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Tax Law and Intellectual Property Rights

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Intellectual property is one of the most important assets of many well-known major companies. However, in Russia the role and value of intellectual property in business is not fully understood yet.

The position of the Tax Code on the tax consequences of transactions involving goods, works and services leaves ambiguities for the taxation of transactions involving intellectual property. For example, in the case of export of intellectual property rights through electronic communication channels, the supplier cannot receive VAT deductions. At the same time, VAT deductions would be received in the case of export of intellectual property rights as a part of goods or equipment.

It is important to note the significant additional tax sums charged by the tax authorities and challenged in court cases connected to usage of trademarks by distributors, or cases of the tax inspectorates challenging the expenses or pricing model of intellectual property. The absence of legal procedures in Russian tax law for reclassifying transactions for tax purposes also significantly complicates the issue of assessing the tax consequences of transactions involving intellectual property.

At the same time, even in Russian practice, issues surrounding the taxation of intellectual property rights are exerting a greater influence on purchasing and sales structuring and pricing, and on the tax consequences of transactions. For example, the introduction of VAT exemption for the sale of rights to use the results of intellectual activity under license has influenced the system of establishing relations by contract between the parties of such a transaction. This exemption has significantly simplified delivery of software products through electronic communication channels, because it has canceled the duty of the buyer to act as tax agent for VAT.

Also, the possibility of applying the exemption has raised the competitiveness of suppliers who can offer customers the opportunity to purchase the rights to software products without VAT. Many of Russia's international agreements on avoiding double taxation contain special articles releasing royalties from taxation at the source of payment. This allows us to consider intellectual property rights as a convenient tool for tax planning.

Intellectual property rights therefore have more value than any other asset for the company that possesses them. For example, intellectual property rights can simultaneously be used as a source of current income, an element of tax planning and an important reserve to increase the company's capitalization.

This means that the issue of determining the tax consequences for transactions involving intellectual property rights, and the legal procedures for reclassifying transactions for tax purposes in the Tax Code, are rather pressing. It is absolutely necessary to bring these questions to the attention of the professional community and the authorities.

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