

Federal Tax Service develops concept of unjustified tax benefit

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On March 23 2017 the Federal Tax Service issued a notification entitled On Identifying the Circumstances of an Unjustified Tax Benefit (ED-5-9/547@), which summarises the law enforcement practice associated with assessing the validity of a tax benefit in disputes relating to bad-faith contracting parties.

The Federal Tax Service commented on the lack of a formal approach undertaken by the tax authorities when collecting evidence to prove an unjustified tax benefit. According to the notification, a supplier's failure to fulfil its obligation to pay taxes itself should not form the basis for the imposition of negative consequences on the taxpayer where it has exercised due care and diligence when selecting its contracting party, provided that the transaction was actually performed.

The notification also contains the criteria by which the tax authorities should assess whether a taxpayer has exercised due care and diligence when selecting a contracting party. In particular, the Federal Tax Service has indicated that it is necessary to investigate how a taxpayer assessed the terms of the transaction and their commercial appeal and the contracting party's:

- business reputation;
- solvency;
- risk of default;
- resources (eg, production capacities, technological equipment and qualified personnel); and
- relevant experience.

The notification's terms are mandatory for territorial tax authorities. The directions contained therein are aimed at:

- a deeper analysis of the relationship between a taxpayer and its contracting parties and the actual performance of the transactions concluded between them; and
- the avoidance of tax and additional charges on formal grounds.

The notification will contribute to the reduction of companies' tax risks concerning an assessment of the validity of their tax benefit when dealing with contracting parties.

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