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Legislative and court practice
news for companies
in the automotive industry



Dear friends,

We are pleased to present you with the latest issue of our Automotive Bulletin, which contains legislative news for the third quarter of 2014.

This document contains hot topics for automotive world covering scrappage tax and recent amendments on the conditions of tax allowances for the car manufacturers.

It also contains list of special economic zones with tax allowances for car manufacturers, recent court practice on transfer pricing aspects and treatment of VAT on supplier's bonuses.

We hope this issue will prove useful.

Kind regards,

Svetlana Fedorova
Partner
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Tax news

New scrappage scheme introduced in Russia in September 2014

- In order to stimulate the sales of new vehicles, starting from September 1, 2014 the Russian Government introduced a new scrappage scheme, which subsidizes the sale of passenger and light commercial vehicles, as well as buses and trucks. Car owners are eligible for a discount of at least 40 thousand rubles (approximately one thousand US dollars) for passenger cars, while the discount for buses and trucks may be up to 350 thousand rubles (approximately nine thousand US dollars).
- Though the new scrappage scheme is currently running, there is still no legal framework, which establishes certain conditions of it. Therefore, at the moment, auto network is concerned about the way the compensations for the sales with discounts is transferred to minimize negative tax implications.

Special economic zones with tax allowances for certain car manufacturers were recently introduced

Far East region

- A new special economic zone was created in Vladivostok which will be based on the "Sollers" factory. This zone is launched mainly to satisfy the needs of the car makers.
- About 90% of the planned investments are expected from Mazda and Sollers. In fact, the zone is created to moderately subsidize these companies to develop their business in the Far East region.
- The status of special economic zone provides for tax and customs allowances, as well as government financing of infrastructure construction. Though particular conditions of tax and customs allowances for Far East region are not yet formalized, most likely, the residents will be provided with allowances for the majority of taxes and customs duties for 5-10 years. The actual conditions will be specified by the regional authorities.
- The decree is effective from 28 January 2015.

RF Government Decree No.822 dated August 18, 2014

"Volga" industrial park

- The industrial park "Volga" in Volgograd is planned to be on the base of "VolgaBus" factory. The amount of investments for the construction of new manufacturing buildings, a customs terminal and an expo centre is planned to be up to 2 bln rubles. Small and medium sized buses will be produced in the park.
- It is expected that the Government will provide subsidizes

for compensation of interest expenses with regard to the financing attracted for the construction of the infrastructure (90% of the refinancing rate of the Central Bank of the RF)

- Moreover, at the moment, potential tax allowances for the period of 7 years are discussed.

Recent amendments on the conditions of tax allowances for the car manufacturers in Moscow

- Recent amendments to the legislation altered the conditions of receiving tax allowances for the profits and property tax by the companies engaged in car manufacturing within the territory of Moscow.
- In particular, the thresholds of the amount of investments, which is necessary for the application of the allowances are lowered (i.e. for the first tax period – from 5 bln rubles to 2.8 bln rubles; for the second – from 9 bln rubles to 5.6 bln rubles).

Scrappage tax: increase of tax for commercial vehicles

- Scrappage tax is levied for each vehicle imported to the Russian Federation or manufactured in the Russian Federation in order to secure the ecological safety as well as to protect human health and environment from the harmful effects of the vehicle operation (Federal Law № 89-FZ of 24.06.1998 "On Production and Consumption Wastes").
- From 12 April 2014 the base for special transport vehicles of below categories including vehicles of increased flotation ability (G) of these categories is changed from RUB 20 000 to RUB 150 000
- M2 (passenger car, more than 8 seats, excluding the driver's, weight not more than 5 tons);
- M3 (passenger car, more than 8 seats, excluding the driver's, weight not more than 5 tons);
- N1 (cargo car, weight not more than 3.5 tons);
- N2 (cargo car, weight more than 3.5 tons, but not more than 12 tons);
- N3 (cargo car, weight more than 12 12 tons).

Scrappage tax: new forms of reporting

- The Federal tax service in its Order of 23 June 2014 № MMB-7-3/327@ introduced the new electronic form and the way of reporting for scrappage tax. The form and the way of reporting are obligatory for all new reports and revised reports of previous periods.
- The previously introduced forms (Order of the Federal Tax Service of 25 December 2013 № ГД-4-3/23318@) are no longer in force.

Transportation tax: luxury cars

- Based on the art. 362 of the Russian Tax Code, there are progressive coefficients on transportation tax for luxury cars depending on their average prices.
- The average prices are calculated by the Ministry of Production and Trade based on the prices reported to the ministry by producers located in Russia and official representatives of foreign producers (typically, importers).
- There are the following progressive coefficients:
 - 1.1 on passenger cars of average price RUB 3-5 mln., manufactured 2-3 year before;
 - 1.3 on passenger cars of average price RUB 3-5 mln., manufactured 1-2 year before;
 - 1.5 on passenger cars of average price RUB 3-5 mln., manufactured not more than 1 year before;
 - 2 on passenger cars of average price RUB 5-10 mln., manufactured not more than 5 years before;
 - 3 on passenger cars of average price RUB 10-15 mln., manufactured not more than 10 years before;
 - 3 on passenger cars of average price of RUB 15 mln. and more, manufactured not more than 20 years before.
- The information on prices is submitted to the Ministry of Production and Trade twice a year and provides the recommended dealers' resale price.

Transfer pricing court practice

- Recently a number of tax disputes involving Russian car distributors (namely, Mazda Motors Rus, Suzuki Motors Rus, Hyundai Motor CIS and Subaru Motor) and the application of transfer pricing rules emerged in the court trials.
- The distributors posted losses for tax purposes, which, in the opinion of the Russian tax authorities, were due to the fact that the profit was shifted outside Russia by applying overstated transfer prices.

Mazda Motors Rus case

- On July 17, 2014, the Moscow District Federal Arbitration Court returned the Mazda Motors Rus case for retrial on the basis that the lower court had not examined the possibility for application of the comparable uncontrolled price for identical (homogeneous) goods method.
- The tax authority's assertion that there were no identical/homogeneous goods on the market because Mazda Motors Rus is the exclusive dealer of Mazda vehicles in Russia was not, in the opinion of the cassation court, sufficient for application of the resale price method.

Resolutions of the Federal Arbitration Court of Moscow region on the case # A40-4381/13 dated July 21, 2014

Suzuki Motors Rus case

- In the Suzuki Motor Rus case, the Moscow District Federal Arbitration Court returned the case for retrial based on the similar conclusion that the that the lower court had not examined the possibility for application of the first method with respect to the disputed import transactions.
- In the opinion of the court, similar vehicles imported by other distributors that Suzuki Motors Rus views as direct competitors should be treated as identical or, where there are minor differences in technical characteristics, homogeneous to Suzuki vehicles.

Decision of the Arbitration Court of Moscow region on the case # A40-111951/12 dated June 23, 2014

Hyundai Motor CIS and Subaru Motor cases

- Similar court cases with regard to Hyundai Motor CIS and Subaru Motor, were accepted by the Moscow Arbitration Court and are currently in the trial at the first instance.

Cases # A40-50654/13 (Hyundai Motor CIS) and A40-89807/14-75-258 (Subaru), which are currently in the trial at the first instance

Tax implications for the future

- In the event that upon the retrials, the courts broaden the interpretation of identical/homogeneous goods, this may significantly affect the application of the transfer pricing rules effective at the moment.
- In particular, it seems like courts may consider the vehicles produced by various manufacturers with various technical characteristics as identical/homogeneous goods. In this case, the comparable uncontrolled price method may be extended to controlled transactions with numerous goods of different types and classes, rather than only commodities.
- The outcome of these court cases may have a significant impact on current transfer pricing practice.

Court practice on VAT on bonuses received

Negative decision

- Major car dealers lost lawsuits with the tax authorities on the assessment of VAT on bonuses received from suppliers up to 1 July 2013, i.e. before the enactment of amendments to Article 154 of the RF Tax Code (Federal Law № 39-FZ of 5 May 2013).
- In its decision to reject the dealers' claims, the court noted:
 - The payment of bonuses by supplier companies on the basis of performance of obligations under bonus programmes is a measure incentivising a dealer to sell as many products supplied as possible; i.e. to purchase more products from the suppliers
 - If bonuses for performing a sales plan are directly linked to the supply of products, it should be recognised that they, like other discounts (bonuses), also represent a form of trade discount that affect the value added tax base.

Fifteenth Arbitration Court of Appeal Resolution of case № A53-16510/2013 of 30 April 2014 Order of refusal to submit the case to the Presidium of the Russian SAC № BAC-4321/14 of 23 April 2014

Positive decision

- The automotive dealers were able to sustain their position on accounting for bonuses received from suppliers in court.
- The courts ruled that there were no changes to the price of supplied cars on the basis of an agreement between the parties; respective primary documents were not prepared (no changes were made to goods delivery notes containing information on the price of goods); and no adjusting invoices were issued to suppliers as the price of goods did not change. The tax authorities did not present any evidence that the suppliers had taken the bonuses paid into account when determining the VAT base.
- The bonuses received by taxpayers could not be qualified as a trade discount that changes the price of goods supplied to the company.

Decision of the Federal Arbitration Court of the Moscow region Resolution of case № № A40-130903/13-140-419 of 19 June 2014; Decision of the Arbitration Court of Moscow region on the case # A40-129987/13-107-476 dated March 31, 2014; Decision of the Federal Arbitration Court of the Moscow region Resolution of case № № A40-90799/13-91-313 of 22 May 2014.





Federal Legislation News

Government Incentives

Industrial Production Type Special Economic Zone Created in Vladivostok

- The Government of the RF decreed the creation of an industrial production type special economic zone (SEZ) in Vladivostok.
- There are tax and customs privileges legally provided for the industrial production type SEZ residents. Particularly, the SEZ residents pay income tax at lower rate, enjoy transport tax incentives and exemption from property tax and land tax with a number of conditions conformed to. The legislation also provides for the cases where the goods imported to and exported from the SEZ, are subject to exemption from VAT and customs fees.

Other News

Foreign Machinery Government Procurement Prohibition Decreed

- The Government decreed the prohibition of procurement of automobiles and other equipment manufactured outside Russia, Belarus and Kazakhstan for state and municipal needs.
- There is also a requirement of obligatory number of production operations to be carried out in the territory of the RF, Belarus or Kazakhstan when manufacturing the transport vehicles ("TVs") listed in the Decree. This requirement shall be also complied with by the companies applying "industrial assembly" regime, as well as certain residents of SEZ in the Kaliningrad region.
- The list of government procurement prohibited goods includes passenger cars of different types, overland public transport and other vehicle categories.
- In order to prove the required number of production operations carried out, as well as the compliance with the "industrial assembly" regime and requirements for the Kaliningrad SEZ residents, a manufacturer shall have the expert's examination certificate issued by the Chamber of Commerce and Industry of the Russian Federation. In regard of the rest of the goods included in the list, a certificate of the goods origin is required to prove the TV's Russian, Belorussian or Kazakh origin.
- The decree is effective from 16 July 2014.

Decree the RF Government No. 656 dated July 14, 2014

Mandatory Availability of Bills of Entry for Temporary Imported Automobiles

- The Government decreed changes to the Driving Regulations in the RF ("DR").
- The drivers crossing borders in vehicles are charged with responsibility to have and make available for inspection to the traffic police officers, among other documents, bills of entry with the customs authority temporary import mark for TVs and trailers.
- The DR changes are effective from 12 August 2014.

Decree the RF Government No. 714 dated July 30, 2014



Changes in Customs Legislation and Court Arbitrage Practice

Unification of "Industrial Assembly" Regime in Russia, Belarus and Kazakhstan

- The decision of the Supreme Eurasian Economic Council obliges Russia, Belarus and Kazakhstan to enshrine in national legislations a number of provisions on the industrial assembly regime regulation.
- Thus, the above governments shall introduce unified requirements for capacities and conditions of applying the industrial assembly regime for companies entered into industrial assembly agreements before the Decision's effective date. The term of the industrial assembly agreement shall be limited in the national legislation by 31 December 2020.
- The violation of the industrial assembly regime shall be followed by the sanctions identified by the Decision and stipulated in the national legislation.
- In addition, the RF, Belarus and Kazakhstan are obliged to settle in the national legislations the levels of production localisation in the territory of one of the countries for free circulation of vehicles in the territories of other countries (30% from 29 May 2014 and 50% from 1 July 2018).
- Certain limitations of circulation in the RF shall be introduced by the countries in regard of the vehicles manufactured in Belarus and with the localisation level of less than 30%. For such TVs they introduced an annually agreed upon quota limit of 10 thousand cars per year for the period from 29 May 2014 to 1 January 2017. Starting from 1 January 2017 these automobiles have free circulation in the RF only with the observation of the unified requirements for the industrial assembly regime, stipulated in the Decision.
- The Decision is effective from 29 May 2014. The national legislation of the countries is subject to change in accordance with the provisions of the Decision within 90 calendar days from the date specified.

Decision of the Supreme Eurasian Economic Council No. 72 as of 29 May 2014, Decision of the Board of the Eurasian Economic Council No. 149 as of 25 August 2014

Unified System of Electronic Vehicle Certificate of Title Introduced for Russia, Belarus and Kazakhstan

- Governments of the RF, Belarus and Kazakhstan entered into the Agreement providing for step-by-step transfer to a system of electronic vehicle certificates of title (as well as for other equipment and machinery categories) subject to registration in the territory of the Agreement member countries.
- The first step involves the utilisation of the Russian vehicle certificates of title forms by competent authorities of Belarus and Kazakhstan. After that the Eurasian Economic Commission (EEC) will determine the unified forms of vehicle certificates of title to be used before the introduction of the electronic vehicle certificates of title and respective electronic systems. There are also plans to create a Unified register of authorities and organisations authorised to issue vehicle certificates of title.
- The transition to the use of electronic vehicle certificates of title is planned to be realised starting from 1 July 2015.
- The Agreement is temporary used from 14 October 2014 and will be effective after 5 days from the moment of the Agreement's diplomatic procedures are completed.

"Agreement on introduction of unified forms of vehicle certificates of title (carriage frame certificate) and self-propelled vehicle certificates of title and other machinery categories, and organisation of electronic certificate systems" (Signed-off in Moscow on 15 August 2014)

Reduced Rates of Import Customs Duties for Tires and Bonnets in Russia's Observing WTO Obligations

- Starting from 1 September 2014 the rates of customs duties for certain types of tires and bonnets are reduced as part of the obligations assumed by the Russian Federation concerning the step-by-step reducing of the import rates for certain goods categories.
- The changes affected the tires classified in subheading 4012 11 000 0.
- The Decision is effective from 6 August 2014.

Decision of the Board of the Eurasian Economic Council No. 103 as of 7 July 2014

Legal news

Legal legislative news

Amendment of technical regulations on pollutant emissions of automotive vehicles

- The new edition of the technical regulations "On the requirements to the pollutant emissions of automotive vehicles produced on the territory of the Russian Federation" approved by the decree of the RF Government as of 12 October 2005 No. 609 (hereinafter, the Regulations) was issued.
- In accordance with the amendments vehicle manufacturers are authorized to produce vehicles that do not comply with Euro 5 standard until 31 December 2015. Therefore, the introduction of this environmental standard on the RF territory was postponed for a year.
- The definitions of gas diesel, dual-fuel engine and special machinery were included in the new version of the Regulations. The Regulations are not applicable to special purpose vehicles with armored all-welded engine.
- RF Government Resolution as of 30 July 2014 No. 730 "On the amendments to the technical regulations "On the requirements to the pollutant emissions of automotive vehicles produced on the territory of the Russian Federation" and on the recognition of revocation of the RF Government Resolution as of 20 January 2012 No. 2"

Judicial and law-enforcement practice

A. Application of competition law

Case of limitation of competition at the market of after-sales services of vehicles

- Under the concluded contracts the vehicle manufacturer entrusted service station with the actions related to presale and after-sale service of trucks of a specific make on the territory of the region of the RF.
- Under the contracts:
 - service station confirms its status by using the elements of outdoor advertising of the manufacturer trying to keep the make identifiable;
 - for the provision of the services hereunder, the service station has the right to use trademarks, logos, trade names or other signs owned by the manufacturer or used on a legal basis;
 - in case of termination of the contract the service station shall terminate use of trademarks, logos, trade names and other signs owned by the manufacturer, of symbols and remove all slogans that relate the name with its enterprise and its distribution network on any territory;
 - service station undertakes the obligation not to conduct competitive activities, specifically maintenance and

repair of trucks of company's competitors without its written consent during the duration of the contract and one year after its expiration;

- service station shall have the right to perform maintenance and repair of trucks of other manufacturers that compete with the vehicle manufacturer, but only under the stipulation that the services rendered shall not be advertised;
- in case of violation of the mentioned obligations by the service station the vehicle manufacturer shall have the right to terminate the contract concluded with the service station unilaterally.
- The Russian FAS concluded that the service station after concluding such contract with the vehicle manufacturer refused to act autonomously at the market of maintenance and repair of trucks of all makes except the make of the manufacturer and also undertook the obligation to provide maintenance of trucks of the manufacturer's make only on the territory defined in the mentioned contracts.
- The court of cassation confirmed the conclusions of the first-instance court and the court of appeal that:
 - literal interpretation of the contract terms support the conclusion that concluded contracts correspond to the definition of "vertical" agreement for which reason it should not be recognized as contracts concluded in violation of anti-trust legislation and competition;
 - mentioned contracts demonstrate the signs of dealership agreement, franchising agreement, agreement on the right of use of means of individualization, i.e. agreements that represent the interests of the main company that delegated corresponding rights to the dealer, user;
 - non-compete clause is designed to avoid consumers' confusion;
 - there is no evidence of actual restraint of competition and the service station repaired other makes.
- Nevertheless, the FAS continued appealing of the decision of the court of first instance. On the 9 June 2014 the complaint in order of supervision was filed in the Supreme Arbitration Court of the Russian Federation. At present, there is no information on the case's results in the Supreme Arbitration Court or in the Supreme Court.

Resolution of the Federal Antimonopoly Service of the West-Siberian region as of 19 March 2014 in regard of the case No. A45-4580/2013

Limitation of competition of car loans market

- The Arbitration Court of Moscow and the Ninth Arbitration Court of Appeal dismissed the claims of two credit institutions on the unlawfulness of the decision and order of the Russian FAS with respect to the case on the violation of anti-trust legislation by the banks, and also of provisions on amercements for violations.
- The credit organizations concluded an association agreement (hereinafter, the Agreement). The subject of this Agreement was the opening of accounts for citizens in order to put credits of other bank that is subsidiary of the vehicle manufacturer and to execute account operations because the latter does not possess the license on the raising of cash of individuals to deposits. At the same time the provisions of the Agreement provided free opening and service of accounts at the bank for car buyers.
- The agreement set out an obligation for the first credit organization not to recommend and not to set up conditions for the purchase by the clients of the bank affiliated with the vehicle manufacturer (captive bank), directly or indirectly for the purposes of partial or complete liquidation of its obligations under the credit agreement with the captive bank, of any products or services of the first credit organization as it may lead to additional expenses for the borrowers.
- During the investigation it was found that when entering into the Agreement the banks were potential competitors at the market of car loans for individuals.
- The court came to the conclusion that the agreement between business entities operating on the same commodity market under which one business entity refuses to make some independent activities on such market, in particular to offer and (or) recommend to buy his products to the clients of the other participant, is anticompetitive. The establishment of the possibility to limit competition on the commodity market as a result of the agreement of these business entities is sufficient to recognize violation by the business entities of clause 4, article 11 of the Federal Law "On the Protection of Competition". At the same time the absence of facts of competition limitation in pursuance of the agreement does not matter legally.

Resolution of the Moscow Arbitration Court as of 3 June 2014 in regard of the case No. A40-10517/2014, Resolution of the Ninth Arbitration Court of Appeal as of 18 December 2013 in regard of the case No. A40-10517/2014



Case on limitation of competition by car distributor

- Because of the dealer's appeal the Russian FAS initiated a case on the violation of anti-trust legislation against the car distributor in whose actions the dealers found violations of anti-trust legislation that could lead to the limitation of competition at the market of cars of a specific make and of spare parts. Clause 4, article 11 of the Federal Law "On the Protection of Competition" sets a ban on the performance of the mentioned actions.
- After the investigation the Russian FAS has concluded the following:
 1. Commission of the Russian FAS did not identify the facts of the fulfillment of the terms of agreements limiting car sales of the dealers to public organizations and servants, application of sanctions to the dealers or their discrimination. At the same time the application of the mentioned provisions could lead to the limitation of competition.
 2. The FAS of Russia believes that by virtue of article 13 of the Federal Law "On the Protection of Competition" the agreements specified in clause 4, article 11 of the Law may be seen as acceptable under certain conditions. The Russian FAS took into account that the aim of the introduction of these limitations was 1) mitigation of corruption risks related to the car sales to the specific group of clients by exclusion of the third parties (resellers) from the process of sale, 2) improvement of service quality by improvement of sales transparency. Moreover, the dealers earned commission (3-5%) as a compensation for the services of sending clients of the mentioned group for further work with the distributor. The evidence of the absence of negative consequences for the market and for its participants was also taken into account. Thus, the advantage of these measures for the clients was the creation of more transparent terms of purchases that could lead to budget savings. In case of the identification of facts of the fulfillment of the mentioned agreements, it could be seen as acceptable on the provisions of article 13 of the Federal Law "On the Protection of the Competition".
 3. The distributor introduced amendments to the sales policy that extended the scope of dealers' independence in regard to 1) state companies and 2) public servants. Moreover, the dealers received additional explanations of the possibility of the official dealers to install spare parts that are not original on consumers' demand. In connection with the above-mentioned amendments the requirements to the new sales policy in regard to the

clients of specific category exclude the possibility to limit competition in the future.

4. The Russian FAS took into account that the distributor decided to promote further development of positive business practices at the market of cars of different class on the territory of the Russian Federation by signing the Code of Conduct of vehicle manufacturers and dealers that the Association of European business agreed with the Russian FAS.
5. Considering the above, the Commission of the Russian FAS concluded that there is no reason to recognize the distributor as violator of clause 4, article 11 of the Law "On the Protection of the Competition".

Decision of the Federal Antimonopoly Service as of 9 June 2014 in regard of the case No. 1-00-320/00-05-13

B. Administration of civil legislation

Case on invalidation of refusal to fulfill agreement by vehicle maker

- The RF Supreme Arbitration Court issued an Order of refusal to submit the case to the Presidium of the Russian Supreme Arbitration Court. Earlier, the Resolution of the Moscow District Federal Commercial Court and of the Ninth Arbitration Court of Appeal provided that unilateral extra judicial refusal of major vehicle manufacturer to fulfill the dealership agreement is invalid due to the absence of sufficient evidence of negligence of the dealer and violation of the dealership agreement.
- Particularly, under the conditions of the dealership agreement the supplier has the right to refuse to fulfill the agreement if the dealer does not fulfill repeatedly any provisions of the agreement, its appendixes or directives of the supplier. The Court concluded that the dealer did not commit violation or improper execution of its obligations of payment for goods or nonacceptance of goods as in case papers there is only 1 notice of violation of the dealership agreement by the dealer.
- Without limitation, the dealership agreement entrusted the supplier the right to refuse to fulfill the mentioned agreement in unilateral extra judicial order in case of significant deterioration of business reputation or dealer's results. Significant deterioration of business reputation or dealer's results is the beginning of bankruptcy proceedings or official proceedings aimed at the prevention of dealer's insolvency (bankruptcy), sanctions on the property of the dealer and its affiliates as a result of its insolvency, protest of a bill as a result of its insolvency, discreditable actions of dealer's employees,

including the attempt to corrupt employees and supplier's authorized persons.

- The court of appeal without referring to illegality of inclusion of such provision into the dealership agreement noted that the refusal of the vehicle manufacturer to fulfill the dealership agreement disrupts the balance of rights and obligations of the parties, contradicts the customs and violates fundamental private legal principles of reasonableness and good faith as sufficient evidence of bad faith was not presented. In particular, requests of the Ministry of Internal Affairs within the scope of the inspection of the dealer's predecessor, citizens' complaints without signature are not recognized as requests. Evidence of other facts mentioned in the notice, including termination of the salon's activities, story on TV were not provided in the case papers.

Definition of the Supreme Arbitration Court of the RF as of 31 July 2014 in regard of the case No. A40-60922/2013, Resolution from the Federal Antimonopoly Service of the Moscow Region as of 20 June 2014 No. Ф05-5729/2014 in regard of the case No. 40-60922/13-131-594, Resolution of the Ninth Arbitration Court of Appeal as of 14 March 2014 in regard of the case No. A40-60922/13

Case on Claim over Automobile Defects

- In a dispute between the automobile purchasing entity and auto dealer, courts of judiciary used the provisions of the Civil Code of the Russian Federation on retail sales agreement, though the automobile was purchased for entrepreneurial business purposes.
- Substantiating their findings the courts cited clause 5 of the Decree of the Plenum of the Supreme Arbitration Court of the Russian Federation as of 22 October 1997 No. 18 on "Some issues relating to the use of the provisions of the Civil Code of the Russian Federation on retail sales agreement" that stipulates that if the goods are purchased from the seller conducting entrepreneurial activities in retail sales, then the relationships of the parties are regulated by the provisions on retail sales. At the same time the provisions of the Law of the Russian Federation Concerning the Protection of Consumer Rights were found inapplicable as their jurisdiction is limited by the consumers who are represented by individuals.
- In the dispute the courts used Article 503 of the Civil Code of the Russian Federation which, as opposed to Article 475 of the Civil Code of the Russian Federation being a general SPA provision, has specific limitations in regard of technically sophisticated goods as substantial

breach of the goods quality requirements is essential. Based on the expert evidence it was found that the purchased automobile had serious defects.

The Decree of the Federal Arbitration Court of the Northwestern District as of 17 July 2014 in regard of the case No. A56-31298/2013

Case regarding claim for collection of car recycling fee payable against vehicle purchaser as per SPA

- A seller brought a court action for debt collection regarding the goods supplied, including the car recycling fee.
- According to the SPA, the goods price comprised all sums of specifications to the agreement. According to clause 3.2 of the agreement, the goods price included the cost of the van, the cost of the equipment (if it was stipulated in the specification), the cost of assembling the van and the equipment, the cost of goods manufacture and sale related documentation formalisation services and expenses, the cost of its safe storage in the seller's warehouse, as well as the recycling fee payable by the seller to a vehicle manufacturer identified in the vehicle certificate of title, VAT and other expenses.
- The materials of the case were provided with the copies of the vehicle certificates of title which imply the recycling obligations assumed from the vehicle manufacturer and the recycling fee payment by the vendor to the manufacturer.
- Thus, the court found that the inclusion of the recycling fee in the goods cost was legally acceptable, and sustained the claim.

The Decree of the First Arbitration Appeal Court as of 28 July 2014 in regard of the case No. A43-2448/2014





Other News

Possibility of parallel imports validation

- Federal Antimonopoly Service has prepared a draft bill stipulating fundamental changes in the state legal policy concerning exhaustion by means of dropping restrictions and prohibitions from the titleholders for the Russia-imported goods marketed abroad with their consent, or parallel imports.
- The bill may significantly affect the development of the Russian automotive sector. At the moment the titleholders are only able to hold the consumer demand with their distributors in Russia by means of determining the official distributors. And if the bill is adopted the parallel imports could be only limited under the condition of the title holder's (or other party with its consent) localisation of the substitute goods manufacture in the Russian Federation. Any other limitations would be considered as violation of antimonopoly legislation.
- The bill is planned to be effective from 1 January 2020.

http://regulation.gov.ru/project/14362.html?point=view_project&stage=3&stage_id=9876&page=project&record_id=14362

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