



I. Exempting the VAT from an amount of debt on which the seller charged interest for using another's money, courts unreasonably assumed that the buyer's responsibility to pay the VAT amount included in the price of services was a public duty, therefore according to Sec. 3, Article 2 of the RF Civil Code it was not subject to application of Article 395 of the RF Civil Code. (The RF SAC Ruling #SAC-5451/09 of 19.06.2009)

According to the RF SAC Ruling #SAC-5451/09 of 19.06.2009, a number of court decisions of the first, appeal and cassation instances were transferred to the RF SAC Presidium for consideration in the exercise of supervisory powers. Those court decisions came to a conclusion that at calculation of interest added by the seller, based on Article 395 of the RF Civil Code, on the VAT amount being part the underlying debt, the VAT amount should be excluded from the underlying debt amount.

The RF SAC has noted as follows:

The RF SAC Presidium position as reflected in Paragraph 10 of its Circular #9 of 10.12.1996 stating that calculation of interest on an amount outstanding for the goods based on price ex VAT was based on then acting legislation providing taxpayer with the right to pay the VAT at the moment the seller receives money from the buyer. Therefore, such transaction was not accounted for taxation purposes until the moment the buyer paid for the goods, and the seller didn't have to pay the VAT amount from its own funds prior to payment receipt.

After enactment of Chapter 21 of the RF Tax Code on 01.01.2001, taxpayers, with rare exception (from 01.01.2006 - no exception), must account their revenues for taxation purposes based on invoicing, i.e. from the moment the buyer's receivable is posted in books. The seller must pay the VAT from internal funds, not waiting for the buyer's payment to be received.

The buyer, when delaying payment for the services delivered, actually uses the seller's money, but not the amount payable to the budget as tax.

Therefore, there were no grounds for refusal in charging interest for using another's money in respect of the amount payable as the VAT.

II. To answer questions arising in judicial practice in connection with enforcement of court decisions associated with bankruptcy cases, the RF SAC has prepared a Draft Resolution "On some practical issues of applying the Federal Law "On executory process" in bankruptcy related case".

The gist of the said Draft Resolution by the RF SAC could be outlined as follows.

1. From the date of issuing a ruling on supervision, all claims to the debtor may be presented only based on the order of presenting claims to the debtor as established with the Federal Law "On insolvency (bankruptcy)". Creditors and the authorized agencies have no right based on Part 1, Article 8 of the Federal Law "On executory process" to forward money collection orders issued by courts and other bodies directly to any bank or another lending institution having accounts open for the debtor. However, that requirement does not concern current payments, i.e. those liabilities and obligatory payments which have arisen after the date of filing the application to recognize the debtor bankrupt.
2. The bank has the right to accept for execution executory and other documents requesting money collection from the debtor's accounts only if the said documents or the documents attached to them contain data confirming that such claims refer to really current payments. If the said documents do not contain such data, the bank returns the payment order to the claimant with an explanation of the reason of its returning. In case the bank violates this requirement, the debtor within the supervision procedure or financial improvement, or either external manager or receiver can request the bank to reimburse losses caused by wrongful writing off funds from the debtor's account.
3. After initiation of supervision procedure, non-monetary claims, such as enforcement of obligation in kind, as well as in disputes concerning protection of title or ownership of property, are no longer considered suspended property collections.
4. Pursuant to Sec. 1, Article 63 of the Federal Law "On insolvency (bankruptcy)", property distresses imposed during the executory process shall be removed. However, measures taken by courts to provide security for the claim remain intact.
5. The receiver has the right to apply to arbitration court with a petition to take measures providing security for the creditor claims and property of the debtor by distressing the debtor's property, banning auctions, etc. Besides, based on the receiver's petition, arbitration court can take additional measures ensuring integrity of the debtor's property, including interdiction to make deals not stipulated by Sec. 2, Article 64 of the Federal Law "On insolvency (bankruptcy) without the receiver's consent.



6. After initiation of the financial improvement procedure of or external management procedure, new sequestrators or establishment of new restrictions in respect of the debtor's property, including security measures, are allowed only within the bankruptcy proceedings. The only exceptions are restrictions in respect of current payments collection, and reclamation from another's illegal possession, only imposed in arbitration proceedings or executory process.
7. Transfer of court orders to the receiver does not release creditors in bankruptcy and the authorized bodies from filing the said claims with the court hearing the bankruptcy case. The receiver must notify the claimants immediately upon receipt of corresponding court orders and on the need to observe requirements regarding definition of creditor claims.
8. By virtue of Part 4, Article 96 of the Federal Law "On executory process", collection of debts associated with current payments does not terminate on the date when arbitration court issues its decision to recognize the debtor bankrupt, but the executor bailiff in that case has no right to levy execution upon the debtor's property, except for collection of the money from the debtor's bank accounts.

III. To answer questions arising in judicial practice in connection with application of the Federal Law #127-FZ of 26.10.2002 "On insolvency (bankruptcy)" in respect of current liability payments, the RF SAC Plenum has prepared a Draft Resolution "On current liability payments in bankruptcy cases".

The gist of the said draft Resolution by the RF SAC Plenum could be outlined as follows:

1. By virtue of Paragraph 2, Sec. 1, Article 5 of the Federal Law "On insolvency (bankruptcy)" (hereinafter - the Law), creditor claims to pay for delivered goods, rendered services and executed works issued after the bankruptcy case initiation are considered current claims.

In the contract obligations providing for periodic payments by the debtor for property use, provision of lasting services (storage agreements, provision of utility and communication services), as well as supply, through the attached network, with electric or thermal energy, as well as other goods, claims to pay for the periods expired after the bankruptcy case initiation are considered current claims.

When deciding whether to qualify claims to pay interest on the money lent to the debtor under a loan agreement as

current payments, the said interest, along with the principal loan amount, form the amount outstanding, and should be calculated according to the rules outlined in Sec. 1, Article 4 of the Law.

Interest on the money lent to the debtor under a loan agreement, credit facility agreement or as a commercial credit as of the date of filing with the court an application to recognize the debtor bankrupt or as of the date of initiating the appropriate bankruptcy procedure, are capitalized and added to the loan (credit) amount. The claim to pay the total amount, which amount may not be altered later, must be entered in the creditor claim register. Claims to pay interest on borrowed (credit) funds based on the liabilities emerged after filing the application to recognize the debtor bankrupt, are considered current claims.

2. If payment against the bill issued before such bill issuer bankruptcy case initiation is secured in full or in respect of the bill's amount with an aval, and the surety on the bill pays the bill after the said date, the claim of the surety on the bill against the debtor (the drawer) is not considered current payment.
3. When deciding whether to qualify claims resulting from surety agreement as current payments, one should take into consideration that the guarantor's obligation to guarantee the creditor that the other person will fulfill its obligation arises from the moment of signing the surety agreement.
4. If the bank guarantee secures fulfillment of an obligation arisen before the date of the bankruptcy case initiation in respect of the debtor (the principal), and the guarantor pays to the beneficiary the guarantee amount after that date, the guarantor's claim to the debtor (the principal) to compensate the indicated amount may not be considered as current payment and is subject to inclusion in the creditor claim register.
5. The date of causing damage, for which the debtor bears responsibility to the creditor according to Article 1064 of the RF Civil Code, for the purposes of qualifying the obligation to compensate harm as a current payment, is the date of its occurrence irrespective of when calculation of the damage amount takes place or when the court decision confirming the fact of damage and liability of the debtor becomes effective.
6. The debtor's liability to repay or compensate the amount of unjust enrichment is considered arisen from the



moment of actual acquisition or saving of property by the debtor.

7. Transfer of claim to another person by concession or based on the law does not change the status of such claim from its qualification as a current payment point of view.
8. Claims to apply measures for infringement of current payment liabilities follow the destiny of the said liabilities.
9. If the obligation is terminated by a novation, the date of the initial obligation shall be used when qualifying the new liability as a current payment.
10. If method of enforcing the court decision to award the property of non-monetary character was changed to collection of the money, the date of emergence of the obligation to transfer the property being subject of the court decision which method of enforcement was changed shall be taken to qualify such claim as a current payment.

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This review was prepared by the Litigation Team of the Law Firm Liniya Prava.
For more information please contact Law Firm Liniya Prava:
123100, Moscow, Presnenskaya Naberezhnaya 8, Bldg. 1, 7th floor
Capital City Complex, Moscow City International Business Center
Phone: (495) 664-28-90 Fax: (495) 664-28-91
review@lp.ru