

Warranty services: current issues

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PRICEWATERHOUSECOOPERS 

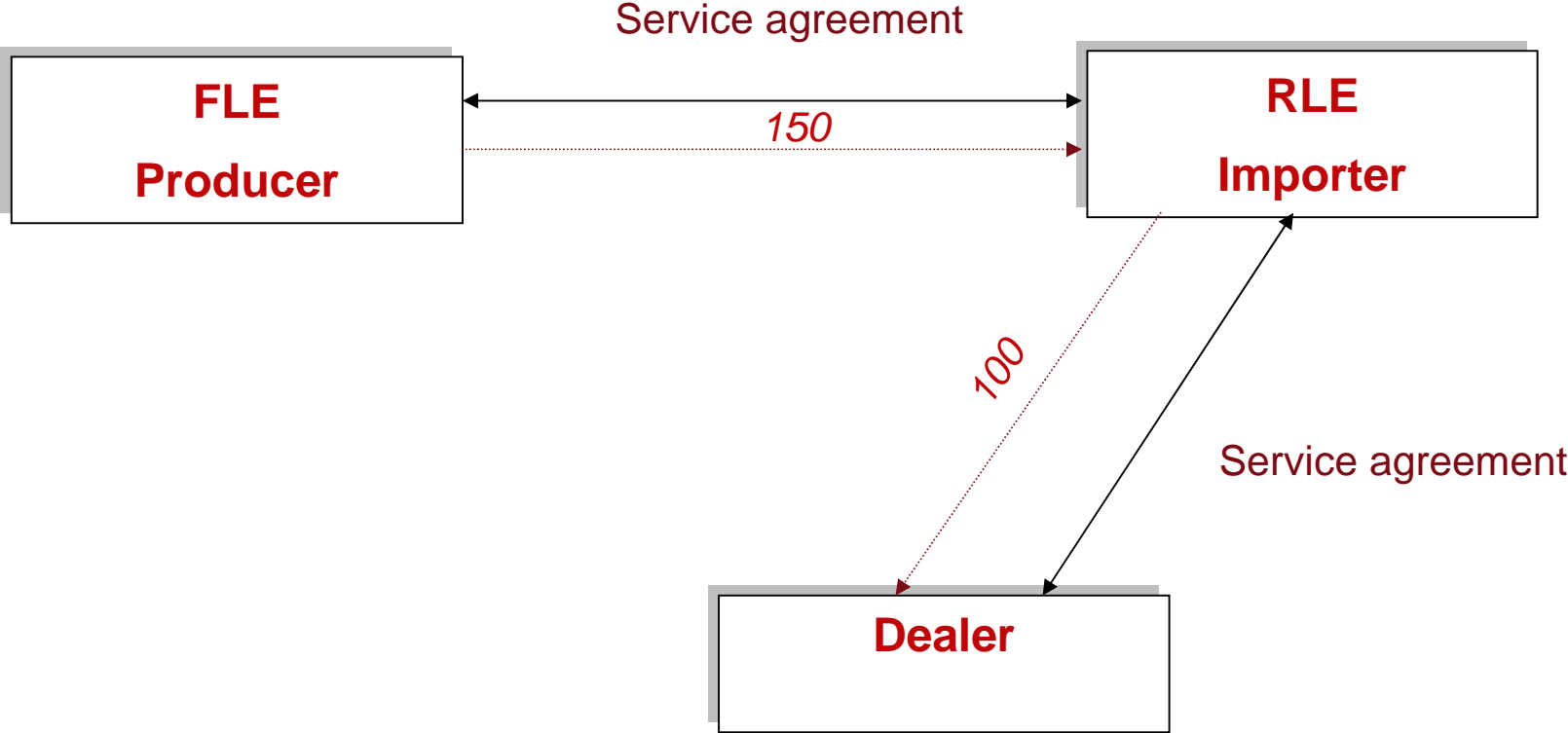
Agenda

- Structuring of warranty repair operations
- Deductibility of warranty costs
- VAT exemption - documentary support
- Recovery of input VAT related to warranty activity
- VAT issues related to transitional period upon abolishment of UTII regime

Warranty services: current issues

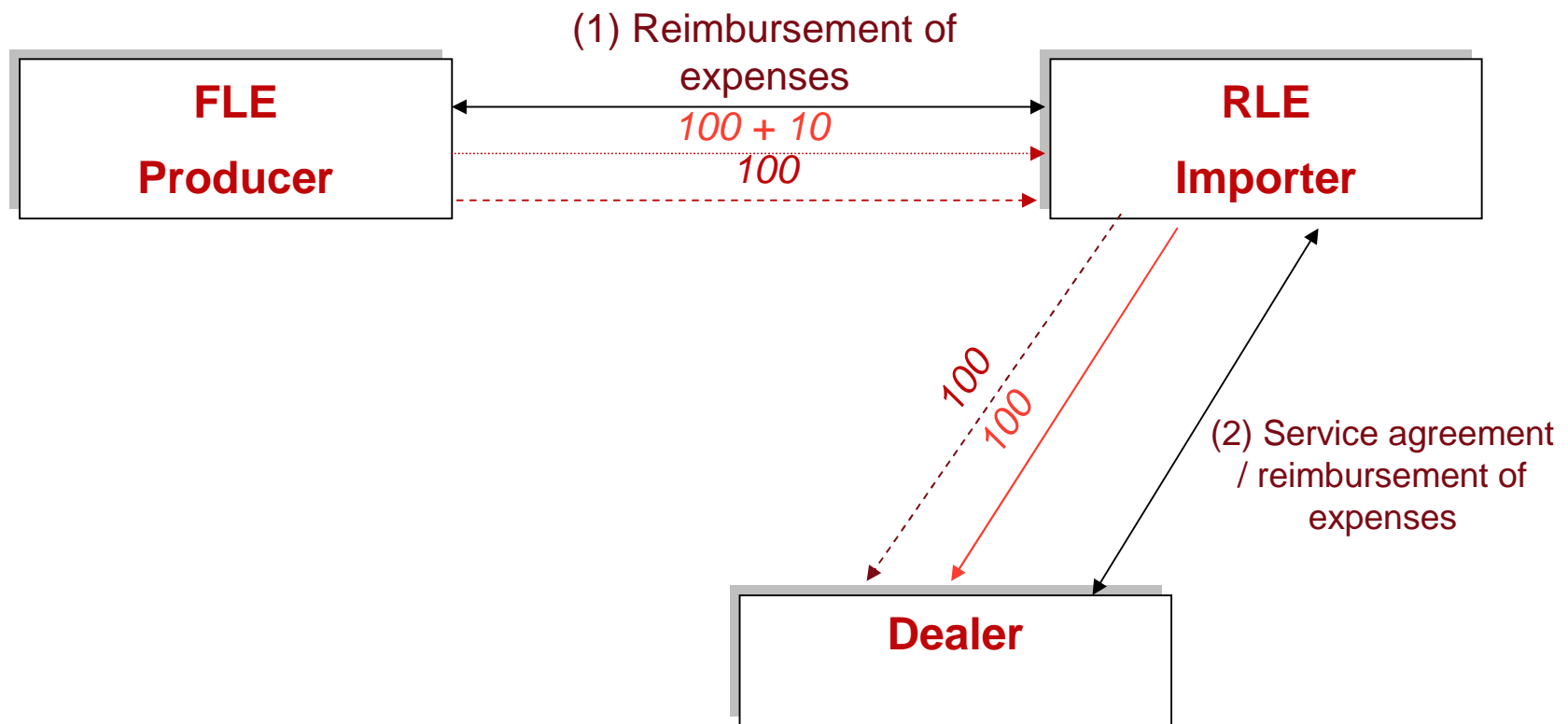
Structuring of warranty operations

Option 1: provision of services



Structuring of warranty operations

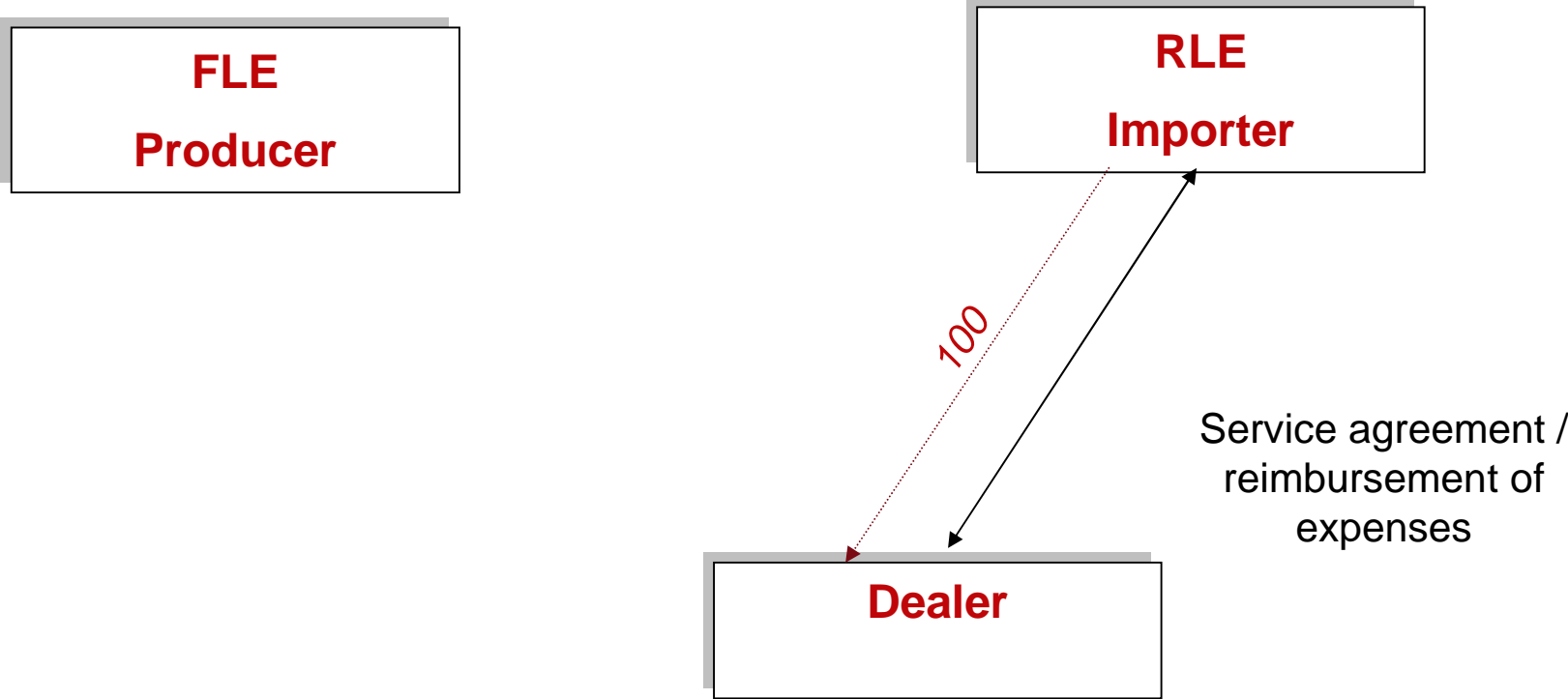
Option 2: reimbursement of expenses / reimbursement of expenses + fee



Warranty services: current issues

Structuring of warranty operations

Option 3: provision of services / reimbursement of expenses



Deductibility of warranty costs (1 of 3)

General issues:

- Profitability of warranty repair activity
 - Calculation of service fee / amount of reimbursement based on standard costing, rather than on actual fees invoiced by dealers (standard labour costs, standard cost of spare parts and materials) => could result in losses
- Risky costs
 - Difference between warranty coverage established by a manufacturer and provisions of Russian Customer Consumer Protection Law
 - Additional warranty provided by importer
 - Unclear cases (qualify for warranty?)

Warranty services: current issues

Deductibility of warranty costs (2 of 3)

Provision of services

- Profit generating activity
- Documentary support of service fees:
 - Service agreement for warranty repair
 - Act of acceptance of services
 - Copies of documents issued by a dealer and signed by a consumer confirming actual provision of services

Warranty services: current issues

Deductibility of warranty costs (3 of 3)

Reimbursement of expenses

- Should not be done under the service agreement
- No separate agreement – problems with deductibility of expenses (concept of reimbursement of expenses is not envisaged by the TC RF)
- Agency agreement – documentary support
 - agency reports
 - copies of documents confirming performance of warranty repairs

Warranty services: current issues

VAT exemption – documentary support (1 of 2)

Legislative provisions

1. Tax Code (subitem 13 of item 2 of article 149)

- Services rendered without the charging of an additional fee involving the repair and technical servicing of goods during their warranty period are VAT exempt.

2. Federal Law “On the protection of consumers’ rights” № 2300-1 of 7 February 1992

Warranty services: current issues

VAT exemption – documentary support (2 of 2)

Documents should confirm that:

- Warranty repair services *were rendered* by a service provider *and accepted* by a buyer
- Warranty services were rendered during goods' *warranty period*
- Warranty repair has been actually performed on a *free-of-charge* basis for a consumer
- Possibility to apply electronic documents*

* Resolution of FAS Moscow District № KA-A40/12621-07 of 10.12.2007; Resolution of FAS North-West District № A56-4388/2007 of 29.05.2008

Recovery of input VAT related to warranty activity

- Allocation of input VAT between VATable and non-VATable activities
- Application of 5 % rule by trading companies
- Recovery of VAT claimed by dealer / service centre in respect of warranty repairs
- VAT treatment of difference between revenue and expenses arising in respect of provision of warranty services*

* Letter of Ministry of Finance № 03-07-11/37 of 29.01.2008.

** Letter of FTS №MM-6-03/886@ of 19.10.2005, AFTS №16-15/23330 от 17.03.2009.

QUESTION

Did the tax authorities challenge the application of VAT exemption on warranty repair operations?

1. No basis for judgement
2. During tax audits VAT exemption was not analyzed
3. During tax audits no claims were related to VAT exemption
4. The tax authorities challenged the application of the exemption

Abolishment of UTII

- Starting from 1 January 2009 companies are not able to apply UTII if:
 - the number of employees is more than 100 people;
 - the share of other legal entities in the charter capital is more than 25%.
- Increase of tax burden

VAT questions associated with transitional period of UTII abolishment

- Repair was finished in 2008, car was received by owner in 2009 – what is the date of the end of repair?
- Repair was partially performed in 2008 and partially in 2009 – whether it is necessary to split repair value before and after 1 January 2009 and charge output VAT on 2009 part of repair?
- Is it possible to recover VAT attributable to expenses incurred in 2008 in relation to purchase of spare parts for post-warranty repair, if such repair is performed in 2009 and represents VATable operation?

Questions?

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