

Criminal liability is being imposed for VAT 'on paper'

FAO heads of companies' legal, compliance and security departments

Pepeliaev Group advises that, on 23 November 2024, the Russian President signed a Law introducing criminal liability for arranging activity that entails VAT invoices and tax returns that are known to have been falsified being submitted to tax authorities.¹

How did it all start?

Law enforcement practice defines as 'platforms' organised groups that issue documents which are known to reflect transactions 'on paper only' in order to create formal conditions for other persons to be able to apply VAT deductions. Meanwhile the VAT that such latter persons declare to be deducted, knowing that there are no grounds for doing so, is called as a VAT 'on paper'.

A new article in the Criminal Code

A new article 173.3 has been introduced in the Russian Criminal Code (the 'Criminal Code') to crack down on such activities. The article introduces criminal liability for arranging activity that involves:

- submitting to tax authorities and/or
- distributing
- VAT invoices and/or
- tax returns – that are known to have been falsified

on behalf of legal entities which have been incorporated:

- either through nominee front persons or
- through the use of personal data that has been obtained illegally.

Risks of liability being imposed

The proponents of the new article intend that criminal liability should be imposed on professional sellers of VAT 'on paper'.

For this purpose, the text of the article specifically provides for the following:

- the phrase "arranging activity" refers to VAT invoices being submitted to tax authorities and not just to anyone,

¹ [Federal Law](#) No. 406-FZ "On amending the Criminal Code of the Russian Federation and articles 28-1 and 151 of the Criminal Procedure Code of the Russian Federation" dated 23 November 2024

- VAT invoices and tax returns are recognised to have been falsified if they contain false information regarding goods being shipped² rather than regarding goods being purchased,
- VAT invoices that are 'criminal' are those that are transferred to a buyer and such tax returns that are submitted to a tax authority on behalf of legal entities that have been incorporated through nominee front persons, rather than VAT invoices and tax returns that are submitted to a tax authority on behalf of a taxpayer that is a buyer.

Nonetheless, the text of the new article does not distinguish sufficiently well between the liability of sellers of VAT 'on paper' and of taxpayers:

- there are no clear criteria for how a taxpayer submitting VAT invoices to the tax authority is differentiated from "arranging activity" to provide fake VAT invoices,
- it is possible to say about any VAT invoices and tax returns that they contain information regarding goods being shipped because a transaction of two parties may be described by it being classified as such for either of the parties;
- it can also be stated regarding VAT invoices of suppliers that are submitted to a tax authority that these are VAT invoices which were submitted to it previously on behalf of the suppliers.

In addition to the risk of prosecution under the new article instead of prosecution for tax evasion, risks are possible of the aggregate of crimes being artificially created which would also include the new elements of crime and tax evasion, and of a criminal law institute of complicity in a crime being also applied.

Comparison with current liability

The new article is more stringent than the article regarding liability for tax evasion (article 199 of the Criminal Code):

Article 199	Article 173.3
limitation period under the 1st part: two years	limitation period under the 1st part: 6 years
limitation period under the 2nd part: 6 years	limitation period under the 2nd part: 10 years
a case is prohibited from being instigated if the tax, default interest and a fine have been paid	there are no limitations on instigating a criminal case
a case that has been instigated terminates by the tax and default interest and a fine being paid	a case that has been instigated terminates by three times the amount of income being paid

² In addition, regarding work being performed, services being provided and property rights being transferred.

on a large scale means RUB 18,750,000	on a large scale means RUB 3,500,000
on an extremely large scale means RUB 56,250,000	on an extremely large scale means RUB 13,500,000

What to think about and what to do

That special criminal liability is being introduced for the VAT 'on paper' acknowledges the fact that the state has embarked on eradicating such type of illegal activity. Risks, however, cannot be ruled out of the new article being applied not only to VAT 'on paper' but also to genuine transactions where a counterparty has turned out to be a 'conduit company', and even to transactions which have entailed factual or methodological errors when they were being executed.

Companies should be even more diligent in selecting their counterparties and should assess their current operational practices with such contracting parties. It is also vital to check whether information is accurate regarding how business transactions are documented.

Help from your adviser

Pepeliaev Group's lawyers are well-versed in advising clients with regard to tax risks and in providing criminal law defence to companies' employees. This starts from handling the 'forerunners' of a criminal prosecution (being summoned to provide explanations or requested to provide documents and information, and so on).

Our specialists stand ready to assess and re-assess the tax risks and risks of criminal prosecution in connection with the new Law being adopted. They will also plan what measures can be taken to mitigate the above risks.

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