

**TOPICAL ISSUES OF ASSIGNMENT
OF THE RIGHT TO CLAIM RECEIVABLES**

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Abstract. The article deals with the important aspects of the assignment agreement. Particular attention is paid to the value-added tax at the assignment of the right to claim debts. The fact is the contract of assignment must contain clear information about the kind of debt and the period of debt. Otherwise, there is a chance that such contract can be considered as void. Moreover, a very important point is to specify in the contract of cession the amount and terms of payment to the supplier by the new lender. In the absence of such information, the tax authorities may consider the contract of cession to be the gratuitous, that's why this amount will not appear in the original creditor as a "tax" expenses. These and other important issues will be discussed in this article.

Keywords: the assignor, the assignee, assignment of debt, the creditor, accounts receivable, the rate of VAT, the invoice, the tax base, the timing of the payment of VAT.

An organization can sell and get cash for the unpaid debt. In the case of conclusion of such a contract, it will be called a concession rights (claims) or processes. Contractor who buys the debt named "assignee" and the seller named "assignor". Such an agreement does not require registration. However, if the contract is for the assignment of the debt associated with the long-term lease of real estate, according to claim 2 st.389 Civil Code of the Russian Federation it is subject to state registration [1]. Before the debts to be sold, it is necessary to carefully analyze the conditions of the contract of assignment.

First of all? It is necessary to pay attention to the following moments. The assignor should pass to the assignee the original documents confirming the debt by the buyer. Such documents may be acts of reconciliation, supply agreements. In case of non obtaining of the above documents, the new lender may terminate the contract of assignment and demand the return of these funds [6].

The new lender may request the originals of the documents, but, in our opinion, it is risky for the seller of the debt. This is due to the fact that the seller will not have the originals of the documents while the auditing by the tax authorities.

Based on the recommendations of the officials, the assignee can be transmitted copies of the documents, certified by the director. In the case of a dispute with the debtor originals should be provided [5].

The contract of assignment must contain clear information about the kind of debt and the period of debt: specify the number and subject of the contract, the amount of debt. Otherwise, there is a chance that the judge may consider such contract null and void [3].

Seller shall not negotiate the sale of the debt with the debtor, however, obliged to inform him. Not knowing that debt is sold, the customer can transfer money to the original creditor. In that case, it is considered that he has fulfilled his obligations (Clause 3 st.382, Civil Code) [1]. If notice send the new creditor, the debtor has the right to demand documents proving the concession, such as the act of acceptance. In its absence, the debtor has the right not to transfer money to the new creditor.

A very important point is to specify in the contract of cession the amount and terms of payment to the supplier by the new lender. In the absence of such information, the tax authorities may consider the contract of cession to be the gratuitous, and it will lead to the fact that this amount will not appear in the

original creditor as a "tax" expenses. In fact, according to claim 16 st.270, Tax Code, expenses for compensation transactions are not included in the calculation of income tax.

If the first lender inferior claim arising from the contract of sale of goods (works, services), subject to VAT, the tax base is determined by the rules of art. 155 of the Tax Code. It does not matter when they are implemented.

According to the art. 155 of the Tax Code, the first lender, who lost the right to claim, pay VAT only from the sum of the income exceeding, obtained by assignment, on the size of the assigned monetary claim.

Thus, the first creditor have to pay the VAT only if he was lucky to sell receivables at a price exceeding the amount of the debt itself (what happens seldom enough).

In order to fulfill the obligation to pay VAT at the assignment of the claim, the original lender shall:

- 1) determine the tax base;
- 2) determine the VAT rate;
- 3) calculate the amount of tax;
- 4) put the invoice;
- 5) fill in the declaration.

If the first lender sells receivables with a loss, the tax base for the assignment will be zero and VAT at the time of assignment does not need to pay.

For example, the organization of an "X" on the basis of the supply contract in September 2015 shipped to the address of the organization "Y" products in the amount of 354,000 rubles. (Including VAT -54 000 rub.). In February 2016 the organization "X" and "Z" have signed an agreement on assignment of the contract delivery requirements, according to which the organization "Z" acquired the company "X" to the right to claim for the "Y" organization for 280 000 rubles.

In this situation, receivables in the amount of 354 thousand rubles. sold for 280 000 rbl. That is why in February 2016 (when the assignment of debt), the organization "X" under no obligation to pay VAT to the budget.

VAT, calculated with the assignment of rights by the original creditor is payable (as part of the total tax amount for a tax period) in a general manner: in equal parts not later

than the 25th day of each of the three months following the expiration of the tax period [2].

This VAT payment period introduced from 1 January 2015 [4].

Thus, the above is aimed at increasing the efficiency of the company as a whole.

Bibliography

1. Гражданский кодекс Российской Федерации [Принят Государственной думой 22 декабря 1995 г.] // Справочно-правовая система «Консультант плюс»: [Электронный ресурс] / Компания «Консультант плюс»
2. Налоговый кодекс Российской Федерации [принят Государственной Думой 5 августа 2000 г., №117-ФЗ] // Справочно-правовая система «Консультант плюс»: [Электронный ресурс] / Компания «Консультант плюс»
3. Информационное письмо Президиума ВАС РФ от 30 октября 2007 г.№120) // Справочно-правовая система «Консультант плюс»: [Электронный ресурс] / Компания «Консультант плюс»
4. О внесении изменений в части первую и вторую Налогового кодекса Российской Федерации: Федеральный закон от 29.11.2014 N 382-ФЗ // Справочно-правовая система «Консультант плюс»: [Электронный ресурс] / Компания «Консультант плюс»
5. Письмо Минфина России от 20 января 2011г.№03-03-06/1/15) // Справочно-правовая система «Консультант плюс»: [Электронный ресурс] / Компания «Консультант плюс»
6. Постановление Президиума ВАС РФ от 5 апреля 2011 г.№16002/10) // Справочно-правовая система «Консультант плюс»: [Электронный ресурс] / Компания «Консультант плюс»

Bibliography

1. Graždanskij kodeks Rossijskoj Federacii [Prinjat Gosudarstvennoj dumoj 22 dekabnja 1995 g.] // Spravochno-pravovaja sistema «Konsul'tant pljus»: [Jelektronnyj resurs] / Kompanija «Konsul'tant pljus»
2. Nalogovyj kodeks Rossijskoj Federacii [prinjat Gosudarstvennoj Dumoj 5 avgusta 2000 g., №117-FZ] // Spravochno-pravovaja sistema «Konsul'tant pljus»: [Jelektronnyj resurs] / Kompanija «Konsul'tant pljus»
3. Informacionnoe pis'mo Prezidijuma VAS RF ot 30 oktjabnja 2007 g.№120) // Spravochno-pravovaja sistema «Konsul'tant pljus»: [Jelektronnyj resurs] / Kompanija «Konsul'tant pljus»
4. O vnesenii izmenenij v chasti pervuju i vtoruju Nalogovogo kodeksa Rossijskoj Federacii: Federal'nyj zakon ot 29.11.2014 N 382-FZ // Spravochno-pravovaja sistema «Konsul'tant

- pljus»: [Jelektronnyj resurs] / Kompanija «Konsul'tant pljus»
5. Pis'mo Minfina Rossii ot 20 janvarja 2011g.№03-03-06/1/15) // Spravochno-pravovaja sistema «Konsul'tant pljus»: [Jelektronnyj resurs] / Kompanija «Konsul'tant pljus»
 6. Postanovlenie Prezidiuma VAS RF ot 5 aprilja 2011 g.№16002/10) //
 7. Spravochno-pravovaja sistema «Konsul'tant pljus»: [Jelektronnyj resurs] / Kompanija «Konsul'tant pljus».

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