure, which is the subject of this tax (taxpayer), so that organizations with state functions that have the rights of a legal entity are treated as taxpayers, regardless of whether the relevant assets are assigned to such organizations for economic control (operational management) or included in the treasury [3].

We believe that in all the above cases there is a trend to prioritize the identification of an object of taxation when governing relations related to calculation and payment of VAT. In other words, if there is a VAT taxable object, the law-maker and the courts seek to find a subject that would pay VAT in relation to this taxable object. It appears that a taxpayer has a secondary role here and is sometimes completely replaced by a tax agent.

This approach requires a more consistent assessment of the potential for creating an obligation to pay VAT when a taxable object emerges immediately with public-law entities.

Above are the cases where the tax laws expressly specify tax agents (Clause 3, Article 161 of the Russian Tax Code) and the cases where the supreme court authorities have imposed the payment obligation on a state (municipal) authority (with the rights of a legal entity) acting on behalf of a public-law entity. However, the range of taxable objects (Article 146 of the Russian Tax Code) is wider than the above cases. In this regard, the question is about taxation of other VAT objects of public-law entities and its substance.

Following the establishment of the legal position of the Constitutional Court of the Russian Federation, which allows to treat local governments as VAT payers in relation to sales of municipal assets that are not assigned to municipal enterprises and institutions and are included in the municipal treasury, any actual transactions specified in Clause 1, Article 146 of the Russian Tax Code may be VAT-taxed. The only barriers here may be the rules defining the structure of transactions that are not treated as a taxable object (Clause 2, Article 146 of the Russian Tax Code) and the provisions providing for the list of transactions not subject to taxation (exempt from taxation) (Articles 149, 150 of the Russian Tax Code). Similar exemptions are provided,

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[7] Alexander V. Zhigachev *Tax Agent Instead of Taxpayer: Interesting Conclusions of the Supreme Court of the Russian Federation in Resolution No. 310-KG16-17804, dated May 23, 2017* // ConsultantPlus Law Assistance System.

[8] See Resolution No. F09-527/12 of the Federal Arbitration Court of the Ural District, dated February 22, 2012, in case No. A76-11891/11, Federal Arbitration Court of the Volga-Vyatka District, dated December 14, 2011, in case No. A82-3937/2011.

[9] Ruling No. 1719-O of the Constitutional Court of the Russian Federation *On Dismissal of Claim of the Municipal Asset Management Committee of the Municipal Entity Yurga Urban District on the Violation of Constitutional Rights and Freedoms by Para. 2, Clause 3, Article 161; and Clause 5, Article 173 of the Tax Code of the Russian Federation*, dated July 19, 2016.

[10] Resolution No. 17383/13 of the Presidium of the Supreme Arbitration Court of the Russian Federation, dated April 08, 2014. See also Resolution No. 16055/11 of the Presidium of the Supreme Arbitration Court of the Russian Federation, dated April 17, 2012.

for example, by Paras. 4, 4.1, 9.3, 10, 12 of Article 146 of the Russian Tax Code, etc.

In addition, application of these exemptions also creates additional intricacies in law enforcement. For example, the courts have to assess the relationship between services provided by public authorities and exclusive powers in the relevant area provided by law. In particular, the Supreme Court of the Russian Federation, in assessing the actual grounds for imposing VAT services on leasing a land plot for placement of an advertising structure by a local government, noted that "the local government, by approving the installation and operation of an advertising structure and receiving a consideration, actually exercises the powers of the owner of the land plot rather than its exclusive powers as, in accordance with Federal Law No. 131-FZ *On General Principles of Local Government in the Russian Federation*, dated October 06, 2003, leasing of a land plot for placement of an advertising structure is not in the scope of local matters, i.e. it is not an exclusive power. A similar agreement is signed with any property owner. As leasing of a land plot by a local government for placement of an advertising structure is not in the scope of local matters, i.e. it is not its exclusive power, such activity is subject to VAT."[11]

Thus, the tax laws and its enforcement cases are moving toward assigning a taxpayer status to public-law entities. In certain documents, the courts try to disguise such subject by shifting the focus to its bodies. The applicable regulatory practice is due by the priority of the principles of economic neutrality of VAT, equal recognition and protection of private, state, municipal, and other types of ownership. In this regard, in cases where there is a VAT taxable object and no exemptions provided by the tax laws, the relevant transactions will be taxed either through tax agents (if any) or public authorities.

REFERENCES

1. Krasyukov AV. *Property relations in tax law.* Voronezh: Publishing house of VSU; 2018. 312 p. (In Russ.)
2. Bryzgalin AV, Fedorova OS. Value added tax: current issues from the practice of tax consulting. *Taxes and Financial Law.* 2021;(8): 9–92. (In Russ.)
3. Komarova GV. Legal regulation of tax relations: current theoretical problems. *Russian Justice.* 2011;(9):10–14. (In Russ.) EDN: OIZEQR

СПИСОК ЛИТЕРАТУРЫ

1. Красюков А.В. Имущественные отношения в налоговом праве. Воронеж: Издательский дом ВГУ, 2018. 312 с.
2. Брызгалин А.В., Федорова О.С. Налог на добавленную стоимость: актуальные вопросы из практики налогового консультирования // Налоги и финансовое право. 2021. № 8. С. 9–92.
3. Комарова Г.В. Правовое регулирование налоговых отношений: актуальные теоретические проблемы // Российская юстиция. 2011. № 9. С. 10–14. EDN: OIZEQR

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[11] Ruling No. 305-ES24-4194 of the Chamber for Economic Disputes of the Supreme Court of the Russian Federation, dated June 26, 2024, in case No. A41-40409/2023.