

# Value added tax: current issues



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PRICEWATERHOUSECOOPERS 

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- VAT refunds: practical considerations
- VAT on advance payments in 2009
- VAT on sum differences
- VAT on sale of used cars applicable starting from 1 April 2009
- Other questions

## Question

What topic is more relevant for the activity of your company?

1. VAT refund from the budget
2. VAT on advance payments in 2009
3. VAT on foreign exchange differences
4. VAT on used cars in 2009
5. Other

# VAT refunds: practical considerations

- Legislative provisions
- Practical aspects associated with VAT refunds
- Possible changes in VAT refunds approach

## Legislative provisions and practical aspects associated with VAT refunds (1 of 4)

### 1. Submission of a VAT return

- negotiation regarding the amount of VAT claimed for recovery under the VAT return
- request for provision of documents
- delay in submission of documents
- submission of documents

VAT refunds: practical considerations

## Legislative provisions and practical aspects associated with VAT refunds (2 of 4)

Do you defer VAT recovery?

1. Do not defer
2. Defer under the agreement with the tax authorities
3. Defer due to own decision
4. Defer due to objective reasons

## Legislative provisions and practical aspects associated with VAT refunds (3 of 4)

2. Desk audit (3 months)
  - VAT committee
  - interrogation of witness
  
3. Documentation of results of the tax audit
  - act
  - notification
  
4. Disagreements and decision
  
5. Appeal
  - to the higher tax authorities
  - to court

## Legislative provisions and practical aspects associated with VAT refunds (4 of 4)

### Statutory appeal:

- Decision cannot be executed before the decision on the appeal is issued
- The deadline for appeal to court is postponed
- Appeal should be submitted in very short period (10 working days)

### Standard appeal:

- Decision can be executed irrespective of appeal
- In case appeal is not considered within deadlines the taxpayer could miss the deadline for submission of appeal to court
- Appeal could be submitted within the longer period (1 year)

## Possible changes in VAT refunds approach

- Introduction of separate VAT registration
  - Obtaining separate VAT registration which, in view of legislators, could help to make tax audits faster
  - companies without VAT registration would not recover input VAT
- Obtaining a VAT refund within 30 days from the day of submission of an application based on a bank guarantee

# VAT on advance payments in 2009

- Amendments to the Russian Tax Code
- Practical aspects of recovery of VAT on advance payments
- Current issues

## 1. Amendments to the Russian Tax Code

- In case of receipt of the advance payment for future supply of goods/works/services the seller is obliged to charge the respective amount of VAT to the buyer and issue a VAT invoice in the format stipulated by the Russian Tax Code;
- The VAT charged by the seller on advance payment is subject to recovery by the customer which has paid such an advance if conditions established for VAT recovery are met;
- VAT on advance payments which has been recovered is subject to reversal in the tax period when the VAT on purchased goods (works, services), property rights is subject to recovery under the applicable rules.

## 2. Practical aspects of VAT recovery on advances

- Cash flow benefits
- Outstanding questions (clarifications of Ministry of Finance do not contain answers to all questions)\*
- Additional administrative costs
  - changes of accounting program, documentary flow, internal control system
- Necessity of recovery of VAT on advance payments

\*Letter of the Ministry of Finance of 06.03.2009 №03-07-15/39

VAT on advance payments in 2009

## Question

Do you recover VAT on paid advance payments?

1. Yes
2. No
3. Currently not, but will do this in future
4. We do not pay advances to suppliers

### 3. Current issues (1 of 4)

#### Format of VAT invoice

- Amendments to Government Resolution № 914 on the format of the VAT invoice on advance payment have not been introduced. The items to be included in the VAT invoice on the advance payment differ from the mandatory items to be included in the VAT invoice for supplied goods, works, services (e.g.: «the amount of payment, partial payment» instead of «value of goods (works, services)»)

#### Question for consideration:

- What format of the VAT invoice on advance payment should be used before adoption of the new version of Government Resolution № 914?

### 3. Current issues (2 of 4)

#### Fulfilment of VAT invoice (1 of 2)

- The customer signed a supply agreement for several models of cars. At the same time the exact models (configuration) of cars to be supplied in consideration for advance payments is not known when the advance payment is made.

#### Question for consideration:

- What should be indicated in the VAT invoice on advance payment in the column «Description of the supplied goods»?

VAT on advance payments in 2009

### 3. Current issues (3 of 4)

#### Fulfilment of VAT invoice (2 of 2)

- The customer made advance payment for cars and actually received these cars in the same tax period (quarter).

Question for consideration:

- Should the customer in this situation:
  - (i) recover the VAT on advance payments, (ii) reverse it and (iii) recover the respective VAT amounts on the purchased cars, or
  - recover VAT on the purchased cars and disregard VAT on advance payments?

### 3. Current issues (4 of 4)

#### Other questions for consideration:

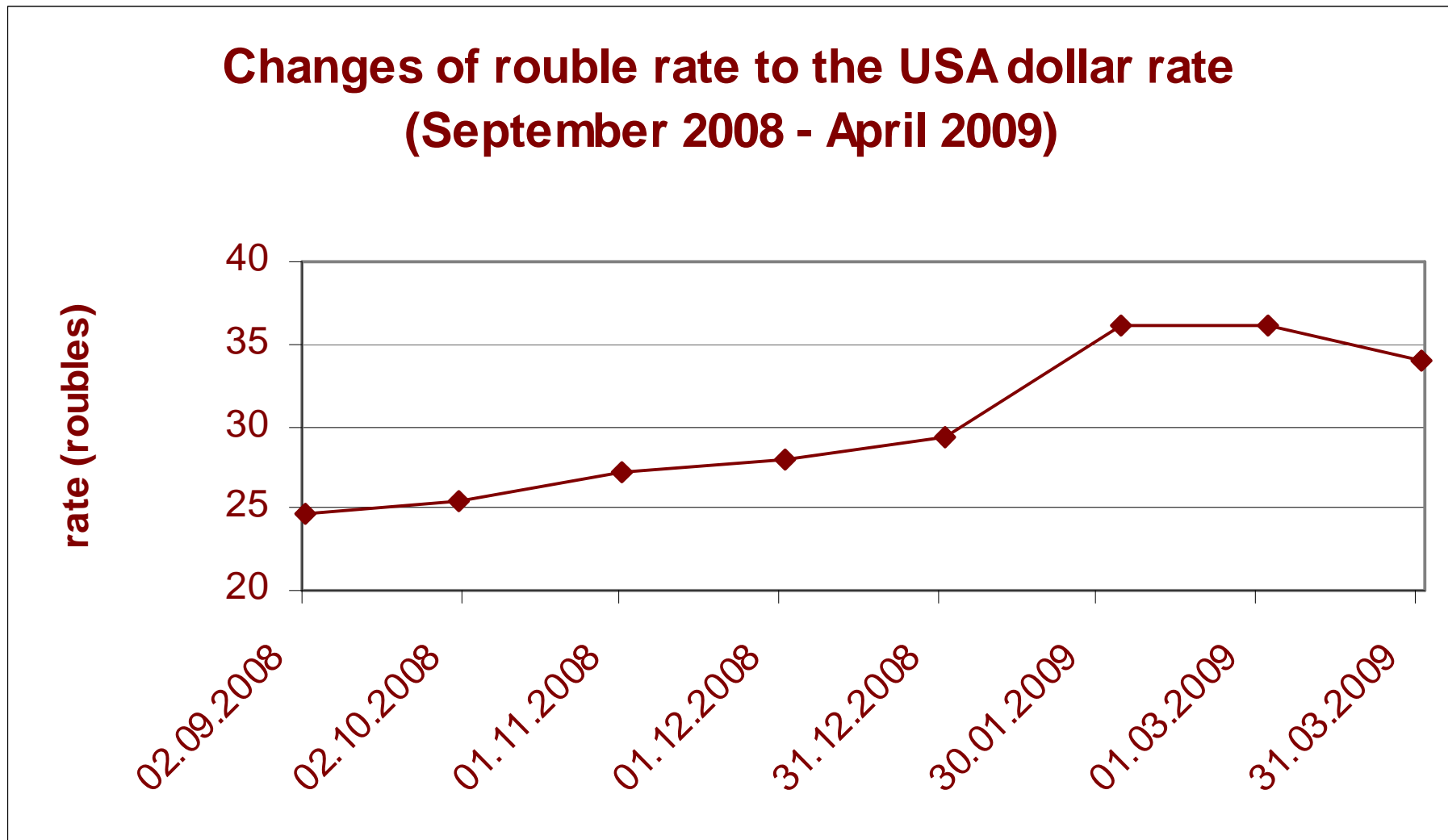
- Guidance on the maintenance of the purchase/sales books in relation to VAT on advance payment is yet not issued.
- Recovery of VAT on advance payments made in respect of goods that will be used both in VATable activity and in non-VATable activity.
- VAT recovery in case of transfer of advance payment for the supply of goods which will be included in non-business expenses.
- Do the new recovery rules apply to the VAT subject to withholding upon payment to the foreign supplier?

# VAT on sum differences

- Current market situation
- The position of the fiscal authorities and court
- Practical considerations

VAT on sum differences

## Current market situation



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VAT on sum differences

## Clarifications and court practice

### Supreme Arbitration Court\*:

- Upon realization of goods (works, services) which value is stated in conditional units, price of such goods (works, services) and the amount of VAT tax base are determined on the date of payment.

### Ministry of Finance\*\*:

- There are no grounds to reduce tax base for the amount of VAT on negative sum differences; however positive sum differences should increase VAT tax base in accordance with subitem 2 of item 1 of article 162 of the Russian Tax Code as the amount connected with the payment for such goods (works, services).

\* Resolution of the Presidium of the Supreme Arbitration Court of the Russian Federation №9181/08 of 17.02.2009.

\*\* Letters of the Ministry of Finance №03-07-11/74 от 26.03.2007; № 03-04-15/116 от 19.12.2005

VAT on sum differences

## Practical considerations

- Possible approaches:
  - determine VAT tax base based on the exchange rate effective on the date of shipment of goods, and the amount of VAT recovery based on the exchange rate effective on the date of booking into accounts of goods (works, services)
  - determine VAT tax base and the amount of VAT recovery based on the exchange rate effective on the date of payment for goods (works, services)
  - recover VAT in amount paid by supplier to the budget

## VAT on sum differences

### Example

	<i>Purchase</i>	<i>Sale</i>
Value at the date of shipment / booking into accounts including VAT	236 RR (VAT – 36 RR)	262 RR (VAT – 40 RR)
Value at the date of payment including VAT	222 RR (VAT – 34 RR)	250 RR (VAT – 38 RR)
Sum difference	14 RR (VAT – 2 RR)	12 RR (VAT – 2 RR)

«**Upon shipment**»: VAT on sum difference upon sale is paid from the own funds of the seller; recovery of VAT in the amount exceeding amount of VAT paid by supplier to the budget (risk?);

«**Upon payment**»: VAT on sum difference upon sale is paid from assets received from the buyer (risk?); amount of VAT claimed for recovery equals to actual amount of VAT paid to the supplier, however, difference with accounting records arises

# VAT on sale of used cars applicable starting from 1 April 2009

- Changes to the Russian Tax Code
- Reasons for change of the previous approach
- Questions and problems

## Changes to the Russian Tax Code applicable starting from 1 April 2009

- Upon sale of used cars VAT is charged on the difference (“margin”) between purchase and sales price of used cars if the following conditions are met:
  - used cars are purchased from individuals not registered as a VAT taxpayers;
  - used cars are purchased for resale purposes.

## Questions and problems (1 of 2)

- New VAT treatment is applicable only for sale of used cars previously purchased from individuals;
- Sale of used cars between dealers;
- Adaptation of documentary flow system will be needed (accounting program and internal procedures);
- It is necessary to confirm the amount of tax base (margin);
- It is necessary to confirm that used cars are purchased from individuals for resale purposes.

## Other questions



# Questions?

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