

ACTUAL PROBLEMS OF PRACTICE AND THEORY OF MODERN INTERNATIONAL TAXATION

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TAX CLAUSE IN INTERNATIONAL CONTRACTS: COMPOSITION OF FEE STRUCTURE

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Tax Clause in International Contracts: Composition of Fee Structure

Whenever two international contractual parties decide to conclude an international business contract, the deal brings forward numerous issues on conflicting legal regimes, including tax.

Tax Clause in International Contracts: Composition of Fee Structure

Two questions arise at once:

1. Is there a necessity to prescribe a tax provision in an International business contract?

2. How to form the tax provision:

2.1. contract fee + tax amount?

2.2. contract fee without tax amount + any clause regulating tax issues?

Tax Clause in International Contracts: Composition of Fee Structure

The structure of the deal needs to be understood clearly and the contract needs to be drafted in a way to express the intent of the parties.

Tax Clause in International Contracts: Composition of Fee Structure

1. Is the deal intended to be taxable or non-taxable for the participants?
2. There may be different goals in different jurisdictions.
3. In certain jurisdictions some unique structures are required in order to ensure tax free treatment.

Tax Clause in International Contracts: Composition of Fee Structure

However, in local practice the contract parties are free to prescribe or not to prescribe a tax clause both in local and international business contracts.

In the event there is no tax clause, further problems are caused: should the parties consider if the contract price includes the withholding tax that the beneficiary side will pay at source?



Tax Clause in International Contracts: Composition of Fee Structure

It is important to make sure that the contract parties understand all the risks presented by that international deal they are coming to sign. However, an international contract will need to be drafted to take into account requirements of local tax systems.

Tax Clause in International Contracts: Composition of Fee Structure

In local practice, in the international business contracts the following general structure of fee is frequently used:

contract fee to be paid to contracting party + a provision prescribing that the tax agent should take care of all taxes at source.



Tax clause in International contracts: Composition of fee structure

What is the Best International Practice?

Can the issue be solved internationally at least enforcing (by the measures of international tax treaties, in the case of their application) necessarily prescribe tax-related provisions in contracts?

Thank You for Attention !



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