Korpus Prava

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Tax & Law Survey

IN COOPERATION WITH

НАЦИОНАЛЬНАЯ АССОЦИАЦИЯ ДИСТАНЦИОННОЙ ТОРГОВЛИ

Dear readers!

We are delighted to present for your attention our annual tax and legal review dedicated to the companies engaged in distance sales.

This review contains information with respect to civil and legal aspects of selling products online. Each year this type of sales is becoming increasingly popular, whereas the issues relating to lawful and enforceable performance of such business are far from being resolved. This review is designed to clarify some aspects mentioned above.

The review issued this year emphasizes the importance of processing personal data. Our experts have prepared useful information with respect to personal data processing in Russia, operators of personal data and facilitation of CRM-systems for processing thereof, liability for violation of regulations relating to data processing and other important issues.

We hope that information regarding gift cards and online-payment system will be useful and interesting for you. This material contains interpretations and case law on specific issues related to sale, return and exchange of goods.

This overview has comprised the most practical information you might need to consider when carrying out distance sales. Tax and Legal Review of Mail Order has been prepare specially for you, therefore, we would appreciate your feedback, comments and suggestions with respect to the content of reviews in future.

Sincerely,

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Managing Partner
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Chapter 1

§ 1. Civil law aspects of sale of goods in the Internet

Back in 2005 position of the Russian Finance Ministry was that "global computer network" Internet" does not meet definitions of trade objects established by the State standard of Russia P51303-99 "Trade. Terms and definitions"[1].

In 2007 the Parliament (State Duma) considered a draft of federal law "On electronic commerce", which turned out to be buried in its depths[2].

While conservatism of state power takes over "unrecognized" method of distance trading is getting firmly embedded in our lives: development of Internet commerce is ahead of development of all other forms of non-store trade[3], and growth of e-commerce market in 2012 was 30%[4].

Moreover, there is integration of various forms of distance trading: more and more products in the segment of catalogs trading are ordered through the Internet. For example, a share of clothing retailer Quelle of such orders is 60%[5]. Sales of Enter develop in the same way.

Therefore, there are many questions of civil regulation of trade in the Internet, which pose a challenge to the Russian legislator and waiting for its response.

The method of concluding a contract

In the Internet space, traditional forms of contracts provided by the legislation have undergone significant changes, which are only at the stage of legal settlement. This creates risks connected with obligation for the party to the contract and to proving legality of the contract in court. The current Russian legislation provides the following forms of concluding civil contracts:

1. By exchange of documents by mail, telegraph, telex, telephone, electronic or other communication that allows reliably establish that the document comes from a party to the contract;
2. By taking actions to implement the terms of the contract specified in the offer (conclusive action);
3. In any other form agreed between the parties, if the contract law does not designate a specific form[6].

The last two ways of concluding contracts implement that dispositive regulation, which allows developing and entering into the legal field for new phenomena of reality. In a series of contracts that have arisen as a result of spread of trade in the Internet, it should be noted the so-called click-wrap and browse-wrap contracts (contracts concluded by

1. Letter of the Ministry of Finance dated December 28, 2005 № 03-11-02/86
2. Draft of Federal Law № 310163-4 "On electronic commerce" (submitted to the State Duma of Russia by V.Y. Komissarov).
3. Under a study conducted by the National Research University — Higher School of Economics in collaboration with the Association of trading companies and manufacturers of electrical and computer technology "Impact of cross-border trade on the retail markets of Russia", Moscow, 2013. p.18
4. According to the National Rating Agency, an analytical review "Retail: growth drivers in 2013", http://www.ra-national.ru/uploads/rus/files/analytic/file_review/12.pdf
5. According to a study conducted by the National Research University — Higher School of Economics in collaboration with the Association of trading companies and manufacturers of electrical and computer technology "Impact of cross-border trade in the retail markets of Russia", Moscow, 2013. p.18
6. Article 434 of the Civil Code of Russia

clicking a computer mouse and contracts concluded by the use of web site). Initially, these types of contracts appeared for granting a right to license use of software, however today, many online stores that offer for sale a variety of items use these forms of contracts for formalization of relations with customers. Contracts concluded by clicking a computer mouse became commonly used means of obtaining accept of online store user for processing of his personal data, whereas contracts concluded by the use of a website are often used to agree on conditions of sale of goods.

Click-wrap contracts are easily integrated into the existing legal structures. Under the Russian legislation, the written form of the contract is considered fulfilled if the written offer to conclude a contract is accepted by one of the above three methods[7]. Thus, to give strength to the contract two conditions have to be complied with: (1) a written offer and (2) action of a person aimed at fulfilling conditions specified therein. Written purchase offer can be regarded as an offer due to the fact that it contains all essential terms and conditions of the contract. The button "I agree" is usually accompanied by the words that the user agrees to the terms, and by clicking it the user accepts the offer.

Confirmation that the click-wrap contract is fully justified under the existing civil law, may be the fact that amendments made to the Civil Code by the Federal Law of 12.03.2014 № 35-FZ established that conditions of the license contract on the use of computer programs or database can be stated on the acquired sample or on the package of such sample, as well as in electronic form. "Start of using computer program or database by the user, as determined by these terms means its consent to conclude the contract. In this case, the written form of contract is considered fulfilled". This innovation is an adaptation of the aforementioned general rules of civil law to a specific type of legal relations existing in the space of the Internet.

The principal difference between the contracts concluded by the use of website from the contracts concluded by the click of a computer mouse is that provisions of the latter are always available for review and accept by visitor of the website before committing any legal actions by him, whereas conditions of browse-wrap contracts are available for review on the website, but the user does not express accept with its terms and conditions explicitly. That is the buyer may not be aware of terms and conditions under which a contract of sale is concluded. "Legalization" of browse-wrap contracts occurs by reference to the aforementioned provision of the Civil Code, namely conclusion of contract by accepts of offer by committing actions specified therein. There are, for example, such wordings:

— "Buyer's payment made in accordance with the Order shall be considered as conclusion of the Contract by the Buyer, i.e. full and unconditional acceptance of the Contract by the Buyer"

— "performing of all actions specified in the relevant section of the Offer implies full and unconditional acceptance by the Client of all the conditions of the Offer and / or User Contract without any exceptions and / or limitations and is equivalent to a written contract".

On the one hand, payment of the buyer made under the order is undeniable action to fulfil terms and conditions of the offer. Actual use of consumer of services of the obligated party should be considered as acceptance of offer proposed by the party providing services[8]. On the other hand, the probability that user of online store becomes a party to the contract without reading and not even knowing about its terms and conditions, is so great that proving the reverse at court is almost an impossible task. Foreign courts in most cases acknowledge that the user is not bound by terms and conditions of such contract, as it did not receive proper notification of existence of the offer and expressed no explicit accept to its terms and conditions[9]. Unfortunately, nowadays the Russian courts have not yet formed sustainable practices of disputes about validity and binding force of click-wrap and browse-wrap contracts. These forms of contracts have recently entered into legal validity and it will take some time to practice to challenge and prove their validity at court. However, even now it is possible to say with high probability that if the party to browse-wrap contract is an individual consumer, the court does not acknowledge its validity. Therefore the use of click-wrap contracts for agreements with consumers in the Internet seems to be more justified in terms of risk minimization. The following measures will allow to protect against the risk of acknowledging the contract not concluded:

1. Giving the buyer (client) possibility of prior familiarization with terms and conditions of the contract until the contract is deemed to be concluded;
2. Purchasing (receipt of services) should be made conditional on the acceptance of terms and conditions of the contract, i. e. actual performance of the contract terms and conditions with both sides should be possible only with express consent of the consumer.

Place of trading

Online store may be qualified as a place of trading with the view that retail sales contract of is concluded based on familiarization of the buyer with sample of goods offered by the seller and displayed at the place of sale of goods[10]. In this case, the sales contract will be governed by the Rules of sale

7. Paragraph 3 of Article 434 of the Civil Code of Russia
8. Paragraph 2 of the Information Letter of the Presidium of the Supreme Arbitration Court of the Russian Federation from May 5, 1997 № 14 "Review of Dispute Resolution relating to the conclusion, amendment and termination of contracts"
9. Specht v. Netscape Communications Corp., 306 F.3d 17, 2d Cir. 2002
10. Paragraph 1 of Article 497 of the Civil Code of Russia.

of goods by sample approved by decree of the Russian Government of 21.07.1997 № 918. However it is possible to classify the sale contract in the online store as a sale by samples only for products presented in digital form, for example, a book or music album. For all other products such classification is highly controversial, as the buyer is offered to make acceptance of a public offer on the basis of the proposed description of the goods and (or) its digital image, i.e. in other cases online trading will be regulated the Rules for remote sale of goods approved by the decree of the Russian Government of 27.09.2007 № 612.

Execution of retail sales contract consists of two stages: its conclusion and execution of obligations under the contract. In case if both stages occurred in the Internet then the place of transaction execution will definitely be virtual space. If the contract is concluded in the Internet and the place of its execution is material reality, then the crucial purchase meaning receive terms and conditions of the contract about the place of execution. The subject-matter of the contract at ordering on the website is not selling a product but delivery and product demonstration, which the buyer is interested in, at home or other specified address in order to acquaint with subsequent decision of the buyer to purchase this product and concluding the retail sales contract directly at the location of the buyer[11].

Special instruction that the contract is concluded not in virtual space but at the location of the buyer, makes sense in terms of minimizing tax risks. In judicial practice there is a case when tax authorities accrued additional income tax, VAT, penalties and interest to an individual entrepreneur since according to tax authorities he wrongly applied ENVD (unified tax on imputed income of individual entrepreneurs) regime by trading on samples and catalogs outside stationary trading network[12]. Trading was carried out as follows: the buyer who wanted to buy the goods after consultation with the manager was issued a buyer's check, which was paid in cash. Then the manager signed in the buyer's check in the column "items released" and the buyer signed in the column "goods received". The buyer then showed the buyer's check at warehouse, where shipment of goods was made. Entrepreneur was able to prove that the sale of goods (its payment and transfer of ownership by the buyer signing the column "received" in the buyer's check) took place on the territory of trading place, which is located in stationary trade network without salesrooms. In support of the decision to cancel resolution of tax authority the court referred to the provision of the law that sale of goods is acknowledged as transfer of ownership to the goods[13] under reimbursable basis and the right of ownership arises from the transfer of goods, which is equivalent to the transfer of bill of lading or other document of title to the goods[14].

Ministry of Finance, however, recently took the opposite position and does not put the possibility of using special tax regimes dependent on what is the place of sale of goods: virtual space or material reality, for example, location of the seller or buyer. In his letters published in 2013 the Finance Ministry clearly indicated that the sale of goods via the Internet is not a type of activity in respect of which the patent system of taxation and tax on imputed income can be used[15]. So we have to wait the moment when the legislator takes into account difference between the legal relations, which are fully implemented in the Internet and legal relations implemented in the Internet only partly.

Time of payment

Companies and individual entrepreneurs using cash register equipment are bound to give customers at the point of payment cashier's checks printed by this equipment[16]. Specific nature of trade through online store creates certain difficulties in applying this rule to contracts concluded in virtual space; primarily it raises a question what in this case to be considered as time of payment and when to fix the fact of payment by cashier's checks. Last year the Federal Tax Service clarified the matter as follows: at remote trade cashier's check shall be issued no earlier than 5 minutes before the actual cash settlement or settlement by payment cards. There can be no issuance of copies of cashier's checks[17]. In support of its position the tax service referred to the opinion of the Supreme Court[18] that cashier's checks issued to customers and printed by cash register equipment at the moment of payment for goods, the time of purchase shall coincide with real time. Deviation of 5 minutes is allowed in accordance with the protocol of the State interdepartmental expert commission on cash register equipment[19].

Divergence of time of purchase specified in cashier's check with real time is a violation of obligation to issue such check at the time of purchase and punishable by an administrative fine of 30 000 to 40 000 rubles for companies, from 3000 to 4000 rubles for officials and from 1500 2000 rubles for citizens[20].

It is noteworthy that in a letter published two months earlier than the above[21], the tax service had reported exactly the opposite: issuance of cashier's check to the buyer at the time of payment printed by cash register equipment on the day of purchase of the goods, does not constitute an administrative offense. Such position was very beneficial to

11. Nichuk R.P. "Pharmacy imputed tax", 2010, Part 2 / / Advisor of accountant in health care. 2010, № 3. April-May. p. 8
12. Resolution of the Federal Arbitration Court of the Ural District from May 4, 2011 in the case № A47-3959/2010
13. Paragraph 1 of Article 39 of the Tax Code of Russia.
14. Paragraph 1 of Article 224 of the Civil Code.
15. Letter of the Ministry of Finance dated 22.11.2013 № 03-11-11/50540, Letter of the Ministry of Finance dated 13.06.2013 № 03-11-11/21917.
16. Paragraph 1 of Article 5 of the Federal Law of 22.05.2003 № 54-FZ "On the application of cash register equipment in the implementation of cash payments and (or) calculations using payment cards."

companies engaged in remote trade that could legitimately issue cashier's checks before send a courier to deliver goods to customers. Not more than 2 months separate opposite positions of the tax authority based on one and the same position on the Law on application of cash register equipment. During May–June 2013 the Ministry of Finance expressed its disagreement with the opinion of the Federal Tax Service of Russia[22], as a result of which the tax authority changed its May position and made update about permissible divergence of 5 minutes.

The Finance Ministry did not stop at it and on September 27, 2013 published a letter № 03-01-15/40098, which once again confirmed the need for online stores to use cash register equipment. In support the Finance Ministry referred to the list of activities, at performing which companies and individual entrepreneurs due to specificity of activity or specific location can produce cash payments without use of cash register equipment[23]: Internet commerce is not given in this list, which means such equipment shall be used at sale of goods for cash from online store.

17. Letter of the Federal Tax Service of Russia dated July 10, 2013 № C-4-2/12406 "On the application of cash register equipment"
18. Resolution of the Supreme Court from dated 11.05.2012 № 45-AD12-4.
19. Protocol of the State Interdepartmental Expert Commission on cash register equipment dated 15.06.2000 № 2/56-2000.
20. Part 2 of Article 14.5 of the Code of Administrative Offences of the Russian Federation.
21. Letter of the Federal Tax Service of Russia dated May 6, 2013 № AS-4-2/8265
22. Letter of the Ministry of Finance of Russia dated 24.05.2013 № 03-01-15/18769, Letter of the Ministry of Finance dated 04.07.2013 № 03-01-15/25767.
23. Paragraph 3 of Article 2 of the Federal Law of 22.05.2003 № 54-FZ "On the application of cash register equipment in the implementation of cash payments and (or) calculations using payment cards."

§ 2. Tax and accounting aspects of recording sales, return and replacement of goods

2.1. The main aspects related to the sale of goods

When performing distance sales of goods by entering into the Retail Sales Agreement, the seller shall be responsible for delivery of goods. Furthermore, such delivery falls within the category of delivery of goods by mail[1]. In such case, the delivery by mail shall be regarded as a duty imposed on the seller, therefore there are no grounds to treat his responsibility related to transfer of goods to the purchaser discharged at the time of delivery of goods to the post office.

Consequently, the responsibility of the seller to deliver goods in case of distance sales shall be deemed discharged at the time of receipt of goods by the purchaser at the post office.

Since the seller faces difficulties relating to determining in each particular case the moment of transfer of title in goods, we advise to record such fact in the accounting policy as follows: "since it is impossible to determine the moment of transfer of title in goods to the purchaser in each case, the revenue for accounting purposes shall be recognized when the goods are passed to the mail delivery company or courier service for delivery to the purchaser".

The accounting policy for tax purposes and the text of public offer shall contain the following wording: "the date of income shall be the date of sale of goods, services, property rights. Since it is impossible to determine the moment of transfer of title in goods to the purchaser in each particular case, the moment of the sale of goods for tax purposes shall be deemed the moment of transfer of goods to the mail delivery company or courier service for delivery to the purchaser". If the company delivers goods to the fulfillment-company, then the moment of transfer of title may be treated as the date of transfer of goods to such fulfillment-company.

The feature of sales by mail is that the title in goods is transferred to the purchaser at the time of receipt of the goods by mail. Taking into consideration that it is impossible to control the day of receipt of goods by each customer, the revenue shall be recorded in the accounts at the time of shipment of goods from the warehouse to the post office. The fact of acceptance of parcels shall be confirmed by the form 103 of the Russian Post.

In general, it is believed that at the time of delivery of goods to the purchaser the transfer of title in goods occurs from the seller to the purchaser. Under the civil laws of the Russian Federation as a general rule the title is deemed transferred from the moment of transfer of goods to the purchaser. The goods shall be deemed transferred upon actual receipt by the purchaser[2].

It should be noted that the retail purchaser is entitled to reject the goods within 7 days upon receipt thereof[3], and if the information relating to procedure and terms of returning goods of proper quality has not been provided in writing at the time of delivery, the purchaser shall be entitled to reject the goods within three months from the date of delivery of goods. The goods having individual characteristics and intended for specific user are not subject to return.

The goods are returned by the purchaser at the post office.

In addition to the aforesaid 7-day period, available to purchaser for rejection of the goods, the provision of the law on protection of consumers' rights states that purchaser shall be entitled within 14 days from the date of transfer of goods, unless a longer period is set forth by the seller, replace the goods for identical ones having different color, style, size, stock number[4]. Furthermore, the claim of the purchaser for replacement of the goods shall be discharged if the goods have not been used, its consumer properties have been retained and evidence of purchase from such seller is available. The goods of proper quality, included into the statutory list of goods which are not subject to replacement, may not be replaced within 14-days period[5]. Accordingly, wearing apparel and knitted underwear products, footwear garment are not subject to replacement and return[6]. The issue relating to application of said provisions to replacement of goods in case of distance sales is controversial. There is a point of view that the right to return the goods in case of distance sales is not applied since such provision is not included into special article of the Law "On Protection of Consumers' Rights"[7], nor into Regulations relating to distance sale of goods. However, such conclusion is controversial, since there are clear reservations in the aforesaid articles stating

1. Paragraph 3 of the Rules on distance sale of goods (approved by the Resolution of the Government of the Russian Federation dated 27.09. 2007 № 612).
2. Paragraph 1 of Article 224 of the Civil Code of the Russian Federation.
3. Article 26.1 of the Federal Law dated 07.02.1992 № 2300-1 "On Protection of Consumers' Rights".
4. Paragraph 1 of Article 502 of the Civil Code of the Russian Federation.
5. Paragraph 2 of Article 502 of the Civil Code of the Russian Federation.
6. Paragraph 5 of the Resolution of the Government of the Russian Federation dated 19.01.1998 № 55 "On approval of the Rules of sale of particular types of goods, the list of durable goods, which are not covered by the requirement of purchaser on provision to him of the like goods free of charge for the period of repair or replacement, and the list of non-food goods of proper quality, not subject to return or exchange for similar goods of other size, shape, dimension, style, color or configuration".
7. Article 26.1 of the Federal Law dated 07.02.1992 № 2300-I "On Protection of Consumers' Rights".

that the provisions of the law relating to 14-days period may not be applied. Consequently, the consumer is entitled to demand replacement of goods of proper quality (in case of absence of substitute goods — Refund Policy) where the goods are sold by mail.

Furthermore, in order to avoid possible disputes with consumers the company may extend the period within which a consumer may return the item and prescribe the period of 14 days, as in case of replacement of goods.

Taking into account the aforesaid, in summery it may be stated that the goods may be lawfully returned to the seller in cases where:

- purchaser abstained from accepting the goods (failed come to the post office to collect the goods) or refused the goods at the post office;
- purchaser received the goods at the post office, but subsequently refused the goods in connection with non-conformity thereof with terms and conditions of the contract (rejection of goods with defects);
- purchaser received the goods at the post office but subsequently rejected them for the reasons other than non — conformity of goods with terms and conditions of the contract (rejection of goods with defects).

Below we investigate the aspects relating to tax and accounting aspects of recording return and replacement of goods to be addressed by the companies specializing in sales by mail.

2.2. Tax aspects

2.2.1. Value-added tax

The amount of value added tax, charged by the seller to the purchaser and paid by the seller into the budget when selling goods, is subject to deduction in case of return of such goods (including within the warranty period) to the seller, or rejection thereof .

The deduction of the stated amounts of tax shall be made in full upon recording relevant adjustment transactions in connection with return of goods or rejection thereof, but not later than one year from the date of return or rejection .

Accordingly, taking into account that no exceptions from the general rule relating to application of deduction of amounts of value added tax when returning the goods by persons other than payers of value added tax, are set forth by the Tax Code does, upon return by such persons of the whole consignment of goods, whether recorded or otherwise, the aforesaid provision of the laws shall be complied with . Furthermore, tax invoice registered by the seller in sales ledger when shipping goods, shall be recorded by him in purchase ledger upon creation of right for tax deductions in compliance with the provisions of the Tax Code .

Upon downward adjustment of the value of shipped goods, including reduction of the number of goods shipped, the grounds for deduction of value added tax by the seller shall include adjusted tax invoice issued by the seller. Accordingly, when the goods are returned by persons other than payers of value added tax, , whether recorded or otherwise, the seller shall issue adjusted tax invoice for the value of goods returned by the purchaser, subject to the provisions of the Tax Code .

If returned goods to the seller are no longer uses by him for the purpose of transactions treated as objects of taxation, the amount of the tax to be deducted when purchasing goods used for production and (or) sale of the returned goods, shall be recovered and paid into the budget within the tax period, in which the goods returned by the seller are recorded.

2.2.2. Income tax

The laws do not set forth instructions relating to recording returned goods in tax accounts and determination of the tax base with regard to income tax.

Tax accounting of returned goods will depend on the period within which the return has been performed. If return of goods occurred in the same tax period in which the goods were sold, then the following shall be excluded by the seller from the tax base of the current tax period:

- proceeds from sales — the amount of revenue from the sale of returned goods previously recognized for tax purposes since the refund to the purchaser of the amount paid for the goods entails the absence for the seller of economic benefits subject to taxation[13];
- expenses — previously recognized expenses in the form of returned goods, such expenses shall be recorded only at the time of sale of goods[14].

If sales have been carried out in one tax period, and the goods have been returned by the purchaser in the other, the following shall be considered in such situation. According to the Ministry of Finance in case of return of goods in the ensuing period, the tax base for income tax for the previous year, within which they have been sold, is not subject to

8. Paragraph 5 of Article 171 of the Tax Code of the Russian Federation
9. Paragraph 4 of Article 172 of the Tax Code of the Russian Federation
10. Paragraph 5 of Article 171 of the Tax Code of the Russian Federation
11. Letter of the Ministry of Finance of the Russian Federation dated 19.03.2013 № 03-07-15 / 8473
12. Paragraph 13 of Article 171 of the Tax Code of the Russian Federation, paragraph 10 of Article 172 of the Tax Code of the Russian Federation
13. Article 41 and Article 247 of the Tax Code of the Russian Federation
14. Paragraph 1 of Article 268 of the Tax Code of the Russian Federation

adjustment since there was no default relating to its calculation. Termination of the sale and purchase contract should be treated as independent business transaction, therefore income and expenses of the seller connected with such termination shall be recorded in the tax accounts within the period when the contract is deemed terminated.

For this purpose, the taxpayer (seller) records non-operating expenses of the reporting (tax) period within which purchaser unilaterally refused to fulfill contractual obligations, the amount of refunded payment to the purchaser for the goods delivered as losses of previous tax periods identified in the current reporting (tax) period[15].

Concurrently the taxpayer shall record within income for tax purposes, the value of returned goods by the purchaser, for which the income from the sale of such goods has been reduced, as income of prior years identified in the reporting (tax) period[16]. The goods returned by the purchaser shall be recorded by the supplier at the price of the date of sale.

And then, if the goods are returned due to defects not subject to repair, the loss incurred from the defects shall be recorded within the scope of expenses[17]. The said procedure is supported by case law[18].

2.3. Accounting aspects

At the moment of return of the goods two scenarios are possible: rejection (purchaser failed to collect the goods, or refused to receive the goods) and return of goods by the purchaser. In case of rejection there is a classic mistake in terms of paragraph 2 PBU 22/2010[19], which states that "misstatement (failure to record) of the facts of business activity in the accounts and (or) financial statements of legal person (hereinafter — error) may be caused by improper classification or assessment of business activity".

Early recording of the sale constitutes an error related to misinterpretation of economic activity.

The procedure for correcting the error in accordance with Section 2 PBU 22/2010 depends on its materiality and the moment of its identification. Materiality is determined by the company maintaining the accounts.

The error of reporting year identified upon completion of this year but before signing date of financial statements for this year, shall be corrected by records within relevant account for December of the reporting year (the year of annual financial statements).

The error of previous reporting year, that is not deemed material, identified upon signing date of financial statements for this year, shall be corrected records within relevant accounts within the month of the reporting year in which the error was identified. Profit or losses caused by correction of such error shall be included in other income or expense in the reporting period.

Recording of return of the goods depends on the aforesaid options for correction of the error connected with early recording of the fact of sale:

- If returned goods, the title in which has not been transferred, have been received prior to signing date of annual financial statements, it is necessary to perform the reversal of revenue from sales Debit 62 Credit 90.1 reversing record. The cost of goods shall be recorded as Debit 90.2 Credit 41 reversing record. Deduction of VAT should be recorded as Debit 90.3 Credit 68.2 reversing record. Please note that entitlement to tax deduction, recorded in the account in December of the reporting year within the scope of returned goods for the year following the reporting year, shall arise in the 1st quarter of the year following the reporting year. As for the goods recorded as "reversing record", they shall be recorded separately, since they shall not affect the stock actually available at the warehouse of the company at the end of the reporting period.
- If returned goods, the title in which has not been transferred, have been received upon signing date of annual financial statements, it is necessary to record returned goods as Debit 91.2Credit 62 for the value of previously recorded sales, Debit 41 Credit 91.1 for the value of costs and Debit 68.2 Credit 91.1 for the amount of VAT.

§ 3. Crisis of postal mailing: chronology of events

A stir happened in January this year among postal operators: information spread about tightening rules of customs clearance of express parcels addressed to individuals. A lot of publications circulated in the Internet, reporting that the largest express delivery operators, including DPD, DHL, Pony Express, TNT, stop services on international parcel delivery to individuals. There was also a scanned copy of the letter from the Chairman of Association of Express Carriers (ASEP) Sarkisov V. E. dated 20 January 2014 that the member companies of ASEP had to stop import to Russia of express delivery of goods for personal use due to the fact that the procedure for their registration had become complicated and changed[1]. On January 23 Chairman of ASEP told ITAR-TASS that the association had not sent such letter to customers of postal operators, and a draft of document which was sent to

15. Subparagraph 1, paragraph 2 of Article 265 of the Tax Code of the Russian Federation
16. Paragraph 10 of Article 250 of the Tax Code of the Russian Federation
17. Letter of the Ministry of Finance of the Russian Federation dated 16.06.2011 № 03-03-06 / 1/351, Letter of the Ministry of Finance of the Russian Federation dated 03.06.2010 № 03-03-06 / 1/378, Letter of the Ministry of Finance of the Russian Federation dated 02.06.2010 № 03-03-06 / 1/370, Letter of the Ministry of Finance of the Russian Federation dated 05.02.2010 № 03-03-06 / 1/51

association members for discussion was circulating in the Internet[2].

In response to these contradictory information the Federal Customs Service on January 24 published information in which "in connection with statements of certain express carriers with respect to "tightening" of rules of registration of express cargo address to individuals" considered it "necessary to inform that new documents governing clearance of such goods have not been released"[3]. Also the Federal Customs Service specified a list of official acts, in accordance with which regulation of customs operations in respect of goods for personal use is performed:

- Chapter 49 of the Customs Code of the Customs Union;
- Agreement on procedure for movement of goods by individuals for personal use through customs border of the Customs Union and customs operations connected with their release dated 18 June 2010;
- Resolution of the Commission of the Customs Union dated June 18, 2010 № 311 "On the Instruction on procedure of customs operations in respect of goods for personal use by individuals moved across the customs border, and reflection for acknowledgement of such goods not placed under customs control";
- Resolution of the Commission of the Customs Union dated June 18, 2010 № 287 "On approval of passenger customs declaration and procedure to fill the passenger customs declaration".

In the same document, the Federal Customs Service notified that on January 28 an extended meeting with representatives of express carriers on the site of automated postal center Vnukovo-2 will be held to develop a consolidated position on the order of registration of express cargo addressed to individuals. The next day on January 29, Interfax news agency published information that DHL Express operator intends to resume parcel delivery to Russia[4].

It is noteworthy that on January 29–30 the information trail breaks: we did not find any more recent official document, no press coverage devoted to this matter. Empirical data collection method — calls to hotlines of the largest post service providers — showed that their positions are divided: although the majority refuses to send abroad (outside the Customs Union) and import parcels of individuals, few still maintained such service. One operator received a reply that the service for delivery of parcels is only available for those ordering from online stores with which an operator signed partnership agreement. So the crisis of express delivery continues and in the absence of any vowel information.

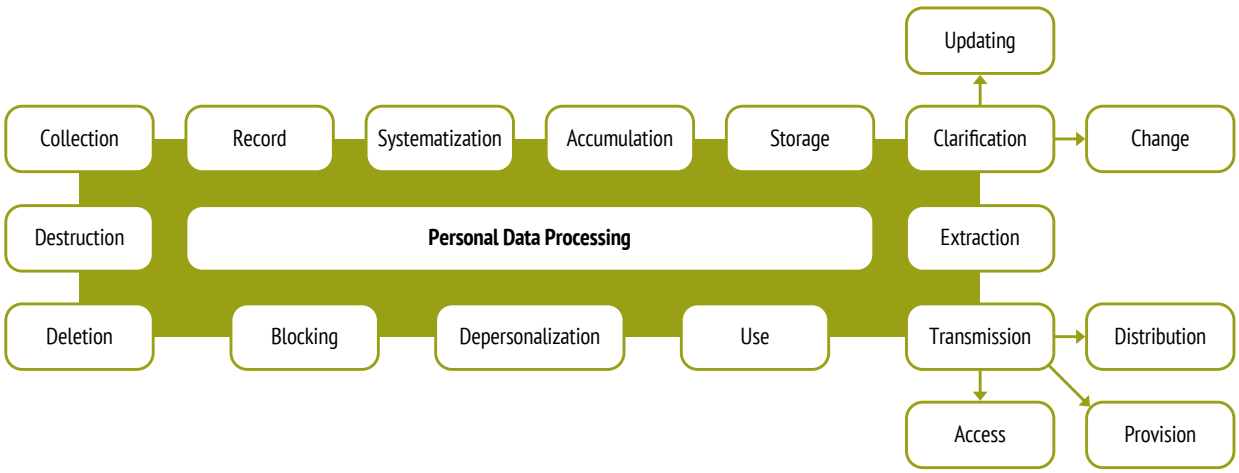
18. FAS for the Central District dated 16.02.2009 № A35-1590 / 08-C21, FAS for the Northwestern District dated 02.11.2007 № A56-47663 / 2006, Federal Antimonopoly Service for the East Siberian region dated 11.01.2007 № A74-2087 / 2006
19. Approved by Resolution of the Ministry of Finance of the Russian Federation dated 28.06.2010 № 63n.

§ 4. Personal data processing

4.1. Legal basis for use of personal data by mail-order trading company in Russia

According to the current legislation of the Russian Federation personal data of an individual include his/her surname, name, father's name, year, month, date and place of birth, address and other information[1]. The list of such information is open and includes any information directly or indirectly relating to identified or identifiable individual recognized as subject of personal data.

Any action performed by organizations, in this case referred to as operators, with respect to the information constituting personal data of customers, is recognized as their processing. Thus, the law includes in the concept of personal data processing, but without limiting the list of possible ways of such processing, the following actions:



Processing of these data, i. e. the actions made with personal data, including data collection, systematization, accumulation, storage, (updating, change), use, transmission (including distribution), depersonalization, blocking and destruction can be performed by persons only with the consent of subjects of personal data[2].

A mail-order trading company may process personal data of its customers for the following purposes:

1. Directly for performance of a customer's order.
2. For promotion by such company of goods on the market by directly contacting the subjects, who provided their personal data to the company.
3. For transmission of personal data of subjects who provided them to the company, to third parties to promote goods on the market by such third parties.

Processing by the company of the customer's personal data for performance of his/her order under the general rule does not require obtaining his/her relevant consent[3]. Personal data processing for achieving other goals described above requires the consent of the subject of personal data. Personal data processing is recognized as being carried out without the prior consent of the subject of personal data, until the company proves that such consent has been obtained[4].

Thus, processing of personal data obtained by the distance selling company, including their transmission to third parties, for any activity not related to direct performance by the company of the customer's order, without the consent of the subject of personal data, constitutes a violation of the current legislation of the Russian Federation.

1. Sub-paragraph 1 of article 3 of the Federal Law of 27.07.2006 No. 152-FZ "On personal data" (hereinafter — the Law on Personal Data).
2. Paragraph 1 of article 6 of the Law on Personal Data.
3. Paragraph 1 of article 6 of the Law on Personal Data.
4. Paragraph 1 of article 15 of the Law on Personal Data.
5. Paragraph 2 of article 3 of the Law on Personal Data.
6. Paragraph 11 of article 3 of article 9, 12 of the Law on Personal Data.

4.2. Personal data operators

Personal data operators, that is, persons who organize or carry out processing of personal data of subjects to achieve the goals defined by such persons, in the composition and amount defined by them, may be state or municipal authorities, as well as legal entities and individuals[5]. Mail-order trading companies refer to the last two categories, and namely:

1. Legal entities. The law does not divide them according to the place of state registration, therefore, the requirements of the Law on personal data apply to both organizations registered pursuant to the Russian law as well as to foreign legal entities, regardless of whether they operate in the Russian Federation through permanent representative offices or carry out cross-border distance selling not being present in Russia.
2. Individuals who may also act as operators, regardless of whether they are citizens or residents of the Russian Federation.

The Law on personal data does not contain indications on how the control over observance of the legislation on personal data by foreign persons is exercised, but it requires compliance with it, if the relationship between the subject of personal data and the foreign operator is governed by the Law, that is, when such relationship arises with the Russian subject of personal data.

If the personal data operator is a foreign entity (including a branch or a representative office of the foreign legal entity), it is by law obliged to obtain the consent of the subject of personal data to their processing, since transmission of personal data to such entity is recognized cross-border transmission of personal data[6].

4.3. Presumption of consent to personal data processing

As stated above, the only case where the consent to processing of personal data of the subject is presumed is the situation where a distance selling company performs by its own an order received from the customer. This conclusion is based on the provision of the Law on personal data, under which "personal data processing is allowed… [when] it is necessary for performance of the contract, under which the subject of personal data is either beneficiary or guarantor, and for the contract under which the subject of personal data will be either beneficiary or guarantor shall be concluded"[7].

Thus, the subject's consent to personal data processing is not required when the following conditions are met at the same time:

1. There is an agreement signed under which a party, beneficiary or guarantor, is the subject of personal data. In distance selling, this means that the company received from the customer and accepted (for execution) his/her order of goods and their delivery to the address communicated by the customer, and in favor of the person referred to by him/her.
2. The company does not transmit personal data of the subject to third parties (even if such third parties are involved by the company in the execution of the customer's order. This condition derives from the provision of the Law binding the personal data operator to obtain the subject's consent to such transmission[8].
3. The company is a legal entity, registered and operating under the Russian legislation, or a Russian individual.

4.4. Subject's consent to personal data processing

Subject's consent to personal data processing under the general rule can be given in any form, which enables the operator to confirm its receipt. Thus, we can speak about the possibility of expressing the consent by the subject by the means shown below.

The obligation to obtain the consent in writing must be directly provided for by law. The text of the written consent must include the following information[9]:

- surname, name, address of the subject of personal data, number of the main identity document, date of issue of this document and issuing authority;
- name and address of the company obtaining the consent of the subject of personal data;
- purpose of personal data processing;
- list of personal data, for the processing of which the subject of personal data gives his/her consent;
- list of actions with personal data for the performance of which the consent is given, general description of methods of personal data processing used by the company;
- period, during which the consent is provided, and procedure of its withdrawal.

In the absence of any of the above signs, the customer's consent to processing of his/her personal data shall be deemed invalid. This means that obtaining of such consents can not be deemed as proper execution of legal requirements to the content of the customer's consent.

Consequently, if the customers' consent to processing of their personal data is given in violation of content and they are invalid, the processing of such personal data, including their transmission to third parties, will be violation of the current Russian legislation.

7. Paragraph 1 of article 6 of the Law on Personal Data.
8. Paragraph 3 of article 6 of the Law on Personal Data.
9. Paragraph 4 of article 9 of the Law on Personal Data.

Form of expressing consent	Way of expressing consent
Verbal	Verbal communication by the subject of the consent to personal data processing
Written	Document drawn up in writing on paper, certified by the signature of the subject of personal data or by his/her legal representative
Implied	Performance by the subject of actions directly evidencing expression of consent to personal data processing

4.5. Use of personal databases

The current legislation of the Russian Federation defines database is a total of independent materials (articles, calculations, regulations, court resolutions and other similar materials) presented in an objective form, systematized so as to enable finding and processing these materials by an electronic computing machine (computer)[10].

Database is recognized as result of intellectual activity, which is granted legal protection and on which exceptional (property) rights and other rights are recognized[11].

The person having the exclusive right to the result of intellectual activity, may use such result at his/her discretion in any legal way[12], and may dispose of his/her exclusive rights to the result of intellectual activity, including through its alienation under contract to another person (agreement for alienation of exclusive right)[13] or provision to another person of the right to use the relevant result of intellectual activity or mean of individualization within the agreed limits (license agreement).

Consequently, the company holding the exclusive right to the customers' database may dispose of the same at its discretion, including by way of alienation of the rights to it, or by provision of the right to use it. Accordingly, the procedure of entering into the agreement for alienation of database containing personal data of customers (full alienation of exclusive rights to the database) or transmission of such database in single or multiple use, including the object and the main rights and obligations of the parties are governed by the relevant rules of the civil legislation of the Russian Federation on license agreements and agreements for alienation of exclusive right[14].

If personal data are not grouped in databases, they can be transmitted to another party under the information service agreement. According to this agreement, a party shall provide to the other party under certain conditions, information about personal data of individuals on paper or other media for specific purposes and for the agreed period. The other party, respectively, shall pay for provided information and shall use it for a certain period or a certain number of times. Upon expiry of the period of use of information or upon the end of the agreed number of referrals to the information provided, the receiving party must stop using the information and return it to the transmitting party.

It should be noted that since the database contains personal data, in the use of the right (documentation of the deal) to the specified database besides the common rules, one shall be guided by specific rules of the legislation on personal data.

Personal data processing for promotion of goods, works and services in the market by directly contacting potential customers by communication means can be carried out only with the consent of the relevant subject of personal data[15]. Personal data processing is actions with personal data, including their use and transmission[16]. Consequently, the transmission of rights to the database, assuming the use of information contained in it, to send promotional materials can be carried out by Companies only with the consent of all customers, whose personal data are kept in such database, for processing of their personal data for specified purposes.

Another feature of transmission of personal data is the fact that an essential condition of the agreement for transmission of database, besides those prescribed by the aforementioned rules, is also the obligation of the person receiving the database to ensure personal data privacy and security during their processing[17].

Thus, in order to transmit the database, it is required:

- to have written consent of all customers whose personal data are contained in the transmitted database for personal data processing to send advertising messages;
- to conclude a written license agreement or an emergency information service agreement providing for the obligation of the counterparty to ensure personal data privacy and security during their processing.

10. Subparagraph 2 of paragraph 2 of article 1260 of the Civil Code of the Russian Federation.
11. Article 1225, article 1226 of the Civil Code of the Russian Federation.
12. Paragraph 1 of article 1229 of the Civil Code of the Russian Federation.
13. Article 1234 of the Civil Code of the Russian Federation.
14. Article 1234-1237 of the Civil Code of the Russian Federation.
15. Paragraph 1 of article 15 of the Law on Personal Data.
16. Sub-paragraph 3 of article 3 of the Law on Personal Data.
17. Paragraph 4 of article 6 of the Law on Personal Data.

Before the personal data processing for advertising purposes, including transmission of personal data to a third party starts, the authorized body for protection of rights of subjects of personal data shall be notified about the same (Directorate of the Federal Service for Supervision of Communications and Mass Media)[18]. If the Company has already sent such notice about the start of personal data processing to send advertising material, where the list of actions specified the transmission of aforementioned data to third parties, repeated notification is not required.

If the relevant authority is not notified, or it was notified, but the list of actions did not include the indication of transmission of the relevant personal data to third parties, then until the transmission of personal data the Directorate of the Federal Service for Supervision of Communications and Mass Media shall be notified as prescribed by the current legislation[19].

In addition, the person who obtained the database is required to request the subject of personal data the consent to the use of his/her personal data, since the Law on personal data does not provide for the possibility to transmit the consent to personal data processing from one person to another.

4.6. Definition of class of CRM-systems for personal data processing

Working with personal data of customers includes the following:

- processing of personal data of customers (buyers of goods);
- in some cases, the conclusion of a written agreement is required, while the personal data are provided by the subject of personal data, as certified by the signature of the subject;
- in some cases, the agreement is concluded by filling in the electronic form, with the personal data are provided by the subject of personal data, but this fact is supposed and the EDS of the subject is not certified;
- in some cases, the call-center operator draws up a list of processed information (including personal data), in this case he/she does not check the correctness of provided data;
- personal data of individuals received from third parties, including in the form of body of data, are processed.

The call-center operators process the mandatory list of information that has the nature of personal data of subscribers (customers of goods):

- surname, name and father's name;
- date and place of birth;
- place of residence;
- details of the identity document.

Therefore the basic characteristics, industry peculiarities and the tasks fulfilled by them, objects of the company's informatization engaged in mail order trading, are:

1. Standalone workstations (PCs).
2. Local information and computer networks.
3. Distributed information and computer networks.

Depending on the characteristics and peculiarities of individual objects a part of computing resources of these companies is connected to public communication networks and (or) international information exchange networks.

Personal data are entered both from paper (e.g. identity documents of the subject), as well as from electronic media.

Personal data information systems (hereinafter — PDISs) assume both a distributed (on standalone workstations — SWs) and a centralized (on separated file servers of the network) personal data processing.

Personal data of subjects can be withdrawn from PDISs to be transmitted to third parties that create their own PDISs, both electronically and in paper form.

The PDISs controlled area is separate rooms. The users' workstations and places for storage of data backups, system servers, networking and telecommunication equipment of PDISs are located in the controlled areas. The data transmission lines and telecommunication equipment used for information exchange through public communication networks and (or) international information exchange networks are located outside the controlled area.

Information systems recording customers' personal data are included in the second class of information systems requiring mandatory information security certification.

Mandatory information security certification may only be carried out by the organizations holding the appropriate license of the Federal Service for Technical and Export Control of the Russian Federation.

To ensure the PD protection in operating PDISs class 1 and 2 the PD operators must also obtain a license for technical protection of confidential information or enter into an agreement with the company that holds such license.

4.7. Responsibility for violation of procedure of personal data processing

The persons guilty of violating the legislation on personal data are hold civilly, criminally, administratively liable, and otherwise as stipulated by the legislation of the Russian Federation[20]. At present, the administrative liability of persons who violated the legislation on the procedure of processing personal data of individuals (except for those for whom personal data processing is a professional activity and subject to licensing) is provided for violation of the legal procedure of collection, storage, use or distribution of personal data. Such

18. Paragraph 1 of article 22 of the Law on Personal Data.
19. Annex No. 1 to the Order of Rossviazkomnadzor dated 17.06.2008 No. 08.
20. Article 24 of the Law on Personal Data.

violation shall entail a warning or imposition of an administrative fine on officials — in the amount raging from five hundred to one thousand rubles, on legal entities — from five thousand to ten thousand rubles[21].

The violation of the procedure of personal data processing by the company in respect of a number of individuals entails an ambiguous situation. The arbitration practice on the possibility of holding a person administratively liable for violation of the procedure of personal data processing relating to each individual separately lacks, thus suggesting that the issue is controversial. However, it should be noted that the experience of our company in protection of the customer's interests in cases of administrative violations in the area of consumer rights protection identified the legal position of inspection bodies, regarding to a similar issue involving violation of the Russian legislation on consumer rights protection. Thus during the inspection officials of relevant inspection bodies found and drawn up certain report on administrative offences, having the same components, but being committed against individual consumers.

Given this fact and taking into account similar principles of the Russian legislation on consumer rights protection and the legislation of the Russian Federation on protection of information that guide these legal institutions primarily to protect the interests of specific individuals, we can conclude that the violation of the procedure in respect of each person can be qualified as an independent offence, because each such case has all statutory elements of an administrative offence. If a person commits two or several administrative offences the administrative penalty is imposed for each of them[22].

Thus, there is a high risk of holding the company administratively liable separately for the violation of the procedure of personal data processing in respect of each individual.

Since the objective side of the administrative offence is also expressed in violation of the procedure of storage and use, which itself is a process, the offence in respect of each individual is lasting[23]. Consequently, the statute of limitations for administrative liability in this case is determined as provided for by the legislation for lasting offences, and may not exceed 2 months from the date of discovery of the administrative offence[24].

Besides the administrative liability the person who violated the procedure of information processing can be hold civilly liable. So the persons, whose rights and legitimate interests have been violated in connection with the disclosure of restricted information or otherwise its misuse, may duly seek judicial protection of his/her rights and may submit claims for compensation of damages, moral damage, defamation, dignity and business reputation[25].

In this case, the total statute of limitations of 3 years applies and it starts from the day when the person found out or should have known about the violation of his/her rights[26]. The risk of being held criminally liable for violation of the procedure of processing of personal data of individual is still theoretical and is not occurred so far.

The Draft Federal Law "On Amendments to the Code of Administrative Offences, aimed at improving the legislation of the Russian Federation in protection of rights of subjects of personal data" developed by Roscomnadzor (hereinafter — the Draft Law), is expected to significantly increase the liability for violations of the procedure of personal data processing and also change the jurisdiction of initiating proceedings for administrative violations in the field of personal data.

This draft law offers to change completely the rules of bringing to administrative liability for violation of the legislation on personal data.

Transmission of the FR prosecution's powers to initiate proceedings for administrative violations in the field of personal data to Roskomnadzor is provided for as well.

Among other matters, the Draft Law establishes a differentiated approach to various possible violations. Thus, the offences of personal data operator, personal data processing without the consent of the object of personal data, illegal processing of special categories of personal data and failure to comply with the terms of cross-border transmission of personal data may be classified as different elements.

The authors of the Draft Law propose to establish the greatest responsibility for illegal processing of special categories of personal data. These data include the following information about the citizen: his/her race, nationality, political opinions, religious or philosophical beliefs, information on health, sexual life.

4.8. Practical issues of protection of personal data of customers of mail-order trading companies

Personal data of any subject can be processed provided he/she gave his/her consent to such processing, expressed in the way stipulated by the current legislation of the Russian Federation. But the very fact of ordering can be seen as a conclusive way of expressing consent to personal data processing solely for the purpose of processing, forming and provision (delivery) of the goods ordered. For processing of information that constitutes personal data for other purposes a separate consent of the subject of personal data must be obtained. Thus, the mail-order trading company needs

21. Article 13.11 of the Code of Administrative Offences.
22. Part 1 of article 4.4 of the Code of Administrative Offences.
23. Paragraph 14 of the Resolution of the Plenum of the SC RF dated 24.03.2005 No. 5 "On some issues arising at courts in the application of the Code of Administrative Offences of the Russian Federation"
24. Part 1, 2 of article 4.5 of the Code of Russian Federation on administrative offences.
25. Article 17 of the Federal Law from 27.07.2006 No. 149-FZ "On Information, Information Technologies and Protection of Information".
26. Article 196, paragraph 1 of article 200 of the Civil Code of the Russian Federation.

the special consent of the customer to send him/her advertising messages, to inform about the status of the order, to provide other reference and other information.

The main problems encountered in protection of personal data of customers' of the mail-order trading companies can be classified into three categories depending on the methods of obtaining information that constitutes personal data.

The most common ways of obtaining information constituting personal data of customers of mail-order trading companies are:

1. Obtaining questionnaires on paper completed by customers by their own hands. Usually such questionnaire as a mandatory element is part of the order form and is sent to the distance selling company by mail or personally by the customer.

   This method of obtaining information constituting personal data of customers can be considered the most secure, since the questionnaire is direct evidence, first, of obtaining information directly from the subject of the relevant personal data, and secondly — expression of their consent to personal data processing for the purposes specified in the order form.

   Undoubtedly, processing and storage of customers' questionnaires obtained on paper involve substantial costs of the company. First, the processing of questionnaires obtained in such way can not be fully carried out in an automated mode and in the nowadays conditions requires the participation of employees entering information from such questionnaires in automated information systems and databases. Secondly, there are advantages of personal data processing obtained from questionnaires being completed by the customers' hands only if the mail-order trading company keeps originals of such questionnaires for the period of use of personal data, and thereafter until the expiration of the statute of limitations enabling the customers to file claims. On average, such periods make up about five years — not every company may afford to keep such archive. Companies that can not afford such extravagance, may be recommend to store questionnaires, at least for the period of use of personal data, allowing them to create and store copies in electronic form before the expiration of the statute of limitations. If this is not possible as well, production and storage of electronic copies of questionnaires at the company shall be strictly regulated, the originals must be destructed by ways enabling to establish the fact of disposal of documents.
2. Obtaining information constituting personal data of customers by completing registration form on the website. Such way is undoubtedly much more modern and less costly in terms of staff engagement. However, its shortcomings are obvious, and primarily the inability to determine whether the personal data provided during registration really relate to their subject. Unfortunately, to date, there is no guaranteed way to avoid claims arising from indication of others' personal data during registration, however, to minimize the probability of a dispute it makes sense to use additional authentication methods, such as SMS, phone calls or e-mail confirmations. The corresponding methods shall be described in details in the public offer, posted on the web-site of the distance selling company.
3. Verbal communication of information that constitutes personal data of customers, by telephone. Upon receipt of the information in such way the distance selling company is most at risk, because in this case there is no confirmation of receipt of the consent to personal data processing. The ideal solution can be considered the record of all phone calls of customers, but the cost of storage of the appropriate amount of data is often significantly higher than the risks that the company may face. A "democratic" alternative here, like in the previous case, we can consider the confirmation phone call, SMS or e-mail confirmation.

Chapter 2

§ 1. Questions of sales of gift cards remotely

Gift cards as an element of marketing, although came into retail sales recently,[1] but could gain a foothold there quite firmly and companies constantly continue to expand the niche of application of this tool to increase sales.

One of the options for expanding the scope of gift cards is an attempt by some companies to offer their customers to purchase gift cards remotely, usually via online store.

In this article we will not stop in details on clarifying legal nature of such phenomena as gift card. We have already conducted such a study, and it was published in Analytics № 1 2014. Therefore, those who are interested in the matter can refer to this publication. Let's recall only brief conclusions that we came to in the study of legal nature of gift cards.

First of all a gift card — is not a commodity, work or service. So to talk about selling gift cards is at least incorrect.

Second, the gift card is not a means of payment and a security.

Third, the gift card cannot be considered as an advance of the forthcoming purchase.

More than anything by its nature the gift card reminds legitimizing signs, i. e. some objects of material world, possession of which is confirmed by conclusion of specific contract by its own and the right to require its execution from the obligated person. For example, a ticket, subscription, locker token etc.

Therefore, with some degree of conditionality one can say that buying the gift card it's buyer concludes commodity sales contract the seller,[2] name and quantity of which will be determined later by the card holder; and the amount of purchase is limited by par value of the gift card.

Conditionality is that according to the requirements of the Civil Code of Russia sales contract cannot be considered as concluded until name and quantity of goods to be transferred to the buyer is determined.

In fact, the gift card is a regular bank card with reduced functionality, used for settlements with the only difference that nonbanks institutions issuing such cards break the law since the right to issue bank cards belongs exclusively to banks.

Due to the fact that gift cards as a phenomenon of economic life have already firmly rooted and continue to expand explanation of legal nature of this phenomenon as completely lawless will hardly make anyone happy. So we have to close our eyes to many tensions and inconsistencies when trying to regulate circulation of gift cards.

However, to understand the place of gift cards in remote trade we will start from the official position, under which acquisition of the gift card is making an advance payment by the buyer for the goods to be purchased later, and the card itself confirms the fact of making such advance and the right to require transfer of goods to the amount deposited[3].

According to the Ministry of Finance of Russia a gift certificate (gift card) shall mean a document certifying the right of the holder to purchase from the person who issued the

1. While remote trade is a type of retailing, this in article the concept of retail will be used exclusively to refer to trade providing a possibility of direct familiarization with the product at the time of purchase.
2. Conditionality is that according to the requirements of the Civil Code of Russia sales contract cannot be considered concluded until name and quantity of the goods to be transferred to the buyer are determined.
3. Letter of the Federal Tax Service of Russia on Moscow dated 22.10.2009 № 17-15/110609.

certificate the goods, works or services for an amount equal to the par value of the certificate[4].

Tax authorities share this position and clarify that the amount received by company at payment for the gift card is considered as a pre-payment sale of goods (services, works) to be purchased (rendered, executed) in the future[5]. Based on this position, sales contract is considered to be concluded at the time of purchase of the gift card, as advance payment is possible only within the framework of the contract, which has already been concluded or simultaneously with its conclusion.

In this view sale of gift cards are not contrary to the rules of remote trade.

Under the provisions of the Rules for remote trade[6] a contract is considered as concluded from the time of issuance by the seller to the buyer a cash sales receipt or other document confirming payment for the goods or from the time of receipt by the seller information about intention of the buyer to purchase the goods.

In our case, there are two conditions — transfer of gift card confirms payment for the goods (although, strictly speaking, this is not the document) and at the same time we notify the seller about our intention to purchase the goods, however, we do not inform which exactly.

If authorities consider settlements permissible by means of gift cards in retail, then there are no obstacles to use exactly the same method of settlement in remote trade. The matter is that the remote trade rules contain special requirements in respect of retail, but these specific requirements do not affect ways and means of settlement between buyer and seller.

Settlement methods at remote trade remain the same as in retail trade — settlement in cash and cashless payments (including payments made by bank cards, bank transfer, payment systems).

Accordingly, when making advance payment by gift card payment, all the requirements imposed by law to certain methods of settlements remain. So, in order to fulfil the Law № 54-FZ a company shall under standard procedure apply cash register equipment and punching and issue cash check:

- on the day of sale of gift certificates (cards);
- at the time of payment for goods (works, services) by means of gift certificates (check is issued by a separate section of cash register equipment for the purpose of material accounting of goods and consumer protection).

Tax authorities indicate that the Law № 54-FZ does not exempt companies and individual entrepreneurs from the use of cash register equipment at cash settlements in case of payment for goods (works, services) prior to their provision to the buyer.

Failure to apply cash register equipment from at cash settlements is the reason for bringing the taxpayer to administrative responsibility for cash settlements without cash register equipment in cases stipulated by law in accordance with part 2 of article 14.5 of the Administrative Code of Russia.

Now let's see whether it is possible at concluding remote trade contract sales by selling gift cards to observe specific requirements for the sale of goods remotely.

In accordance with paragraph 8 of the Rules of remote trade the seller shall prior to concluding retail sales contract provide the buyer with information about basic properties of the goods and address (location) of the seller, place of manufacture of goods, full company name of the seller, price and terms and conditions of purchase of goods, its delivery, lifetime, expiration date and warranty period, payment procedure for the goods as well as about the time period during which offer for concluding the contract is valid.

When selling products through online store this information should be available on the website of online store and usually it causes no trouble. Obviously, this requirement shall be met by online store in any case, as for cases of normal remote sale of goods and for cases of payment for goods by prepayment via gift card.

Another requirement of remote trade is that the Seller at the time of delivery of the goods shall inform the buyer in writing to a set of mandatory product information, return order, sale rules, etc.

However, as we have already said, purchase of the gift card is not purchase of goods, it is just advance payment. Therefore, at payment for the gift card these requirements do not apply. The goods sale occurs, as usual, at the time of delivery. In other words, it does not make any difference compared to ordinary remote sales through online store.

Considering remote sales of gift cards it should be noted that most online stores perceive remote sale of gift cards as sale of goods, and consider gift card as a separate type of the goods. In this regard, it is necessary to warn owners of online shops — recording of gift card sales as sales of goods and not as advance payment of anticipated sale in future may lead to violation of accounting rules as well as incorrect calculation of taxes. Given that position of tax authorities in this matter has been quite well established sanctions of tax authorities cannot keep one waiting.

We cannot ignore another important matter — meaning to purchase the gift card for the buyer is that subsequently he may pay for the selected goods by such card.

Typically, the gift card allows to pay for goods only at the store or chain of stores where it was purchased. Rarer gift card gives one a possibility to pay for the goods not only in stores of the card issuer, but also in its partner-chains. A question arises at remote sale of the gift card — how it can

4. Letter of the Ministry of Finance of Russia dated 25.04.2011 № 03-03-06/1/268.
5. Letter of the Federal Tax Service of Russia on Moscow dated 17.09.2010 № 17-15-098018.
6. Paragraph 20 of the Rules of remote sale of goods (approved by Decree of the Government of Russia dated 27.09.2007 № 612).

be used to pay for the goods. There may be different situation, for example, the card issuer does not provide retail trade but trades only through online store. Obviously, in this case one can use the card at settlements only at remote purchase in online store.

large retail chains often have parallel online sales, duplicating commodity nomenclature. Here the question arises whether it is possible to pay for goods in retail store card of issuer and vice versa by the gift card purchased from online store. If it is, what is the price; since quite often prices of online store are lower than retail prices for similar items.

In order these moments do not lead to disputes card issuers should very clearly describe in Rules for the use of the gist card what goods, in which stores and on what terms and conditions can the gift card be applicable. Terms and conditions of the use of gift card should be both published on the online store and handed in to the buyer at the time of transfer the card. It will be additionally beneficial, if the sample of the Rules which will remain with the Seller, the buyer puts its signature that he read and agrees with Terms and conditions of the gift cards.

§ 2. Some aspects of application of legislation on liability of the Russian Post

Companies involved in the sale of goods by mail (postal service companies), as a rule, work and often have to work with the largest postal operator in Russia — Federal State Unitary Enterprise "Russian Post". It's no secret that this monster, despite the efforts of continuous reformation made in recent years, still remains rather sluggish, unreliable and conservative machine.

Huge flow of postal mailing and technical base of the Russian Post which does not quite keep up with it leads to the fact that some items are simply lost. Companies that sell goods by mail turnover of postal mailings is very significant and accordingly percentage of losses and, purely statistically, is also very substantial with it. The question of damages compensation from such losses cannot always be effectively resolved in the contract which the company concludes with the Russian Post. The fact is that the Russian Post is primarily guided by regulations governing the process of postal services. In this regard, any contract between the company selling by mail and the Russian Post has a reference to such legal regulations, and their provisions take precedence over any contractual terms. The Russian Post due to its status of the federal state unitary enterprise cannot retreat from the rules of providing postal services, even if it has such an intention. In practice, by the way, it is often encountered, especially when the Russian Post realizes its guilt to the client. Nevertheless, the process of bringing the Russian Post to justice is extremely regulated and such regulation is clearly not to the customer's favor.

Basic regulations in this area are as follows:

- Federal Law of 07.09. 2003 № 126-FZ "On Communication";
- Federal Law of 17.07.1999 № 176-FZ "On Postal Communication";
- Rules of postal services (approved by Decree of the Russian Government 15.04.2005 № 221);
- Order of receipt and delivery of registered postal mailing (approved by decree of FSUE "Russian Post" dated May 17, 2012 № 114-p);
- Order of admission, delivery and presentation of internal parcels (approved by order of FSUE "Russian Post" from January 24, 2007 № 28-p).

Let's see what type of liability these rules stipulate for the Post of Russia.

2.1. Liability of postal service operator

As a general rule for non-performance or improper performance of obligations the debtor is obliged to compensate the creditor losses (paragraph 1 of art. 393 of the Civil Code of the Russian Federation). In its turn, the loss is determined in accordance with the rules provided by art. 15 of the Civil Code of Russia. On the basis of paragraph 1 of this article a person whose rights is violated, is entitled to seek full compensation for damages, **unless the law or the contract provides for damages in smaller amount.**

Liability of the Russian Post is exactly the case when the law limits the amount of liability of the creditor.

Art. 34 of the Law on postal services indicated: postal service providers are liable to users of postal services for non-performance or improper performance of obligations for provision of postal services or their improper performance. Here it is specified: liability arises for loss, damage (impairment) and shortage of content, non-delivery or breach of target dates for delivery of mail and other violations of the established requirements for provision of postal services.

The amount of damages subject to recovery by the postal service operator is provided in art. 34 of the Law on postal communication and depend on the type of mailing. According to paragraph 12 of the Rules of postal communication depending on the method of processing postal items are divided into the following categories:

- simple — received from the sender without issuing receipts and he delivered (handed in) to the addressee (his legal representative) without delivery against receipt;
- recorded (registered, insured, common) — received from the sender with issuance of receipt and hand it to the addressee (his legal representative) with delivery against receipt. Recorded mailings can be sent with a list of content, with notice of receipt and cash on delivery.

So postal service operators compensate damages in the following amounts (see table below).

As one can see from the table above delivery companies are advisable to send postal mailings through the Russian Post with the declared value, otherwise in case of mailing

loss it will be possible to recover only the tariff but it is very small.

Postal service operators are not liable for loss, damage (impairment), non-delivery of postal mailings, if it is proven that it was so due to force majeure or property of postal mailing content.

However it is not only that the amount of liability of the Russian Post is limited, in order to receive recover of its losses the client should follow procedure of pre-trial dispute settlement, or simply saying claim procedure. This procedure is also regulated by legal regulations and the Russia Post cannot retreat it.

2.2. Pre-trial dispute settlement procedure

At non-performance or improper performance of the obligations arising from contract for provision of postal communication services, the user of these services may file a claim to postal service operator, including a claim for damages (art. 37 of the Law on postal communication, paragraph 4 of art. 55 of the Law on communication). Interestingly, the present rule of law establishes need for pre-trial settlement of dispute only for user of services but not for service provider.

The main problem for customers of the Russian Post is that the deadline for claims is regulatory limited. Claims for non-delivery, late delivery, damage or loss of post mailing shall be made within **six months** from the date of mailing. This is stated not only in art. 37 of the Law on postal communication, but in subparagraphs 2 of paragraph 5, art. 55 of the Law on communication, as well as in paragraph 52 of the Rules of providing postal services, reference to which are available in almost every contract with the Russian Post.

Procedure for filing claims to the Russian Post is as follows.

Claims shall be made in writing and shall be registered in the order established by the postal operator. When filing a claim the user (his legal representative) shall show proof of identity. If the claim is drawn not by the user but his proxy, power of attorney issued in the name of that person shall be presented. Claim to the federal postal communication company may be brought both at the reception site and at the destination postal mailing. The same applies to claims relating to the receipt and delivery of postal mailings: they may be presented both to service provider, which received the mailing and the service provider at the destination of mailing (paragraph 2 of art. 56 of the Law on communication).

To claim must be accompanied by:

- Copy of the contract for provision of communications services or other document certifying that the contract (for example, receipts, inventory of content);
- Other documents which are necessary for consideration of the claim on the merits and which shall include information about non-fulfillment or improper fulfillment of obligations under the contract, and in case of a claim for damage compensation — the fact and amount of damages.

The claim indicates (paragraph 54 of the Rules of postal services):

- Details of the identity document of the applicant;
- Type of postal mailing;
- Number of postal mailing;
- Date and place of receipt;
- Place of destination;
- The amount of the declared value or detailed list and price of posted content;
- Addresses and full names of sender and addressee;
- Type of packaging.

Responses to the claim (in writing) shall be given in the following terms:

Type of violation	Type of postal mailing	Amount of damage
Loss or damage (impairment) of Postal mailing	Postal mailing with declared value	Declared value amount and amount of tariff fee except tariff fee for declared value
Loss or damage (impairment) of part of content of postal mailing	Postal mailing with declared value when at its delivery with inventory of content	Declared value amount of missing or spoiled (damaged) part of content specified by sender in inventory
	Postal mailing with declared value when at its delivery without inventory of content	Amount of part of declared values of postal mailing determined proportional to the ratio of weight of missing or spoiled (damaged) part of content to weight of delivered content(without weight of shell of postal mailing)
Loss or damage (impairment) of other recorded postal mailing	Other registered postal mailing	Double amount of tariff fee
Loss or damage (impairment) of part of content of other recorded postal mailing		The amount of tariff fee

- claims for postal mailings sent within a single locality - within five days from the date of registration;
- claims on all other postal mailings — within two months (60 days).

Payment of monetary funds in respect of compensation of damage caused by non-performance or improper performance of postal services shall be made by postal service operators within 10 days from the date of receipt of claim (paragraph 56 of the Rules of postal service).

The main problem postal operator companies face — extremely difficult to meet 6-months period for filing claim. Postal service operators ship goods to the Russian Post on their own, but more often through so-called fullfilment-warehouses. These warehouses are professionally engaged in storage of goods, sorting, arranging mailings in accordance with existing orders, shipping of postal mailing to the Russian Post, return of goods, and as well as often such companies are responsible for search of parcels and filing claims.

What is the process of parcel loss? It depends. But it is important that time, from which 6-months period for filing claim starts — in any case it is time of delivery of postal mailing to the Russian Post. Postal service providers usually finalize the process of postal mailing delivery, as a rule batch of such mailings, by registration of form 103.

According to paragraph 392[1] of the Postal rules and paragraph 4.1 of "Procedure for registration of accompanying documents at receiving domestic batch postal mailings" (approved by the Federal State Unitary Enterprise "Russian Post" on 23.03.2011 № 3.2.2-05/8-nd) batch mailings shall be delivered to postal service companies accompanied with lists of 103 form.

When the list of form 103 is made on two or more sheets, each sheet of list shall have a calendar post office stamp for receipt of transfers, and an employee of postal service provider, who received transfer shall sign on the last page of the list (paragraph 399 of Postal rules).

Thus, the date indicated on the calendar post office stamp made on the list of form 103, inventory of content and postal receipt is a valid proof of sending correspondence. Therefore, this date should be taken into account in order to apply the 6-months period for filing claims.

So a batch of postal mailings is delivered to the Russian Post and postal service company has on hand form 103 with fixed date of receipt of correspondence. Then postal mailings for some time are stored, sorted and sent inside post offices in Russia and then delivered to the client. At this stage loss of parcel may happen. That is, it will not be delivered to the client.

It may happen that the parcel will be delivered to the client and it paid for it by cash on delivery, but the payment does not reach postal service operator. Return parcel may be lost, that is the one which the client failed to appear for or refused to accept it for whatever reason.

In all cases, postal service provider usually finds the amount of its losses from loss of parcels and cash on delivery at the end of the year at inventory (unless, of course, there is no intermediate inventory). In that case time for filing claims for postal mailings sent in the first half is passed. This situation creates some problems – the Russian Post refuses not only to satisfy claims filed outside the six-month period, but in general to consider them appealing to paragraph 52 of the Rules of Postal Service. Postal service provider has no other choice but to go to court, but this possibility is in serious doubt.

The fact is that according to the procedural law in case when the law or the contract stipulates compulsory pre-trial (claim) dispute settlement procedure compliance with such dispute settlement procedure is necessary, otherwise there is a ground to leave a claim without consideration (subparagraphs 2, paragraph 1 of art. 148 of Arbitration Procedure Code of Russia). Compliance with claim order of dispute settlement procedure should be understood as submitting a claim.

In this regard, the Russian Post has always said that since the period for filing a claim is over, the claim is considered not filed. Therefore mandatory pre-trial order of dispute settlement procedure is not complied and the claim should be left without consideration.

In most cases, courts do just that, although this position seems fair only at first sight.

First of all, in the Arbitration Procedure Code provision on grounds of leaving claim without consideration is as follows: the plaintiff did not comply with claim or other pre-trial procedure for dispute settlement with the defendant, if it is provided by **federal law or contract.**

If we take the Federal Law "On Postal Service", it says literally the following "for non-performance or improper performance of obligation to provide postal services user of postal services is entitled to submit a claim to postal service operator, including with the claim to compensate damages". It is entitled, but not obliged, in other words the federal law does not provide binding claim dispute settlement procedure (para 1. article 37 of the Federal Law "On Postal Communication").

However, content of para. 9 of article 37 of the Federal Law "On Postal Communication" does not match with such conclusion, in accordance with which the user of postal services shall be entitled to sue in court in the event postal service operator refuses to satisfy the claim or in case of consent of the latter to satisfy the claim in part or in case of failure to receive a response from the postal service operator within time established for consideration of the claim. In this regard, courts in most cases, come to the conclusion that exercise of rights of the user of postal services to apply to court

1. "Postal Rules" (adopted by the Council of Heads of Administrations of the Regional commonwealth in the field of communication on 22.04.1992). Applicable to the extent not inconsistent with the Federal Law of 17.07.1999 № 176-FZ "On Postal Communication" and Decree of the Russian Government of 15.04.2005 № 221 "On approval of rules of postal services".

is due to compliance with claim order for dispute settlement with postal service operator[2].

But despite this postal service company still has a possibility to go to court.

Neither the Law "On Postal Communication" nor the Rules of postal services contain indication what exactly legal consequences entails of filing a claim outside the 6-month period. In addition the current legislation does not provide that filing claim after the expiry of six months repeals the right to appeal to court for protection and does not establish consequences of such claim filing.

Such conclusion would cost inexpensive, however the Supreme Arbitration Court came to the same. In its Resolution of 24.10.2011 № VAS-13460/11 the Court formed a legal position on the issue. According to the case postal mailing in respect of which there was a claim filed to the Post of Russia in October 2009, while the claim was sent to the address of the Russia Post on 15.10.2010, i.e. without meeting the 6-month period for submission of claims. The Russian Post insisted on non-compliance with the order for claim order of dispute resolution.

Position of the Court was based on the following considerations: Federal Law of 17.07.1999 № 176-FZ "On Postal Communication", Rules of postal services establish six months period from the date of delivery of postal mailing to file a claim to postal service operator as well as order of its filing and registration, term to reply at it.

The essence for stablishing this order is that the user of postal services and postal service operator can resolve the disputed issues prior to application to court. If claim order of dispute settlement stipulated by law or contract is not met, the arbitration court shall leave the claim without consideration under paragraph 2 part 1 of Article 148 of the Arbitration Procedure Code of the Russian Federation.

However, the courts found that the claim was submitted by the company to postal service operator and received by the latter on 15.01.2010, however was not satisfied.

Article 37 of the Law on postal services provides that in the event postal service operator refuses to satisfy the claim, or in case of its consent to satisfy the claim in part, or in case of failure to receive response from the postal service operator within the period established for consideration of the claim, the user of postal services has the right file a claim in court or arbitration court.

Thus, compliance with claim order of dispute settlement procedure should be understood as filing a claim.

The current legislation does not provide that filing claim after the 6-month period repeals the right to appeal to the court for protection and does not establish consequences of such claim filing.

Due to the set out circumstances argument of the Russian Post regarding non-compliance with claim order of dispute settlement must be rejected.

Thus, an important precedent was set, which one may rely on in resolving the issue of compliance with the claim order.

The main thing is that one need to send a written claim to the Russian Post, so that the company has evidence of such sending (for example, letters with notice or better by registered letter with the list of content). It doesn't matter whether the 6-month period for submitting claim was not met; in order to comply with the claim order it is important to send a claim in principle.

§ 3. Online payment at remote trading

Remote trading has been firmly established in our everyday life and every year it is gaining popularity. According to analysts by 2015 a quarter of all retail sales will be done this way.

Indeed, it is very convenient, without leaving home or workplace get the desired item directly to one's location. It is even more convenient when one can pay for it without resorting to cash.

Online stores have recently become widely use various electronic methods of settlements. They are also interested in developing such system, since in some cases it allows to receive from advance payment for the goods.

3.1. Types of electronic payment

Electronic payment system may be different. Currently, the most common types are the following:

1. Credit cards payment using portable mobile terminal which moves together with the courier.
2. Payment by personalized bank debit and credit cards by inserting information on the Internet website.
3. Payment by E-wallets.

Any of the following payment systems is based on a mechanism called acquiring.

Acquiring is acceptance of bank credit and debit cards as a means of payment for goods and services. Acquiring is made by bank, licensed to acquiring bank cards (bank-acquirer).

In order to provide acquiring services bank-acquirer installs on sites of retail and service companies (stores, cafes, gas stations, etc.) payment terminals, which allow to accept bank card payments.

Internet acquiring is different from usual acquiring that the function of payment terminal performs specially designed interface that allows cardholders to make payments on websites of online shores and online services.

Internet acquiring as a service is not different from standard acquiring, except that bank cards are read not by

2. Resolution of the Federal Arbitration Court of the Ural District dated September 29, 2003 № F09-3118/03-AK; Resolution of the Federal Arbitration Court of the Northwest District dated November 22, 2005 № A42-296/2005-21; Resolution of the Ninth Arbitration Court of Appeal dated March 6, 2007, March 14, 2007 in case of № 09AP-2472/2007-GK and № A40-55571/06-102-484.

card reader in store but inserted by the payer on website in a special secure payment form.

The general principle is one — no matter whether you top up your mobile phone, buy air ticket or pay down jacket at a discount in online store. In any case, this operation includes:

- buyer (owner of credit card);
- seller;
- issuing bank, which issued the card;
- bank-acquirer providing transfer of funds;
- payment system — Visa, American Express, MasterCard, Diners Club — operating online and uniting all participants.

In practice one and the same bank may act both as issuer and acquirer.

For clarity we consider a method of buying some goods at online store.

1. Buyer at page of online store chooses the right product and puts it in the basket. Virtually of course.
2. Next it is necessary to click "Pay" button and choose your bank card as payment method.
3. The store forwards you to a new page of payment system where you enter your card details in a special web form.
4. Payment system sends them to the bank acquirer. All international payment systems are equipped with a set of tools to combat cyber-crooks. Thus, CVV code consisting of three digits placed on the back of the card is removed immediately after receiving confirmation of its authenticity. Card number is stored in a secure database that is certified under Payment Card Industry Data Security standard or PCI DSS.
5. Bank-acquirer sends an inquiry to the issuing bank, which must verify information on the card, owner and availability of funds in the account. Only then it permits (or prohibits) to transfer the funds.
6. Money comes to the account of the bank-acquirer.
7. Bank-acquirer transfers the funds to the account of online store.
8. Online store delivers the purchased goods to a happy buyer.

3.1.2. E-wallets

Before defining what is an e-wallet it is necessary to clearly understand what is electronic cash. Since E-wallet is both a place and a way of keeping and accounting of electronic cash as well as a regular wallet is a place to keep cash.

The concept of electronic cash is disclosed in the Federal Law "On the National Payment System" (№ 161-FZ of 27.06.2011). Under electronic cash the law understands monetary funds that were previously given by one person (the grantor of funds) to another person, which takes into account information about provided amount of money without opening bank account (the obliged person) for execution of monetary obligations of grantor of funds to third parties and in respect of which the grantor of funds is entitled to transmit orders exclusively through electronic means of payment.

Simply speaking, first of all owner of cash or non-cash gives to a person who takes into account how much cash was provided. This person is the owner of the E-wallet and the program allowing taking into account information on giving cash and cash flow is the E-wallet.

Thus, E-wallet is a computer program that allows storing electronic money as well as using them make non-cash payments in the Internet. In fact, E-wallet is an analogue of bank account, but it is not.

The most famous E-wallets are Yandex Moneyy, E-Gold, QIWI Wallet.

3.2. Agent or not agent?

The question that often leads owners of online stores to unpleasant and often fruitless speculations - is a question whether a company and an individual entrepreneur, which online store attracts for settlements with individuals are paying agents.

Such anxiety is explained by the fact that provisions of the Federal Law "On activity of accepting payments from individuals by payment agents" № 103-FZ of 03.06.2009 require paying agents upon receiving payment to use a special bank account for payments. Also providers of goods must use this account at settlements with payment agent.

As for online stores this means the following: a special account (account № 40821) is the link between the supplier of the goods and paying agent; transfer of funds to other accounts of the company are made from it as well as payments from customers can be directly credited at it. Moreover, paragraphs 18 and 20 severely restrict freedom of action of online stores. They state that it is impermissible to cooperate with as payment agent except through the account № 40821 and that no other transactions except of the above, are possible with it.

Therefore, it is necessary to completely understand who (in relation to the activities of online stores) is the payment agent, and who is not.

In accordance with art. 2 paragraph 3 of the Federal Law "On the activity of receiving payments from individuals by payment agents" (hereinafter — the Law № 103-FZ) payment agent is a legal entity, except credit institution or an individual entrepreneur carrying out activity to receive payments from individuals.

For receiving payments payment agent concludes contract with supplier to receive payments from individuals, under which the operator on receipt of payments is entitled on its own behalf or on behalf of supplier and at the expense of supplier receive monetary funds from payers in order to fulfill obligations of an individual to the supplier, and shall carry out the following settlements with supplier in the manner established in the said contract and in accordance with the legislation of the Russian Federation, including requirements on expenditure of cash received into the cash of a legal entity or an individual entrepreneur.

Thus, payment agent is a person who:

1. Accepts payments from individuals.
2. Accepts these payments not for itself but for the benefit of supplier of goods (services, works).
3. Acts as intermediary in part of settlement between individuals and suppliers of goods (works, services) on the basis of contract with supplier.

But not all persons that go-between settlements are acknowledged as payment agents. Law № 103-FZ contains

3.1.1. What is the process of paying for product / service by customer by credit card

Buyer forms its order at online store and chooses payment by credit card.

Online store forwards the buyer to a secure form of payment of processing center.

On the secure form of payment **PayOnline** the buyer specifies information about his credit card. PayOnline verifies status and parameters of online store in the system as well as checks the inquiry for compliance with requirements and limitations of the system and transmits the generated inquiry for authorization to bank-acquirer, which carries out authorization on payment.

Bank-acquirer after receiving an inquiry to authorize the transaction sends it to the appropriate international payment system: Visa, MasterCard, etc.

Payment system determines the issuing bank, which issued bank card of buyer, then sends authorization inquiry to the bank processing center.

After **issuing bank** confirmed the buyer's payment authorization, PayOnline sends to online store a positive authorization result, and in its turn it notifies the buyer about successful payment of order.

some exceptions. Provisions of law on paying agents and their responsibilities do not extend to settlements:

1. Carried out by legal entities and individual entrepreneurs at sale of goods (works, services) directly with individuals, except for settlements related to charging by paying agent from payer remuneration provided for by this Federal law.

   The matter is when online store has its own courier service that delivers the goods to the buyer (the payer in terms of the Law № 103-FZ) or gives out goods at collection point, it means that settlements are made directly with individuals and hence online store is not a paying agent. The same can be said about the case when outsourced courier services are attracted for delivery of goods to customer and settlement — monetary funds are also charged directly from the payer. The difference between these two variants is that in the first the goods are sold by supplier in its own name, and in the second through an intermediary. Of course, in the second variant the goods are sold indirectly, but settlements are made directly. But if the courier service is only concerned with receiving payments and does not deliver the goods to payer (i.e. payment is cut off from sales) then in respect of such courier service exception does not apply and it should be considered as paying agent.

2. Between legal entities and (or) individual entrepreneurs in implementation of their business, and (or) persons engaged in private practice and not individual entrepreneurs, which is not related to the functions of paying agents.

   Settlements between legal entities (or individual entrepreneurs) and private practice individuals are not subject to the law on paying agents.

3. In favor of foreign legal entities.

   If payment of an individual is designated for payment of goods (works, services), which are sold by a foreign company, such settlements do not cause paying agent's obligation.

4. Made in cash.

   This exception for online stores is the most important thing. The fact is that settlements using electronic cash and E-wallets refer to the category of non-cash payment.[1] However, there is one subtlety — there are several options to top up E-wallet. In order to top up depending on capabilities of payment system is possible by one of the following ways:

   - buy a special prepaid card;
   - transfer money to e-wallet from mobile phone if supported by the mobile operator;
   - use Internet bank;
   - top up electronic account through ATM;
   - postal or bank money order;
   - add funds to electronic account via electronic payment terminal;
   - exchange some electronic money for other electronic money or directly transfer from one e-wallet to another.

   With use of some ways take place depositing cash, namely in depositing cash on electronic accounts through payment terminal. In this case, there is no reason to apply any exception that would not consider owner of E-wallet as payment agent. Indeed, there is no direct contact with payer, sale of goods or services at the time of making payment is not made; cash is being deposited but not non-cash.

   In this case, the company which records electronic money, owner of E-wallet is paying agent and shall make payments using a special account. But the following question remains unclear –if E-wallet of a specific payer is topped up by making cash and non-cash? Following the established rules cash should be deposited into a special account of paying agent, and non-cash into an ordinary account. However, it is unclear how debiting of funds is made, as the payer giving instructions to the paying agent to pay from his electronic wallet does not indicate what account to debit money from and cannot give such instructions since they are not the payer's accounts but accounts of the paying agent. It turns out that paying agent chooses independently what account to make payment from to a particular supplier. However, if he makes payment by debiting from special account, then the supplier shall deposit it into special account. This may not coincide with interests of supplier, and the law does not regulate this situation. In this case, the only way to prevent conflict is a clear regulation in the contract between supplier and paying agent the matter what settlements may lead to an obligation to use special account.

   A variant with top up E-wallet via acquire of prepaid card also deserves some words. It would seem that here, despite the fact that an individual deposits cash, but it also directly buys the goods - a prepaid card. But this is a superficial view. Actually by acquiring prepaid card the buyer does not aspire to owning a piece of plastic. In fact he acquires and pays for the service in advance, which paying agent sells to him and which solely means - making payments between this individual and potential supplier of goods (works, services). That is, the payer deposits cash, while it does not cause any sale of goods, works or services different from services of settlements, which also leads to an obligation of the paying agent.

5. Carried out in accordance with legislation on banks and banking activity.

1. Paragraph 1 of Article 7 of the Federal Law of 27.06.2011 № 161-FZ "On the national payment system".

In case when payment is made through a bank, that is by bank transfer, bank card through the terminal or by inserting card information at internet website, such types of settlements refer to banking transactions. Banking transactions are regulated by the Federal Law of December 2, 1990 № 395-I "On Banks and Banking Activity". In view of this circumstance, any payment through bank excludes qualification of beneficiary of payment as a paying agent.

Summarizing all exceptions, which are established by law lets see under what schemes of settlement between buyer (payer) and online store can occur obligations of paying agent.

1. At settlements involving a third courier company that goes to the address of payer and receives cash from him. At the same time courier company does not perform any other functions (delivery) except settlements.
2. At settlements by electronic cash, provided that top up of E-wallet is made by payer by making cash payments through payment terminal or by acquiring a prepaid card.

3.3. Is cash register equipment necessary?

The question of using cash register equipment at remote sales have long been settled. The official position is that cash register receipt shall be made by online store no later than 5 minutes after payment of the goods by the buyer. But at online payment a question arises whether it is necessary to use cash register equipment since cash payment does not occur.

3.2.1. Cash register equipment at payment by credit cards

According to paragraph 1.5 of the Regulation of the Bank of Russia dated 24.12.2004 № 266-P "On issuance of payment cards and transactions made with their use" (hereinafter — Regulation) any kind of payment card (settlement (debit), credit, prepaid) is an electronic means of payment.

As mentioned above, settlements using payment cards do not relate to cash transactions.

Federal Law of 22.05.2003 № 54-FZ "On the use of cash register equipment at cash settlements and (or) settlements using payment cards" (hereinafter — Law № 54-FZ) separates concepts of cash settlements and settlements using payment cards. Article 1 of this federal law defines cash settlements as made with the use of cash payment settlements for purchased goods, works, services rendered. Means of cash payment are banknotes (bank notes) and coins of the Bank of Russia (article 29 of the Federal Law of 10.07.2002 № 86-FZ "On the Central Bank of the Russian Federation (Bank of Russia)").

However, paragraph 1, art. 2 of the Law № 54-FZ provides that cash register equipment (hereinafter — CRE) included into the State register is applicable on the territory of the Russian Federation mandatory for all companies and individual entrepreneurs at cash settlements and (or) settlements using payment card in case of sale of goods, works or services. In accordance with the Law № 54-FZ companies shall give buyers (customers) cash checks when making settlements using credit cards at the time of payment printed by cash register equipment.

Thus, for the purposes of the Law № 54-FZ settlements using payment cards are equal to cash settlements. Therefore, at settlements using credit cards CRE shall be mandatory used.

Payment cards for purposes of the Law № 54-FZ shall mean bank cards issued by credit institutions — residents of the Russian Federation, as well as cards and prepaid financial products of foreign issuers (American Express, Diners Club, Visa Travel Money, VISA CASH, Mondex, etc.) (letter of Office of the Ministry of Taxes of Russia on Moscow dated 08.01.2004 № 29-12/00538).

However, at online payment using payment cards receiver-company is not directly involved in settlements, since the goods are paid by buyers by payment card through the Internet.

In this case, according to official authorities, responsibility of application of CRE does not arise. For example, letters of the Russian Ministry of Finance dated 09.06.2009 № 03-01-15/6-293, Office of the Ministry of Taxes of Russia on Moscow dated 24.04.2012 № 17-26/037701 @, dated 14.02.2012 № 20-14/012258 @ explained that if cash settlements with customers in payment for the goods received from the company's website in the Internet are made using payment cards via credit institutions (via bank transfer) followed by crediting monetary funds to the account of trading company under agreement on cash settlement service between bank and company, a trading company does not necessarily use CRE, since proceeds from sale of goods from official websites of the Internet comes not into the cash of company but at its settlement account in order of cashless cash flows.

Please note that use of CRE is not only required in the case when settlement transaction is carried out exclusively through bank or payment system without participation of a representative of the seller. If the buyer pays for the purchased goods by card directly to the seller, issue of CRE receipt at the time of cash receiving from the buyer is necessary.

3.2.2. Cash register equipment at payment via e-wallet

Part 1 of art. 7 of the Law № 161-FZ clearly states that transactions with electronic money are nothing but a form of non-cash payments.

The order of application of cash register equipment (CRE) is established by the Federal Law of 22.05.2003 № 54-FZ "On the application of cash register equipment at cash settlements and (or) settlements using payment cards" (hereinafter — the Law № 54-FZ).

In accordance with paragraph 1 of art. 2 of the Law № 54-FZ CRE is applicable on the territory of the Russian Federation mandatory for all companies and individual entrepreneurs at cash settlements and (or) settlements using payment cards in case of sale of goods, works or services. Article 5 of the Law № 54-FZ states that at the time of payment

a company shall issue receipts printed by CRE to buyers (customers) at cash settlements and (or) settlements using payment cards.

Thus, when monetary funds come from customers for the sold goods through electronic payment systems (E-wallets) the company does not have an obligation to use CRE and give buyers cash receipts.

§ 4. Expenditure on advertising in social networks

In today's world among a wide range of the population so-called social networks is growing in popularity. People paying a huge amount of time to communicate with each other in social networks, share photos, video and other materials. Social networks allow eliminating time and territorial barriers, bringing people together and contributing to being in constant contact with loved ones, relatives and friends.

To place different types of advertising the most common basic characteristics of social networks are very attractive for selection of these networks as a platform for advertising.

However, when advertising on social networks, most advertisers face with problems associated with possibility to recognize such costs at taxation of profits. This is due to the fact that for acknowledgement of advertising costs reasonable, conformity of the given expenditure to the requirements of the Law on Advertising is necessary.

Thus, in accordance with the Law on Advertising, advertising is deemed to be information distributed by any means, in any form, with use of any means, addressed to indefinite number of persons and aimed at drawing attention to the subject of advertising, forming or maintaining interest to it and its promotion at the market.

However, despite the fact that the competent authority (Federal Antimonopoly Service of Russia) in some of its letters (for example, a letter of the Federal Antimonopoly Service of Russia 19.05.2006 № АК/7654) acknowledges mailing of advertising on the Internet as advertisement, taxpayers may have difficulty with recognition of expenses on advertising in social networks.

The main reason for occurrence of such difficulties – con-compliance of the main conditions required for finding expenses as advertising — addressing of information to indefinite number of persons. Whereas non-compliance with this condition is ensured by several factors: first of all the range of social network users is initially limited due to the presence of mandatory registration requirements. Secondly, advertising in social networks, is usually placed in certain groups and to view such information social network user should be a member of this group. Moreover, group membership can be hassle-free for a user (if a group is open) or possibility of joining the group may be limited to certain individuals (if a group is closed).

In this regard, despite the fact that distribution of relevant information in social networks is is of advertising nature (in fact its placement pursues advertising purpose) due to non-compliance with formal requirements of the law taxpayer is unlikely to succeed to include such costs for advertising.

In this case, if taxpayer wishes to attribute such costs to other costs, then in that case taxpayer will face some obstacles — since users of social networks register in social networks for personal, consumption purposes, users of social networks do not exercise business activity.

However, the above risks have not yet been reflected in law enforcement practice (including judicial acts and clarifications of tax authorities). So now taxpayer is only left at its own risk at take into account cost of advertising in social networks at taxation of profit and be ready at any time to enter into dispute with supervisory authorities.

Chapter 3

Judicial practice on the cases with the participation of distance selling company as a whole and mail order sales in particular belongs to the area where regular courts consider civil complains and applications regarding consumers' rights violation on the part of distance selling companies. Unfortunately, regular courts' practice is rarely investigated and generalized by a court above. The possibility to independently investigate tendencies in law enforcement is rather limited because currently there is no unified accessible electronic database of court holdings awarded by regular courts. That is why we will basically focus on arbitration practice regarding distance selling companies considering that administrative cases on consumer rights violation often develop into arbitration proceedings on sanctions contestation applied by anti-trust authorities, Federal Consumer Rights Protection and Human Health Control Service (F-RNP) and other similar authorities to distance selling companies.

In regular courts

First of all, we would like to draw your attention to the global generalization of case consideration practice on consumer right protection issued by Russian Federation Supreme Court Plenum amidst of the last year. We are taking about Russian Federation Supreme Court Judgment dd.28.06.2012 № 17 "On civil cases regarding consumer right protection consideration".

Highest court interpretations cover a wide range of the Law "Consumer Rights Protection" application. Two issues were covered by Plenum regarding distance selling companies. First of all, it was pointed out that at distance sales of goods (works or services ordering) where remote linkage means are used (such as Post, Internet, phone) and payment for the goods is done by the consumer by means of E-money or bank transfer, bank cards and/or other legal means of payment included, a purchase can be confirmed by a bank authorization statement regarding transaction execution bearing payee, results of debit and credit transactions, etc. and other documents being the confirmation of money transfer (such as confirmation of a client order for E-money transfer fulfillment issued by E-money operator). These interpretations are given in relation to the provisions of the Law "Consumer Right Protection" under which in case a client has no cash voucher or cash memo, or other document verifying the purchase itself and its terms not being the reason for his requirements fulfillment rejection.

Second, Plenum showed that during compensation claim consideration caused by doubtful or incomplete information on the goods (works, services) a court shall be guided by the suggestion that the consumer has no special knowledge about the features and parameters which means that according to Consumer Right Protection Law, a producer (manufacture, seller) shall provide the consumer with required and true information about the goods (works, services) in due time insure qualified selection (Article 12). It should be taken into the account that communication list and means as per given types o bf goods (works, services) are set by the Government of RF (Item 1, Article 10).

In accordance with Item 2, Article 8 of the Law the information on goods (works, services) shall be brought to the notice of the consumer vividly and accessibly within the scope pointed out in Item 2, Article 10 of the Law. Information delivery in a foreign language shall not be considered required information and cause consequences listed in Items 1, 2 and 3, Article 12 of the Law.

At distance sale of goods (works, services) the information shall be provided by the seller (performer) to the consumer on the same terms considering technical aptitudes of given carriers.

Distance selling rules are the main document governing the activity in this sphere with the help of special, not general regulations. Most often, these special regulations do not quite correspond to general provisions of Civil Code of RF. According to "Europe Ltd" such discrepancies is true with regards to Item 5 of Regulations for Goods Distance Selling where it is fixed that alcoholic drinks are not allowed for distance selling, goods free distribution of which is not allowed

or restricted by RF Legislation.

Item 20 also caused disagreement of distance selling applicants. This Item stipulates that an agreement is considered to be concluded from the moment of issuance of cash voucher or cash memo by the seller to the buyer, or any other document which confirms payment for the goods, or from the moment the seller receives the buyer's intent to buy the goods. In case of bank transfer or credit sales (bank card payment excluded) the seller shall confirm goods hand over by means of waybill or acceptance certificate draw up.

"Europe Ltd" filed an application to Supreme Court of RF for cancellation of Item 5 of Regulations as to alcoholic drinks distance selling restraint;

Paragraph 1, Item 20 of the Regulations as to part which stipulates that an agreement is considered to be signed from the moment the seller receives intent notification from the buyer to buy the goods.

Supreme Court of RF confirmed the correspondence of provisions under dispute to the legislation and rejected the application having explained the following.

Distance selling of alcoholic drinks and those goods free distribution of which is not allowed or restricted by RF Legislation, is prohibited by Item 5 of the Regulations.

In case of alcoholic drinks' distance selling, these goods can be delivered to the buyer by post (Item 30) not only by the seller but also by the third parties (Item 22). In case the buyer is absent the goods can be given to any other person submitting the receipt or any other document as the confirmation of an agreement signing or goods delivery confirmation (Item 26). In this case there is no possibility to check whether the buyer who ordered alcoholic drinks by distance selling has reached lawful age. Therefore, alcoholic drinks' distance selling appears to be legally valid as it is aimed at compliance with the requirements of the law.

Supreme Court of RF also legitimized the first Paragraph, Item 20 of the Regulations in which it is written that an agreement is considered concluded from the moment of issuance by the seller to the buyer of cash voucher or cash memo or any other payment proof document, or from the moment the seller receives the buyer notification about his intention to purchase the goods.

According to Item 1, Article 425 of the Civil Code of RF an agreement comes into force and becomes binding to both parties from the moment of its signing.

According to Article 493 of the Civil Code of RF, retail sales agreement is considered to be duly concluded from the moment the seller provides the buyer with cash voucher or cash memo, or any other document being the confirmation of payment for the goods unless otherwise stipulated by the law or retail sales agreement including the terms of printed forms and other standard formats with which the seller is associated (Article 428).

According to the Plenum, the proposal to conclude an agreement in a manner set forth by Article 26.1 of Civil Code of RF (i. e. distance selling), addressed to a general public, is the public offer, and the data set forth in Item 2, Article 26.1 of RF Legislation dd. February 7th, 1992 № 2300-1, are the significant conditions of an agreement of such type (Article 432 of the Civil Code of RF).

In accordance with express statement of RF Law dd. February 7th, 1992 № 2300-1 (Item 2, Article 26.1) prior to contract conclusion for alcoholic drinks distance selling the consumer shall receive the information on basic application properties of the goods, the seller's address (location), place of goods' manufacture, the seller's (manufacture) trade name, price and terms for goods purchase, proposal for an agreement conclusion validity. Article 8 of the Regulations contains the same provision.

It is provisioned by the Regulations that the seller provides the buyer with his intention to purchase the goods. Type of service, execution time and price, buyer's obligations shall be pointed out in the letter of intent (Item 14). From the moment the seller receives the corresponding letter of intent, the obligations arise to the buyer for the goods delivery, and also other obligations connected with the goods delivery (Item 18).

In view of the above, the instructions set forth in Paragraph 1, Item 20 of the Regulations regarding contract entry into the force from the moment the seller receives the notification from the buyer about his intension to purchase the goods, were found legal by the first-instance court.

Consumer right violation

Apart from the above, we would like to discuss quite considerable rate of cases being the proof that the violations done by distance selling operators are of wide-scale character. The point is that within the frames of the goods' sale distance selling companies stipulate such conditions which restrict the buyer in his rights enforcement with regards to the goods return.

For example, as per one case distance selling company denied buyer's request for the goods return (broadcast adapter) giving as a reason that in accordance with promotional information and Regulations for Goods Distance Selling this adapter can be qualified as specific goods and shall not be returned and exchanged in accordance Paragraph 4, Item 5 of the Regulations for Goods Distance Selling. This Item states that the buyer is not entitled to reject the goods of a proper quality and having specific properties in case the designated item can be used by the buyer exclusively. The seller was penalized by F-RNP for consumer right restriction. And this became the judicial matter.

Having considered the case in three authorities, the court found that the distance selling company provided no evidences that saleable goods differ essentially from others having properties which enable to identify the goods, making it unique and exclusive; that the saleable goods are designated for a particular buyer and it is of no interest to other buyers. So, F-RNP instruction was the following:

- To point out in the agreements, orders and other documents being the confirmation of a purchase, properties of the goods which can be considered specific goods designated for a particular buyer during the selection;

- To stop using broad interpretation of a notion "specific product features" to those goods which do not have such features, namely mass-, batch produced, also produced by other means, which can be used by other consumers are considered to be legally valid[1].

In other case, the seller inserted the provision that 10% off the car price shall be paid in case of its return. The court underlined, that such terms diminish the consumer stature and do not correspond to the legislation in force requirements. According to the judges, in case the buyer refuses to perform the agreement terms he shall compensate only actual costs suffered by the seller, and not percentage off the goods value which depends on the amount to be paid for the goods .

Almost similar cases happened in other regions and in all cases adjudicators showed unified position that distance selling of the goods presupposes that the only expenses of the buyer in case of his refusal to accept the goods shall be the expenses of the seller for the goods return; consumer rights for the goods refusal shall not depend on his obligations fulfillment to reimburse for the expenses suffered by the seller under the agreement.[3]

Tax controversies, catalogues of goods

Legal views formulated by arbitration courts regarding tax controversies involving distance selling companies are also interesting as the debates regarding their background are typical for distance selling companies.

Distance selling covers huge segment called catalogue sales whereby the goods are offered by means of catalogues distribution. That is why the biggest share of expenses of a company focusing on catalogue sales accrued for catalogues' publication and distribution. These activities drew close attention of tax authorities which considered catalogues' distribution to be the sale of the goods resulting in VAT and income tax. Or expenses for catalogues' publishing and distribution shall be treated as advertizing expenses and shall be considered at tax base assessment within the limits of 1% off the revenue.

But a couple of arbitration proceedings involving big players of distance selling allow us to talk about judge-made steady and unified legal views with regards to tax qualification of catalogues distribution[4].

The courts came to the conclusion that the catalogues distributed by distance selling companies contain name of the goods, its colorful graphic presentation and brief description; main application properties (color layouts, sizes scale, material); complete trade name of a company, its postal and location address; phone numbers to receive additional information; price for the goods; terns of purchase, payment and delivery (a couple of prepared order-forms (bill of acceptance) are included); catalogue validity period; all of the above completely correspond to the requirements of Items 8, 12. 17 of Regulations for Goods Distance Selling. So, in accordance with Article 497 of Civil Code of RF they can be considered as an offer.

Under the circumstances, such catalogues as "OTTO", "BON PRIX", "WITT" distributed in the community are not the advertizing, they are an offer (adhesion contract text) and community expenses to pay to a third party for catalogues distribution among general public, both by mail or as an enclosure to printed media, are the expenses for agreements' distribution relating to other costs for production and sales according to Sub-item 6, Item 1, Article 253 of Tax Code of the Russian Federation and Sub-item 49, Item 1, Article 264 of Tax Code of the Russian Federation. Limits for such expenses are not set by income tax database.

As the catalogues themselves are of no consumption value, they cannot be treated as the goods in the meaning of Item 3, Article 38 of Tax Code of the Russian Federation. As they mediate the bargain and are connected with the goods sale, the catalogues' distribution is not subject to VAT; but VAT paid at their import to RF shall be deducted in accordance with the provisions of Articles 171 and 172 of Tax Code of the Russian Federation.

Tax controversies, presents but not for free

Legal views as for presents distribution is also very important. Presents' distribution is one of the most popular marketing pitches.

As per one case of the disputes with tax authorities, the court found free sale to be gifts giving to the buyers in case they placed order for a certain amount, and VAT submission for the deduction. According to the case circumstances, the court came to conclusion that the value of the presents given by a company to a buyer in case he orders goods at a given price is included into the price of the ordered goods. And the buyer actually pays for two items, and the contract is signed for the purchase of the only one item. And the present can be received only if the contract is signed. The courts rightfully considered that in this case presents are not given for free, VAT is charged apart from the price of the main item (because VAT is already included into the price of the goods). And in accordance with Sub-item 1, Item 1, Article 253; Sub-item 49, Item 1, Article 264 of Tax Code of the Russian Federation the presents value is subject to accounting within

1. Decree of FAS of West Siberian District dated. 30.10.2012 regarding case № A70-763/2012.
2. Decree of FAS of Moscow District dated. 13.10.2010 № KA-A40/11940-10 regarding case № A40-177179/09-139-1258.
3. Decree of FAS of Ural District dated. 17.05.2010 № F09-3608/10-C1 regarding case № A47-11060/2009; Decree of FAS of North Caucasus District dd. 30.03.2012 regarding case № A63-2066/2011.
4. Decree of FAS of Moscow District dd. 19.07.2011 № K-A40/7294-11; dd. 17.09.2010 № KA-A40/10505-10 regarding case № A40-167161/09-76-1199; dd. 11.07.2011 № KA-A40/6881-11; dd. 08.12.2010 № KA-A40/15275-10.

the expenses for goods sale[5].

The abovementioned expenses are economically feasible and justified as they contribute to sales and profit increase.

Such point of view was confirmed by two courts in all three authorities and it can be used as the trigger for reasoning in disputes with tax authorities.

5. Decree of FAS of Moscow District dd. 19.07.2011 г. № К-А40/7294-11.

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