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Additional taxes. In what cases to be afraid and how to count?

According to the Tax code of the Russian Federation, legal entities, as well as individual entrepreneurs starting their commercial activities, can choose a General or simplified tax system.

To apply the STS, it is necessary to fulfill a number of conditions, one of which is the establishment of a limit of income for the reporting or tax period, which should not exceed 150,000,000 rubles.

In order to continue to apply the STS with an actual income of more than 150 000 000 rubles. owners of organizations and individual entrepreneurs have come up with a new scheme: artificially divide their business with the help of relatives. However, the tax authorities disclosed the scheme and added VAT. At the same time, if FSB officers disclose schemes aimed at trying to evade taxes, they charge as much as if there were no abuse. They can't add more taxes than a bona fide taxpayer would pay. So it turns out "penalty" VAT. After all, if entrepreneurs behaved in good faith, they would pay less.

The Supreme Court of the Russian Federation clarified this position in its ruling. This is valuable because the fact of violation is undeniable, and the only question is how honestly to pay taxes.

The Supreme Court of the Russian Federation also clarified that taxes should be calculated based on the current economic content of transactions. When identifying distortions, it is necessary to add such an amount of tax that would be paid by a bona fide taxpayer in this situation. The Economic Council noted that the amount of tax cannot depend on the form of payment (cash or non-cash). And the fact that the seller did not allocate a separate line of value added tax, here says only that he used the wrong tax regime. If VAT is not specified in the documents, this does not mean that the buyer agrees to an increase in the contract price when the tax authorities make reasonable claims.

To calculate VAT correctly, you need to keep in mind that the buyer pays it. Thus, the amount of tax should be determined as if VAT was initially presented for payment to third-party contractors, that is, to the allocation of tax from revenue, said the Board of the Supreme Court of the Russian Federation chaired by Marina Antonova. Otherwise, according to the three judges, it turns out that the individual entrepreneur pays a tax on lost profits.

If you have any questions about your relationship with the tax authorities, you can always turn to the services of highly qualified experts from the law firm GRATA International.

Practice areas

[TAX](#)

Locations

RUSSIA