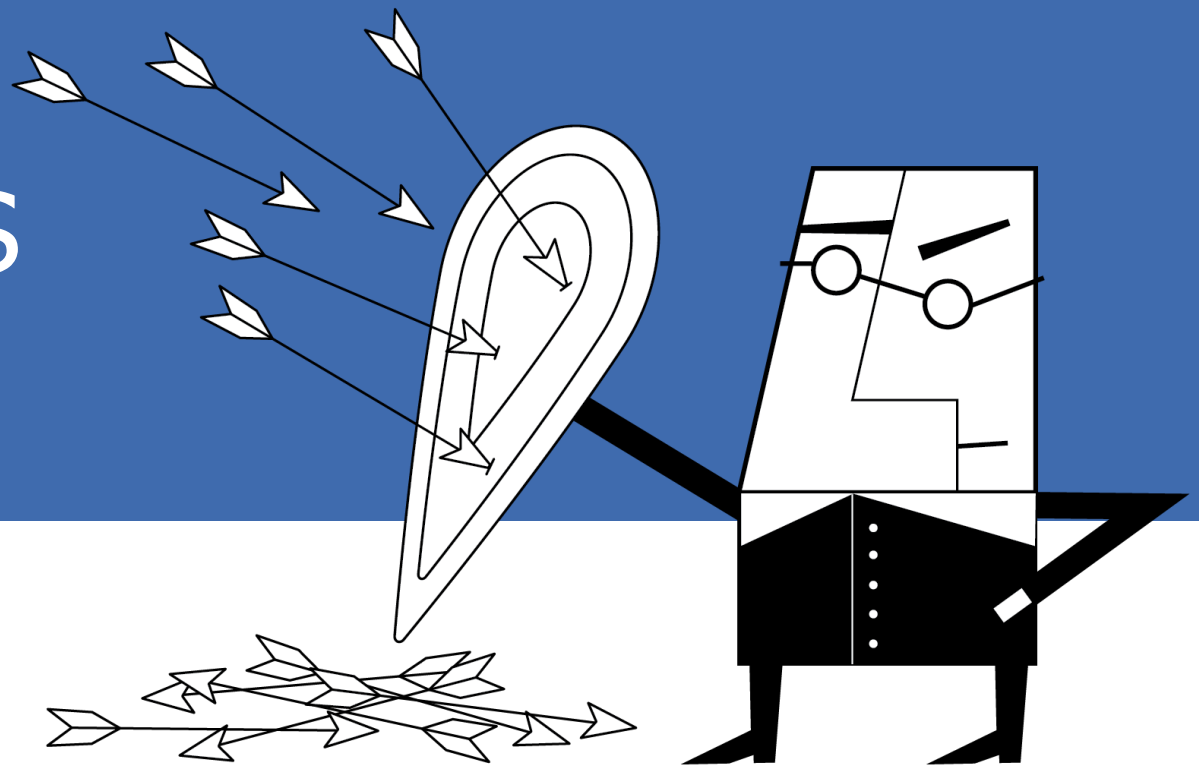
pepeliaev group

WE WILL SAFEGUARD YOU AGAINST TAX RISKS AND HELP TO FIND RESERVES



About the practice

Pepeliaev Group is number one for tax law in all international and domestic legal ratings, including Chambers and Partners, The Legal 500, Best Lawyers, International Tax Review, IFLR1000, and PRAVO 300.

More than 50 lawyers of the firm specialise in tax law. Of these, 12 are partners and senior partners.

The average professional experience of the tax lawyers at Pepeliaev Group is 15 years, with junior associates having more than 4 years.

61% of the total number of our lawyers are graduates from the best national universities and colleges, including Moscow State University, Moscow State Institute of International Relations (known by the Russian acronym MGIMO), Kutafin Moscow State Law University, Moscow University of Finance and Law, Higher School of Economics, and St Petersburg State University.

@PG_TAX

Telegram channel about taxes and tax disputes for business

@SibTaxForum

A Siberian Telegram channel dedicated to tax disputes, tax benefits, as well as tax abuse and how to avoid it

About the practice

The aggregate experience of all tax lawyers in the company is 955 years.

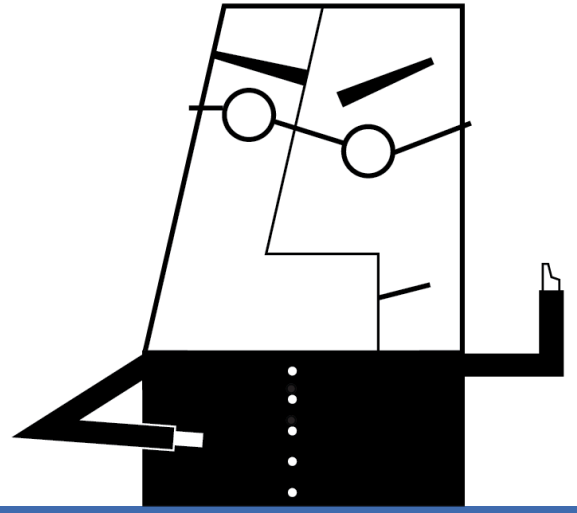
12 of our lawyers hold postgraduate degrees and 13 lawyers teach at universities.

Pepeliaev Group represents Taxand in Russia. Taxand is a global network uniting leading tax advisers around the world.

12 successful tax cases in the Russian Constitutional Court in favour of our clients, with 12 more cases in which our lawyers acted as experts (further to an invitation of the Constitutional Court). More than 1,000 cases in other courts.

"THE TEAM IS PRAISED FOR ITS LEVEL OF PREPARATION AND CAPABILITIES, WITH ONE IMPRESSED CLIENT NOTING THE ''MULTIFACETED KNOWLEDGE OF LAWYERS IN ABSOLUTELY ALL AREAS OF TAXATION.''"

CHAMBERS EUROPE



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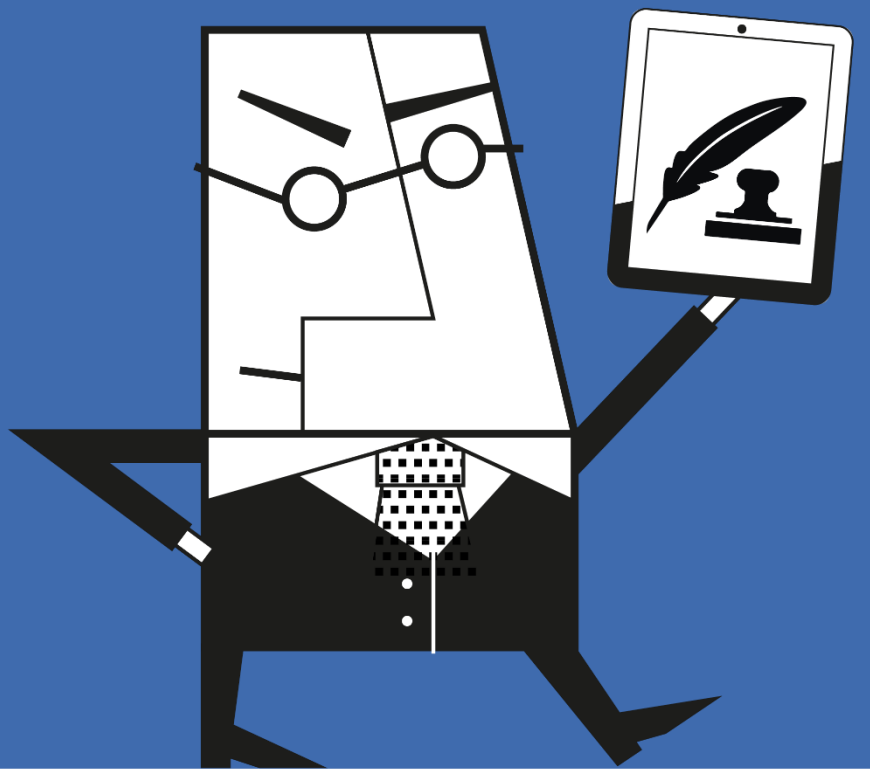
TAX ADVICE



CFCs and Deoffshorisation laws

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Relocated a foreign company from the Netherlands to the Russian free economic zone (in Russian, abbreviated to 'SEZ')

Pepeliaev Group's lawyers advised a major Russian agribusiness holding on the relocation of its holding company from the Netherlands to a special economic zone which was established on Oktyabrsky island in Kaliningrad Region. This project is unique because such relocations of foreign companies are not performed on a large scale and the entire concept of redomiciliation is unusual and new for Russian practice and legislation.

Advised on deoffshorisation

Our experts advised a leading global exporter of natural gas on legislation regarding controlled foreign companies (CFCs). Among other things, they estimated profits of forty-one CFCs and assessed whether the CFCs were entitled to be exempted from taxation based on their financial statements.

Determined the structure of a CFC and advised on related tax issues

Pepeliaev Group's lawyers conducted due diligence of the structure of a group of foreign companies with the aim of determining companies that are recognised as controlled foreign companies (CFCs). The tasks included advising the client on the procedure of how the tax base of foreign companies is assessed for the purposes of taxing their profits in Russia; whether there were grounds for some companies of the group to have their profits exempted from taxation in Russia by reason of their revenues being classified as passive revenues; and advising the client on the procedure and deadlines for disclosing information regarding CFCs. The structure comprised 20 CFCs in total.

Transfer pricing

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Advised on transfer pricing issues

Our tax practice's lawyers devised approaches to the classification, as controlled transactions for transfer pricing purposes, of non-interest- and interest-bearing loan contracts concluded with Russian and foreign companies by a foreign company, which voluntarily recognised itself to be a Russian tax resident. Our tasks also included assessing the potential tax risks and the ways to mitigate them. The project was complicated owing to ambiguous legal regulation and the absence of case law or clarifications on the matter.

Adapted a corporate transfer pricing policy

Our experts implemented a large-scale project for a Russian subsidiary of a large multinational group engaged in heavy engineering, which involved the adaptation of a corporate transfer pricing policy in line with the requirements of Russian tax legislation. The unique feature of the project was that there was an extremely extensive list of goods with respect to which transfer prices were required to be substantiated, and this included over 2,000 items. On top, an account should have been taken of different market niches for different groups of goods from the list.

Advised a major oil and gas company

When drawing up supporting documentation on transfer pricing, Pepeliaev Group’s lawyers devised and implemented methods to assess the comparability of companies taking into account a comparison of functional as well as of financial and analytical parameters. An analysis of financial statements of the companies that are being compared based on functional parameters allows account to be taken not only of functional (economic) indicators, but also the financial figures. It helps to make an in-depth study of whether the companies are comparable and to calculate profit margins based on information about companies being compared with the company in terms not only of its field, scale and functionality but also the process of performing its activity.

Taxation of fuel and energy companies

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Provided support to the client with regard to tax and customs issues under a large-scale investment project

Our lawyers drafted tax and customs provisions of an investment contract concluded between the investor, a major Indian energy company, and the federal and regional authorities to develop a large coal mine in Kamchatka. The project sets a precedent in terms of the amount the investor invests (approx. $ 600 million) and of its complex nature, when the Russian party also invests in the development of infrastructure.

Provided legal support during litigation over the procedure for determining the quantity of raw oil for the purpose of assessing excise duty

Pepeliaev Group's lawyers provided support to the client within the scope of a dispute with the tax authority, which had applied an order of the Ministry of Energy that had not been in effect during the period in dispute. Unfortunately, the courts sided with the tax authority, thereby violating multiple provisions and rules of the Russian legal system. Specifically, the rule of the Tax Code and the version of the Ministry of Energy's order which were in effect during the period in dispute were not applied. Moreover, the tax authority applied the new version of the Ministry of Energy's order which was not in force during that period; in other words, it applied the regulation retroactively. This case has industry-wide relevance as the issue of determining the amount of oil raw materials which goes to be refined is a common hurdle for all companies of the industry.

Assessed tax risks during the restructuring of a holding company

To enhance its management efficiency a large Russian holding restructured its IT division. Given that the state actively supports this field, the company enjoyed tax benefits. Pepeliaev Group's lawyers were assigned the task of assessing the tax risks of the holding company that had been restructured. We analysed the companies' operations before and after the restructuring and, as a result of our work, not only assessed the risk but also prepared recommendations on which documents would evidence the genuine business purpose of the restructuring. Many companies are facing similar issues today. The state support of the IT sphere on such a scale comes with increased control. We assist good-faith market players with formalising their documents properly so as to mitigate claims from controlling bodies.

Applying legislation on profit tax, VAT, corporate property tax and other taxes

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Advised a client on how a tax benefit should be applied

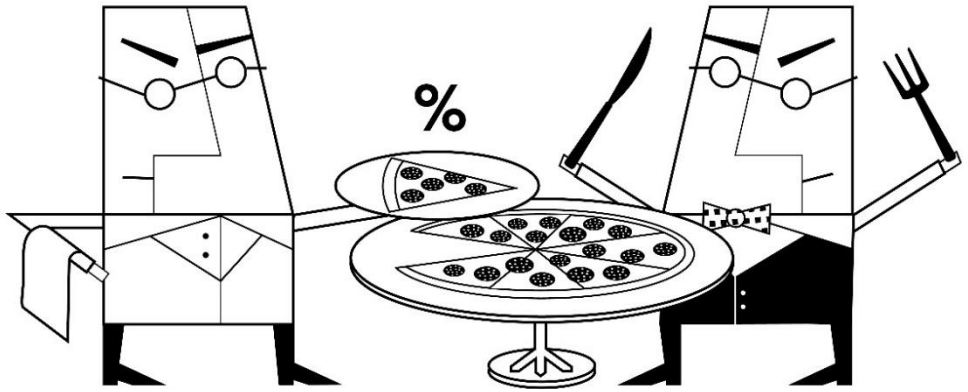
Pepeliaev Group’s lawyers provided a legal assessment of whether the taxpayer, an IT company that is a participant in the Skolkovo project, complies with the requirements for VAT benefits. Non-compliance with the conditions would have resulted in a significant increase of the financial burden, with the additional assessments possibly reaching RUB 200 million and closing the business. The project is significant as it deals with how a specific party supported by state regulation applies benefits.

Analysed tax risks for a major pharmaceutical company

Our lawyers analysed the risks related to VAT and profit tax based on the recent court practice for a client that distributes medicines included in the list of vital and essential medicines and receives bonuses and/or payment for services from the supplier (manufacturer). Pepeliaev Group's experts also devised alternative options for how the client’s tasks can be legally documented based on the specific practices of the industry. What makes the project unique is the fact that the state participated in establishing maximum prices (mark-ups) on pharmaceuticals from the list of vital and essential medicines. In this situation it remains unclear what the boundaries are for permissible flows of money between market participants. There is no practice on this matter in the pharmaceutical industry.

Devised a position on how a reduced tax rate should be applied

Our specialists advised a major international pharmaceutical company on how the VAT rate of 10% (rather than 20%) should be applied when medicines were sold which had not been registered in Russia but been prescribed to maintain a patient’s vital functions. If a reduced VAT rate is applied, companies will, owing to the savings, be able to purchase and import larger quantities of vital medications.



International taxation

Analysed the tax consequences of the remodelling of a group's refinancing

This remodelling involved the centre of financing being moved to another jurisdiction, eurobonds being issued and owners of companies being changed inside the group. Our lawyers explored the tax consequences that could have been triggered by the changes and provided the client with recommendations on how to mitigate the tax risks. The internal restructuring of the group and its financing included multiple transactions each of which (and all of them in aggregate) should be reviewed. This type of restructuring attracts the attention of tax authorities. Yet, no case law has been formed to this effect and the applicable legal rules may be interpreted in an ambiguous manner.

Provided support with regard to taxes during restructuring of the group

Pepeliaev Group's lawyers advised a major mining company with regard to the tax consequences of a group restructuring. It dealt with Cypriot companies being withdrawn from the ownership chain, taking into account the amendments to the double taxation treaties and the principal purpose test, including how it was interpreted in English case law. The importance of the project lied in the risk of significant additional tax assessments since there is no unambiguous approach to interpreting the double taxation treaty between Cyprus and the UK, including in different jurisdictions. For this reason, we had to engage English tax lawyers and coordinate our final conclusions with them.

Provided support with regard to tax matters which arise when a representative office of a foreign pharmaceutical company ceases its operations in Russia

The substance of the project involved the tax authority pointing out that the client should have paid profit tax in the amount of RUB 21.6 million, noting that the company's representative office carried out preparatory and supporting activities for the benefit of third parties. Our lawyers developed a justified methodology for dividing the representative office's expenses into expenses borne in the interests of the head company and those assumed in the interests of third parties. Only a limited number of ways to approach this issue can be found in court practice, such as division based on which person holds a registration certificate for the medicine. Pepeliaev Group's lawyers explored additional criteria: the holder of rights to the trademark; the person able to commercialise the medicine in Russia at present or in future; and the manufacturer. Owing to the legal position that was laid down in front of the tax inspectorate and our calculations, the amount of profit tax due was reduced to RUB 5.2 million and the representative office was deregistered with the tax authorities.

Taxation in the context of investment activity

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Provided legal support to a client in a dispute over additional profit tax assessments within the scope of a regional investment project

Pepeliaev Group's lawyers successfully challenged a tax authority's decision by which additional profit tax in an amount exceeding RUB 130 million was assessed to the client within the scope of the regional investment project (in Russian, abbreviated to 'RIP'). Our client is a party to a RIP within the framework of which an ore mining and processing plant was built. Under the Russian Tax Code, a company has the right to apply a 0% profit tax rate provided that at least 90% of all income taken into account when the profit tax base is determined is generated as income from the sale of goods produced as a result of the implementation of a RIP. As a result of fluctuations of foreign currency exchange rates the company generated a significant foreign exchange gain. In the absence of direct legislative regulation, the company booked this income as income from the implementation of the RIP and applied a 0% tax rate. Based on the results of the audit, the tax authority considered that the foreign gain that had been obtained should have been booked by the company as income that did not relate to the sale of goods and, therefore, the company had unlawfully applied the benefit. With the support of our specialists, the client successfully challenged the tax authority's decision under a court procedure. This project is unique because there had been no disputes considered in Russia concerning tax benefits for participants of a RIP in a situation when the requirement about the ratio of income received from implementing the RIP and other income was not met.

That the dispute was resolved in favour of the investor was significant for forming a positive investment climate in Russia.

Advised a client on setting up a port-type SEZ

Pepeliaev Group's lawyers advised a client on tax and customs matters relating to setting up a port-type special economic zone ('SEZ') for the implementation of a strategic project aimed at servicing and repairing civil aircraft.

Our specialists drafted several legal opinions concerning the various tax aspects of the project, and devised draft amendments to legislation in order to implement tax preferences for the project to be implemented.

Tax audits

Conducted an audit of a branch of a foreign company that voluntarily recognised itself as a Russian tax resident

Pepeliaev Group's tax lawyers conducted an integrated audit of a branch of a foreign company which recognised itself as a Russian tax resident under article 246.2(8) of the Russian Tax Code for the purpose of establishing whether the foreign company's profit tax obligations had been determined correctly. Our experts assessed the potential tax risks and the ways to mitigate them.

A unique feature of the project, among others, concerned the field in which the company under audit carried out its operations: while it carried out its business operations outside Russia, it acted as a Russian tax resident within Russia. As yet, there is no well-established practice regarding most tax aspects of the activity of such companies.

The project is also significant owing to the scope of the jurisdictions involved, because the company earned income from its activities in 10 different countries. Our lawyers analysed the branch's tax accounts, and checked the assessments and profit tax liabilities, including tax on income earned outside Russia. They also checked whether the client had applied the correct approach to offsetting in Russia taxes it paid in foreign jurisdictions.

The project was also unique owing to the wide coverage of the foreign company's transactions we had to review, including those involving, among other things, the sale and purchase of various securities; intra-group loans; and the receipt of dividends.

Conducted an integrated financial audit

Pepeliaev Group's lawyers audited the financial statements and tax reports of a major Russian management company. Based on the results of the audit, we provided recommendations on how to mitigate tax risks and realise tax potential with regard to issues associated with the specifics of calculating the tax base in transactions with securities, fixed-term transaction financial instruments, repurchase transactions ('repos') (including transactions with a foreign element), public placings, management services, capital investments, etc. Tax control measures conducted subsequently with regard to this taxpayer confirmed that we had successfully implemented this project.

Tax monitoring

Conducted due diligence of a large diversified company (which is active in real estate, construction, leasing, trade, the media, events, storage, etc.) in terms of its readiness to enter into tax monitoring

Our experts in risk management and internal control systems conducted due diligence of a large diversified company in terms of its readiness to enter into tax monitoring with regard to its system of risk management and internal control. As part of the project, our experts scrutinised the company's system of risk management and internal control (RMICS) in the context of five criteria: the control environment, risk management system, control procedures, information systems and monitoring of control instruments. As a result of our efforts, we drafted the following documents:

- a report based on the results of our due diligence, which included the current level of the evaluation of the RMICS, recommendations on how the RMICS should be set which were necessary and sufficient for the company to enter into tax monitoring and also long-term recommendations relating to future improvements in the RMICS;
- a roadmap containing the list of short-term and long-term measures necessary to enter into tax monitoring and to improve the RMICS in future (for tax-related and other business purposes);
- a statement of work for the company to become prepared to enter into tax monitoring.

Provided legal support during a major IT company's entry into the tax monitoring

Our experts provided support to a major Russian IT company in a project that involved setting up a risk management and internal control system (RMICS) for the client to be able to enter into tax monitoring. The project was unique in that our lawyers adjusted the RMICS for the client to enter into tax monitoring. Pepeliaev Group's experts performed an in-depth review of the client's internal documents and business processes. Following the review, we proposed measures to improve the RMICS, formalised its structure, and drafted Regulations on the RMICS, registers of tax risks and controlling procedures, as well as documentation relating to special forms the Russian Federal Tax Service requires for a company to enter into tax monitoring. The company has successfully entered into tax monitoring starting from 2022 having secured high scores for its RMICS.

Taxation in the area of pharmaceuticals and healthcare

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Had a decision of the tax inspectorate revoked

Pepeliaev Group's lawyers provided support to a client, a large pharmaceutical company, at the pre-trial stage following its tax audit. Under the project, the tax inspectorate reassessed upwards VAT on expenses of organising clinical trials in Russia which were re-invoiced by the client as an agent and compensated by the principal, a foreign parent company. Owing to the efforts of our experts, the amounts of claims were reduced at the pre-trial stage. However, the client disagreed with the expenses being classified as fees for the service of organising clinical trials and asked us to challenge this classification. Ultimately, the inspectorate's decision was held to be invalid to the extent of the challenge we made, while the remaining amounts were successfully challenged by Pepeliaev Group's lawyers at the state commercial court. The project is significant as it reveals that the tax authorities use an ambiguous approach to assessing the nature of the activities of Russian companies that organise clinical trials in Russia under agency agreements for the benefit of foreign developers of medicines.

Advised on tax and regulatory matters

Our lawyers advised representatives of a major pharmaceutical company on how to interact with healthcare professionals. The aim of the project was to prevent the tax risks that are typical for the pharmaceutical industry by drafting and improving the client's internal documents setting out the procedures for cooperating with healthcare professionals. Our lawyers were required to navigate the legislation regulating the circulation of medicines and grasp the regulatory aspects of cooperation with the healthcare community.

This project is significant in that the work was aimed at preventing risks rather than at protecting the client when a risk had already materialised.

Taxation of intra-group expenses

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Provided support for pre-audit actions that involved booking the client's intra-group expenses

Owing to the efforts of our lawyers, the project resulted in the amounts of additional assessments being more than halved from RUB 1 billion. The project is significant as the possibility of the look-through approach was justified, which is not typical of the practice of the tax authorities.

Advised on tax and currency regulation in connection with a restructuring of intra-group debt

Under the project, our lawyers researched issues related to the different classification of payments for corporate, tax and currency control purposes, taking into consideration the OECD Commentary on applicable double taxation treaties. Based on the results of the research, they prepared commentaries and drafted transaction documents. The project involved handling a whole range of issues related to the different and even contradictory classification of payments for corporate, tax and currency control purposes. An error in assessing the risks could have caused either increased taxation of transactions or heavy fines for violating currency control legislation.

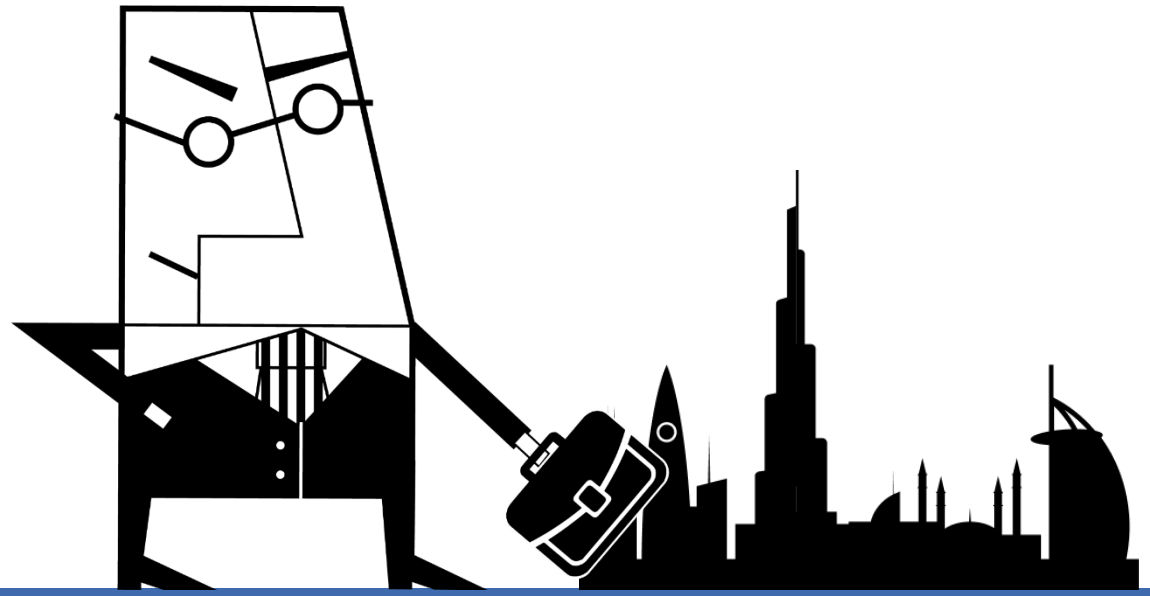
Advised a world-renowned entertainment company

Our lawyers advised the client on compliance with tax legislation when the allocation of expenses was documented within a group of companies with respect to services for ensuring the holding of spectacular productions and entertainment events in Russia. Within the framework of the project we considered the options for the terms and conditions of a corporate agreement for services supplied to a Russian company, and we provided detailed recommendations with regard to documenting certificates of services supplied if the services were supplied by employees from several companies of the group, including companies located abroad. The client followed the recommendations provided by the Pepeliaev Group's experts to the fullest extent and, as a result, the tax authority did not assert any claims in that respect based on the results of the field tax audit.

Middle East Desk

Key Services

- Tax structuring in the GCC states.
- Tax support.
- Tax consultancy in the UAE.
- Private Wealth Tax Services in UAE.
- Tax Compliance.
- Legal project management.



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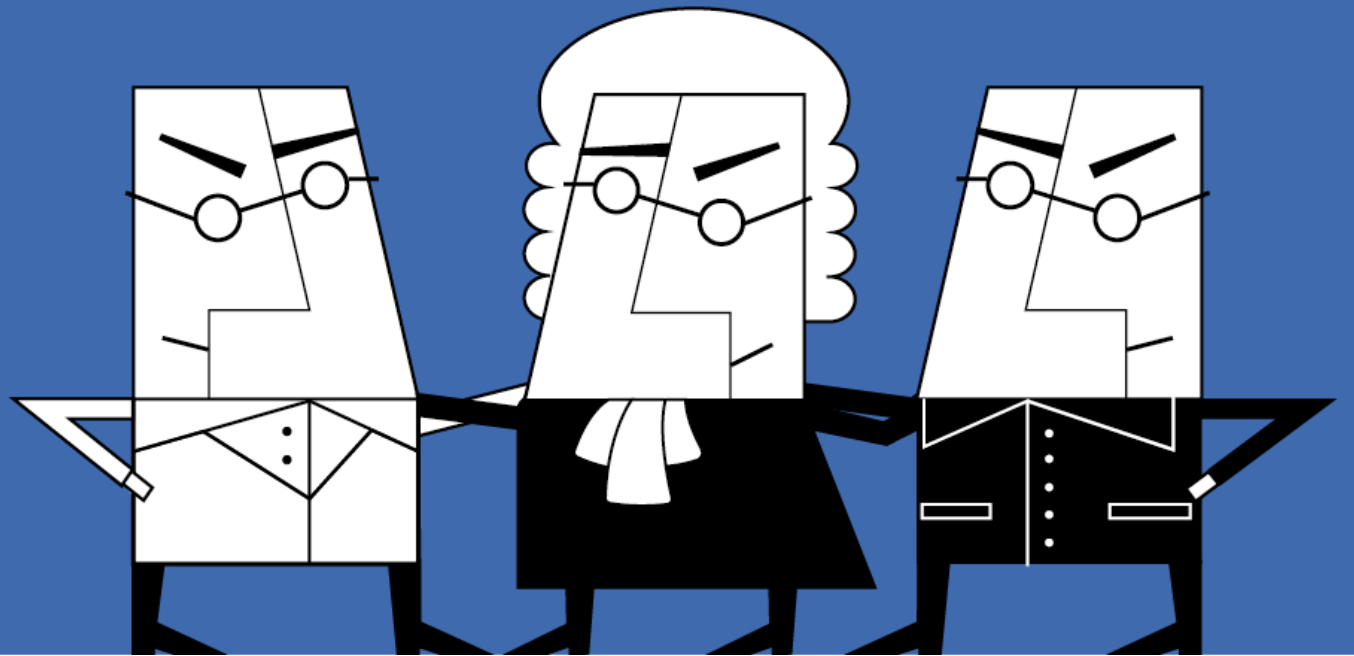
RESOLVING TAX DISPUTES



Providing support during field and desk tax audits as well as audits with respect to compliance with the transfer pricing rules

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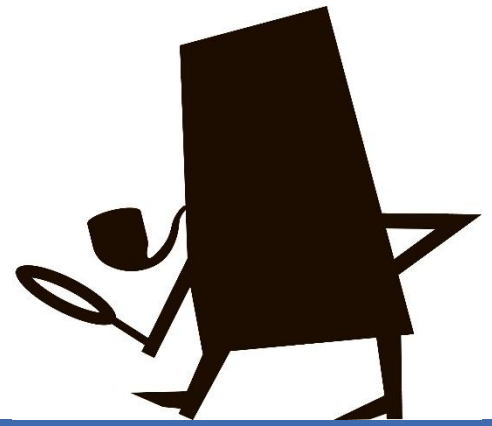
Provided integrated support during a field tax audit

Pepeliaev Group's lawyers provided legal support to the client at all stages of a field tax audit. During the field tax audit, it was evident that the inspectorate's potential claims mainly concerned, among other things: the right to deduct royalties and interest on loans paid to a foreign related party; the right to apply the double taxation treaty when payments were made to the foreign company in connection with its entitlement to the income being contested; and the recognition of the taxpayer as a related agent of a foreign company of the group in connection with it selling the goods in Russia, which gave rise to a permanent establishment. The total amount of potential additional tax assessments could have been over RUB 720 million, disregarding any default interest and fines or possible additional assessments if the existence of a permanent establishment had been recognised. In addition, case law that negative for the taxpayer had been established with regard to all issues in dispute. Owing to our lawyers' efforts the inspectorate agreed with the client's arguments at the stage of the audit and the company did not have to go to court to challenge the upward tax assessments.

Provided support that involved challenging the results of a field tax audit at the pre-trial stage

Pepeliaev Group's team provided legal support to the client at the pre-trial stage, which involved challenging the results of the field tax audit. Under the project, we established a position in response to the tax authority's claims relating to the reorganisation of business in Russia, which involved the acquisition of a Russian group, a major confectionery maker, and the subsequent sale of the membership interest. The tax authority agreed with the taxpayer's objections and issued a decision refusing to impose liability.



Challenging the results of field and desk tax audits. Settling disputes in and out of court

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Successfully challenged the results of a field tax audit at the pre-trial stage

Pepeliaev Group’s lawyers provided legal support to the client with regard to the results of the field tax audit. Within the framework of the audit, the tax authority concluded that the company had unlawfully deducted, with a multiplying factor, excise duty that was assessed when straight-run gasoline was purchased with respect to the portion of the duty that, according to the auditor’s calculations, accounted for the use of the straight-run gasoline for the manufacturing of a number of the company’s products. The additionally assessed taxes amounted to RUB 4.5 billion.

Although there are few such disputes in the case law, Pepeliaev Group's team succeeded in challenging the additionally assessed taxes at the pre-trial stage of the dispute. The tax authority issued a decision refusing to impose tax liability on the client. No additional taxes, penalties or fines were charged to the client either.

Successfully challenged the results of a field tax audit under which loan financing was reclassified

Our tax practice's team provided support during a challenge, in and out of court, to the results of a field tax audit under which the tax authority refused to deduct the client’s expenses of about RUB 1.4 billion, including interest and exchange rate differences under loans granted by other companies of the group. The tax authority reclassified loan relationships as investment relationships which served as the ground for the above refusal. This matter is important for the client because its outcome could have been relevant for other periods and other contracts which would have had an immense negative effect in terms of taxation for the entire group.

Moreover, a negative outcome would have meant that tax authorities’ opportunities to reclassify transactions for tax purposes would have become significantly broader and, consequently, expenses aimed at attracting funds for capital investment would have increased considerably; this could also have led to investment plans being revised.

Challenging the results of field and desk tax audits. Settling disputes in and out of court

pepeliaev group

Successfully challenged a tax authority's conclusions regarding the place of management of a foreign company

Our lawyers challenged the conclusions made by the tax authority further to a field tax audit of our client. Based on the data it had gathered, the tax authority concluded that Cypriot companies of the group were managed from Russia, which triggered an additional assessment of VAT, default interest and a fine for a total amount of RUB 500 million. In the litigation, our lawyers managed to prove that there were no grounds for the conclusion concerning the place of management of the Cypriot companies. This has been the first and only case so far when a tax authority was challenging the place of management of a foreign company. Yet, this is the decisive indicator which not only determines the implications in relation to VAT but, even more importantly, the place of a foreign company's tax residence. No approaches to the indicators of management or methods for proving them have yet been devised in Russian practice. Therefore, the outcome of this dispute was extremely important for all global groups.

Successfully challenged a tax authority's claim with regard to tax arrears of over RUB 3 billion (excluding default interest and a fine)

Pepeliaev Group's lawyers defended the client's interests following a field tax audit as a result of which additional profit tax, VAT, personal income tax and insurance contributions in an amount of RUB 3.3 billion were additionally assessed for the company, along with the relevant default interest and a fine of 40%. With the support of our experts the company challenged the field tax audit report with regard to three items: the transportation of cargoes by road; warehouse handling services; and the insurance of cargo and delivery deadlines. Owing to its review of our objections, the tax authority fully agreed that the additionally assessed taxes were unjustified with regard to the items related to the warehouse handling and insurance of cargoes and delivery deadlines. As regards the transportation of cargoes by road, the tax authority agreed to perform a tax reconstruction under article 54.1 of the Russian Tax Code and considerably reduced the additionally assessed taxes.

Defence in disputes over whether a tax benefit is justified

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Successfully represented a large development company in court

Our lawyers defended a large Russian development company in court. Following the tax audit, the client was charged RUB 33 million of extra profit tax and VAT as well as default interest and fines. The amounts charged in addition were justified by conclusions made by the tax authority that the client had received an unjustified tax benefit owing to sales revenue being understated by creating schemes in connection with land plots being sold and premises being leased out. In the opinion of the tax authority, the client, which had been taxed under the general taxation regime, artificially passed on the income from its activities to related companies (or individual entrepreneurs) who apply special taxation regimes. This allowed the client to understate the taxes payable to the state budget. Despite the negative trends in the practice of state commercial courts relating to tax disputes as well as the largely negative practice of state commercial courts regarding the 'fragmentation of business', we managed to win in full the part of the dispute relating to the additionally charged taxes in connection with the sale of the land plots. We also managed to significantly decrease the amount of the additionally charged amounts in relation to the part of the dispute connected with premises being leased out.

Won a major and high-profile dispute over an unjustified tax benefit

Our tax lawyers succeeded in proving that the scheme imputed to the client was in fact concocted by the producer of products and/or its intermediaries.

Moreover, owing to the efforts of our experts the courts took into account the procedural violations by the tax authority and recognised these to be a separate ground for revoking the decision, which hardly ever happens these days. As a result, we managed to safeguard the interests of an international investor company.

Defence in disputes over whether a tax benefit is justified

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Analysed the advantages and risks of the regional investment project mechanism

Pepeliaev Group's lawyers provided support to a large Russian metallurgical holding within the framework of an investment project in a Russian region. A decision was made that the mechanism of regional investment projects (in Russian, abbreviated to 'RIP') should be used. To assess the advantages and risks associated with the application of tax benefits of a constituent entity of Russia, we conducted an in-depth research of legislative instruments. Based on the results of our efforts, we managed to identify a number of potential problems with applying legislation which might considerably undermine the level of tax support for investors. The customer was able to have a meaningful discussion with regional authorities of 'vulnerable spots' in supporting investments. Any investor requires such assistance. The voluminous commercial court practice demonstrates that ignoring the stage of proper assessment of regional legislation will most likely lead to subsequent disputes with a tax authority. A refusal to apply tax benefits often has a considerable effect on the profitability of a project.

"STELLAR PRACTICE WIDELY RECOGNISED FOR THE BREADTH AND DEPTH OF ITS PRACTICE. HOUSES A FORMIDABLE TAX LITIGATION PRACTICE WITH AN EXCEPTIONAL TRACK RECORD OF ACTING ON HIGH-PROFILE TAX DISPUTES, INCLUDING REPRESENTATION IN THE SUPREME COURT."

CHAMBERS EUROPE

Reimbursement of court costs

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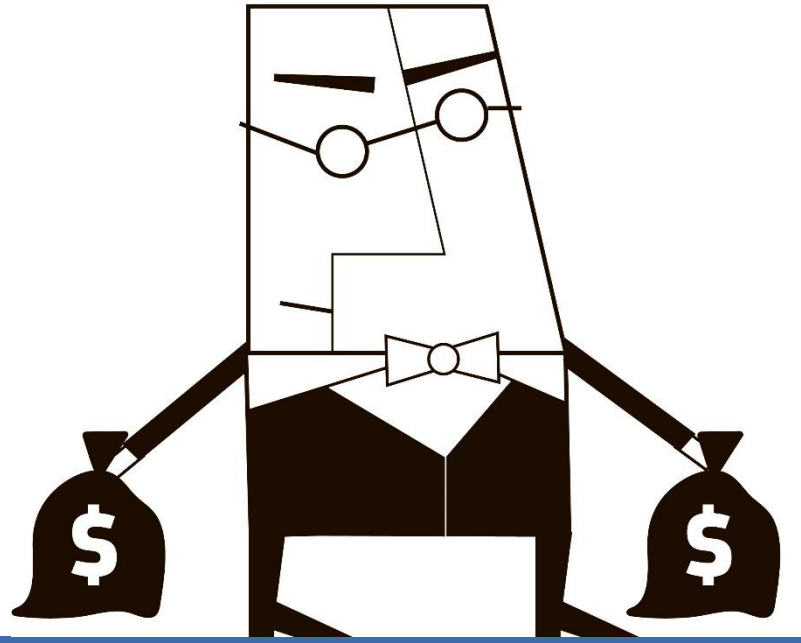
We had court costs reimbursed to the client

Pepeliaev Group's lawyers defended in court the right of companies to the full reimbursement of court costs incurred on obtaining a bank guarantee provided as a counter-security under a lawsuit. A tax inspectorate imposed liability on the company and additionally assessed tax arrears and default interest. To prevent the assessed amounts from being collected out of court, the taxpayer, as advised by the court, provided a counter-security in a form which the company had chosen at its own discretion, namely a bank guarantee. The bank's fee for issuing the guarantee amounted to RUB 3.7 million. Since the tax authority's decision was partially cancelled, the client applied to the court seeking to recover from the tax inspectorate the costs of obtaining the bank guarantee. Initially, the courts of all three levels dismissed the client's claims; however, owing to the efforts of our lawyers the courts' position has been changed. The Presidium of the Russian Supreme Commercial Court confirmed the company's right to recover the costs of obtaining the bank guarantee, cancelled the decisions of the lower courts and referred the case to be reconsidered by the court of first instance.

We had losses recovered from the tax inspectorate

Pepeliaev Group's lawyers managed to recover court costs of RUB 2.15 million from the Inter-District Inspectorate for Major Taxpayers of Moscow Region. The court decided that the high professional standard of a legal advisor should be taken into account when determining what constitutes a reasonable amount of court costs.



Disputes concerning refunds of overpaid taxes

pepeliaev group

Successfully challenged a tax authority's claims

Pepeliaev Group's lawyers provided legal support to the client, a large FMCG producer, in a case over the recovery of VAT which had been deducted in excess. During the audit, the tax inspectorate identified that a tax agent had assessed VAT in excess and had, acting as a taxpayer, deducted the overpaid amount. The VAT which was deducted in excess was being recovered from the company. The tax agent was disallowed an offset against the overpayment in connection with the expiry of the limitation period. Our tax practice's team devised a strategy which helped to have the claim set aside for the recovery of tax without the three-year limitation being applied to the overpaid amount which had been established for the offset and refund of the tax.

Had overpaid profit tax of RUB 150 million returned

Our experts successfully defended a large brewing company in a dispute concerning a refund of RUB 150 million of overpaid profit tax. The case concerned tax paid in excess outside the three-year period that is formally established by the law as the maximum period for claiming a tax refund.

The tax authority voluntarily returned most of the amount, and the rest was awarded by the court.

Asserted the client's right to a preferential tax rate

Pepeliaev Group's lawyers successfully defended the company in court in cases associated with the application of a reduced profit tax rate within the framework of projects involving production sharing agreements (PSA). Initially, the client had lost in court in two disputes with the tax authority and paid additionally assessed amounts to the state budget. When Pepeliaev Group's lawyers were engaged, they initiated a re-examination of these lawsuits owing to newly discovered circumstances in courts of three levels. They managed to secure a refund to the company of more than $5 million of overpaid tax and default interest, together with interest accrued on the overcharged amounts. These court cases are exceptional in Russia and the first in the Far East, since, regardless of a negative Resolution of the Presidium of the Russian Supreme Court, our lawyers managed to convince the judges to apply a reduced profit tax rate for companies that were participating in developing the continental shelf within the framework of the PSA.

Resolving disputes associated with applying value added tax

pepeliaev group

Successfully defended a client against the claims which arose in connection with the tax manoeuvre in IT sphere

Pepeliaev Group's lawyers devised a legal position for the client with regard to licence agreements (placing virtual games on various platforms) and to applying tax benefits and claiming VAT refunds for quarters III and IV of 2020. The matter is unique in that, in 2021, after amendments to legislation were made (a tax manoeuvre in IT sphere), tax authorities not only stopped offering more preferences to IT businesses but started making first attempts to file claims based on the benefits enshrined in the legislation.

In the case at hand, the tax authority was attempting to reclassify contracts in order to refuse VAT refunds for quarters III and IV of 2020. Pepeliaev Group's experts not only devised a legal position but also accompanied the client during interrogations and meetings with the representatives of the inspectorate. Having familiarised themselves with our arguments, officers of the tax authority proposed new discussions of the matter. This matter demonstrates both tax trends in the field of IT in general and changes following the tax manoeuvre.

Provided support in a tax dispute in courts of all levels, including in the Russian Supreme Court

The tax authority denied deductions for the taxpayer with regard to VAT which had been paid based on the supplier's VAT invoices, for a total amount of RUB 2 billion, including fines and default interest. The tax authority's claims related to the purchasing of a product that was involved in a "scheme". The scheme was as follows: the product was transferred to entities controlled by the supplier under loan agreements without VAT being calculated and paid. The supplier purchased the product from the entities it controlled and subsequently supplied it to the taxpayer including VAT in its invoices.

Pepeliaev Group's lawyers provided legal support throughout the dispute in courts of all levels, including in the Russian Supreme Court, and successfully challenged additionally assessed taxes in the state commercial court.

Resolving disputes associated with applying value added tax

pepeliaev group

Successfully settled a VAT dispute at the pre-trial stage

Our lawyers provided support in a case of one of the world's largest pharmaceutical companies in connection with VAT that had been accrued on the sale of souvenir products.

The tax authority decided that the company's non-payment of VAT when promotional products worth over RUB 100 per item were being sold was unlawful and therefore assessed additional tax. Further, the tax authority decided that the company had unlawfully claimed the deduction of VAT on promotional products worth less than RUB 100 per item and denied deduction. At the pre-trial stage, our experts managed to prove that the tax authority's claims were ungrounded in full with regard to items 2 and 3, and mostly ungrounded with regard to item 1.

As a result, the amount of the claims was reduced from RUB 130 million to RUB 3.8 million.

"CLIENTS HIGHLIGHT THE GROUP'S PRACTICAL APPROACH, WITH ONE ENTHUSING: "IT GIVES US RISK ESTIMATIONS AND TELLS US WHAT TO TAKE INTO ACCOUNT, TRYING TO BE AS FLEXIBLE AS POSSIBLE BUT ALSO BEING REASONABLE.""

CHAMBERS EUROPE, 2021

Defence in criminal cases over the non-payment of taxes

pepeliaev group

Defended executives of a trading company in a criminal case over corporate tax evasion committed on an extremely large scale

Pepeliaev Group's attorneys defended executives of a trading company who were accused of evading VAT by performing fictitious contracts with counterparties that demonstrated signs of conduit companies and were not engaged in any activity.

According to the investigation, VAT arrears exceeded RUB 120 million.

Thanks to our defence, the accused had sanctions imposed which did not involve imprisonment (they had only fines imposed of at least RUB 500,000).

Since the court imposed a penalty which did not involve imprisonment, the accused were released from such penalty in connection with an amnesty.

Defended an executive of a construction company in a criminal case over corporate tax evasion committed on an extremely large scale

Pepeliaev Group's attorneys defended an executive of a construction company who was accused of evading profit tax and VAT by performing fictitious contracts with counterparties which demonstrated signs of conduit companies and were not engaged in any activity.

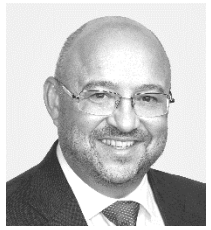
According to the investigation, tax arrears exceeded RUB 230 million.

The specific challenge for the defence was the fact that the accused had been on the wanted list for a long time and was described by the investigation as a person who had fled from justice.

Thanks to our defence, the accused received a suspended jail sentence.

Moreover, the court dismissed the investigation's claim that a penalty should be imposed in the form of disqualification from certain positions.

The team



Sergey Pepeliaev

Managing Partner,
PhD in Law

s.pepeliaev@pgplaw.ru

Sergey Pepeliaev has over 34 years' hands-on experience of dealing with corporate and personal taxation issues. He has resolved countless challenging situations involving investments and court proceedings.

As a practitioner, he has defended the rights and interests of companies before the Russian Constitutional Court, the Russian Supreme Court, and commercial courts in large-scale and significant court disputes regarding: the legality of additional taxes and fines being assessed; unlawful regulations of the Russian Government, ministries and state authorities being repealed; and unconstitutional provisions of laws being set aside. He has also advised on matters including the taxation of investments, day-to-day business operations, and much more.

A member of the Council for the Development of the Arbitration Process.

WHAT THEY SAY

Headed by Sergey Pepeliaev, the firm has, for over ten years, been acknowledged the leading Russian law firm by independent rating agencies and publications.

Various sources refer to Mr. Pepeliaev as “the father of Russian tax law”. The international directory Chambers Europe praised Mr Pepeliaev as “the leader setting development trends on the market and playing an active role in developing solutions for clients”.

The team

Ivan Khamenushko

Senior Partner,
PhD in Law

i.khamenushko@pgplaw.ru

Ivan specialises in financial law in the areas of taxation and foreign currency regulation.

He has more than 25 years of experience in his areas of expertise. He advises clients, provides legal support during audits, and participates in settling clients' disputes with state authorities both in and out of court.

WHAT THEY SAY

The Legal 500 mentions Ivan as 'a key figure in taxation'.

Rustem Ahmetshin

Senior Partner,
PhD in Law

r.ahmetshin@pgplaw.ru

For over 25 years Rustem has been providing tax advice and has represented taxpayers many times in the Russian Constitutional Court, Russian Supreme Commercial ('Arbitration') Court, Russian Supreme Court and state commercial courts.

His professional interests include international taxation and the application of legislation concerning controlled foreign companies (CFCs).

WHAT THEY SAY

Clients describe Rustem Ahmetshin as "a well-known local expert with strong experience on the Russian market who always delivers what we need" (Chambers Europe).

Rustem Ahmetshin acts on tax litigation mandates, particularly those with cross-border aspects (Chambers Global).

The team

Egor Lysenko

Head of Siberian Office

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Egor specialises in tax and civil law, has in-depth knowledge of how to settle disputes involving the tax authorities, and has extensive experience representing clients before tax authorities and commercial courts, including in disputes to confirm that the tax benefit is justified.

WHAT THEY SAY

"The lawyers have broad experience in tax and litigation services. The advice is based not only on legal grounds but also on practicality" (Chambers Europe).

Ksenia Litvinova

Partner

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Ksenia specialises in tax law and advises major Russian and foreign companies on a broad range of matters relating to taxation. These include, among other things, tax planning, intra-group transactions, transfer pricing, M&A transactions and assessing tax risks and the potential of different business models in the construction, production, retail, logistics, FMCG and other sectors. She also engages in due diligence of the actions and decisions of tax authorities, participates in tax litigation and provides support in tax audits.

WHAT THEY SAY

"An impressive track record in resolving tax disputes and outstanding experience of handling large-scale tax disputes, including representation at the level of the Russian Supreme Court" (Chambers Europe).

The team

Andrey Nikonov

Senior Partner

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Andrey provides legal support in taxation projects related to entering into and implementing production sharing agreements, contracts between companies, mergers and acquisitions of companies with multinational corporations being involved, and in major investment projects.

WHAT THEY SAY

His fellow practitioners note his growing reputation and describe him as a "skilled, sophisticated and developed" specialist (Chambers Europe).

Sergey Savseris

Senior Partner,
PhD in Law

s.savseris@pgplaw.ru

Sergey specialises in tax law matters and has experience in advising on tax issues and in litigating with the tax authorities.

Sergey has authored a large number of articles on taxation and participated in preparing draft laws designed to improve tax legislation.

WHAT THEY SAY

The prominent independent international directories The Legal 500, EMEA and Tax Directors Handbook have rated Sergey Savseris as a leading expert in tax law.

The team

Maria Nikonova

Partner,
PhD in Law

m.nikonova@pgplaw.ru

Maria advises clients on issues of taxation, tax planning and tax risk assessment. She has a track record of providing legal support to large companies in analysing and structuring operations of their Russian offices with a view to minimising tax risk exposure.

Maria has frequently litigated on behalf of various companies on tax issues in courts of all levels and before other state bodies.

She specialises in taxation matters in the sphere of the digital economy, life sciences sector and FMCG.

WHAT THEY SAY

An impressive track record in resolving tax disputes and outstanding experience of handling large-scale tax disputes, including representation at the level of the Russian Supreme Court (Chambers Europe).

Andrey Tereschenko

Partner

a.tereschenko@pgplaw.ru

Andrey specialises in tax law. His professional interests include advisory and litigation projects connected with different aspects of the taxation of foreign companies in Russia and applying double taxation treaties, including taxation of interest, dividends, royalties; setting up permanent establishments; allocating income and expenses between a head office and a permanent establishment' and paying intra-group financial and service fees.

Andrey also handles projects involving legal support for major sports tournaments in Russia, namely the 2018 FIFA World Cup, UEFA Euro 2020, UEFA Champions League and UEFA Super Cup, as well as issues relating to sports law. Andrey has an accreditation of the Russian Football Union to act as a sports agent.

WHAT THEY SAY

"Dynamic lawyer Andrey Tereschenko is highly regarded for his 'customer-oriented approach' " (Chambers Global).

The team

Anton Nikiforov

Partner

a.nikiforov@pgplaw.ru

Anton has been specialising in tax law for 25 years. He provides legal support to companies from the financial sector, as well as from the energy, production, metallurgical and other sectors of economy.

His significant experience as a litigator allows Anton to provide practical advice when consulting on complex taxation issues, and, when he provides tax support in transactions, to identify tax risks and overpayments.

Moreover, Anton has vast experience of being involved in providing support during tax audits, as well as during pre-audit activities and when challenging the results of audits at the pre-trial stage.

WHAT THEY SAY

"One of the striking traits of the firm is its ability to look at things very creatively. The lawyers there really try to find new ways which are still 100% in line with the law" (Chambers Europe).

Leonid Kravchinsky

Partner,
Head of Tax Practice Group

l.kravchinsky@pgplaw.ru

Leonid specialises in tax and civil law. He provides advice to clients with regard to taxation and tax planning (including in cases when an audit is being conducted), and also provides legal support to Russian enterprises, including those with foreign investments.

WHAT THEY SAY

"Outstanding tax practice which participates in settling tax disputes of the highest level and often appears before the Russian Supreme Court with regard to issues relating to tax audits"
(Chambers Europe).

The team

Natalia Kovalenko

Partner, head of Cross-Sectoral Group, PhD in Law

n.kovalenko@pgplaw.ru

Natalia specialises in taxation including advising on Russian and international taxation. She provides support during tax audits, represents clients when tax disputes are resolved at the pre-trail stage and in court, conducts reviews of clients' tax affairs and creates systems for tax risk and asset management that cover tax and other (including corporate, contractual, customs, IP, antimonopoly and property) aspects.

WHAT THEY SAY

Clients describe Natalia Kovalenko as "very organised, efficient and involved" (Chambers Europe).

Sergey Sosnovsky

Partner, Head of Tax practice group (St. Petersburg), Ph.D. in Law

s.sosnovsky@pgplaw.ru

Sergey specialises in all aspects of corporate tax including the tax aspects of mergers and acquisitions, reorganisations and reconstructions. He has a particular focus on the real estate sector, banking, oil & gas, automotive, trade and industrial sectors.

WHAT THEY SAY

"St Petersburg practice head Sergey Sosnovsky is one of the leading tax experts in north-west Russia, actively representing clients in tax disputes before the courts" (Chambers Europe).

The team

Narine Khachatryan

Best Lawyers 2022

Head of Tax Practice,
PhD in Law

n.khachatryan@pgplaw.ru

Narine specialises in resolving tax disputes and for more than 20 years, she has been providing legal support to clients when conflicts that need to be settled in court either occur or are threatened. She successfully represents taxpayers in litigations with tax authorities and participates in major advisory projects for Russian and foreign companies in the energy sector, automotive industry, and the manufacturing of and trading in food products.

Narine also has significant successful experience of settling disputes out of court and providing support during tax audits.

WHAT THEY SAY

"As a firm providing services in tax dispute resolution Pepeliaev Group leaves the competition behind" (Chambers Europe).

Olga Baranova

Best Lawyers 2022

Head of Tax Audit and
Accounting Advisory Group

o.baranova@pgplaw.ru

Olga Baranova has, specialised in audit services, while she also has administrative and human resource management work experience.

Olga is a qualified professional tax advisor.

WHAT THEY SAY

"Pepeliaev Group cannot be beaten as a firm for tax dispute resolution services" (Chambers Europe).

About the firm

A leading Russian law firm offering the full range of legal services.

Lawyers

160

Our lawyers include
3 Doctors of Laws
and 19 PhDs in Law.

Clients

2000

Office

8

Moscow
St Petersburg
Nizhnekamsk
Krasnoyarsk
Vladivostok
Beijing
Shanghai
Dubai

Ratings

The Legal 500
Chambers Europe
Chambers Global
IFLR1000
World Trademark Review
International Tax Review
Право 300
Best Lawyers

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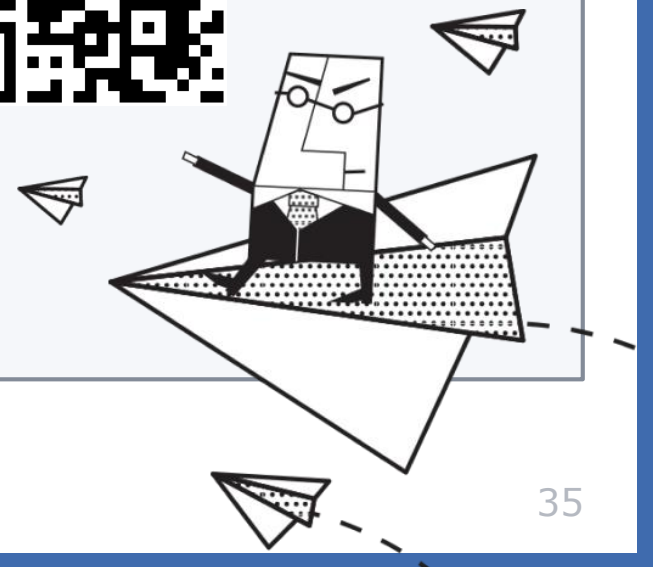
News of the firm, themed overviews of legislation and administrative and judicial practice, and expert commentary



Services

pepeliaev group

- Tax advice & tax disputes
- Administrative law defence of business
- Banking and finance practice
- Intellectual property and trademarks
- Family and inheritance law
- Employment and migration law
- Customs law and foreign trade regulation
- Currency regulation and currency control
- International litigation and arbitration
- Corporate law / M&A
- Antitrust regulation
- Dispute resolution and mediation
- Criminal law defence of business
- Legal protection of information
- Real estate & construction
- Bankruptcy
- Environment
- Telecommunications, media and IT
- Digital group
- Life sciences

Geographical coverage

pepeliaev group

Chinese Desk

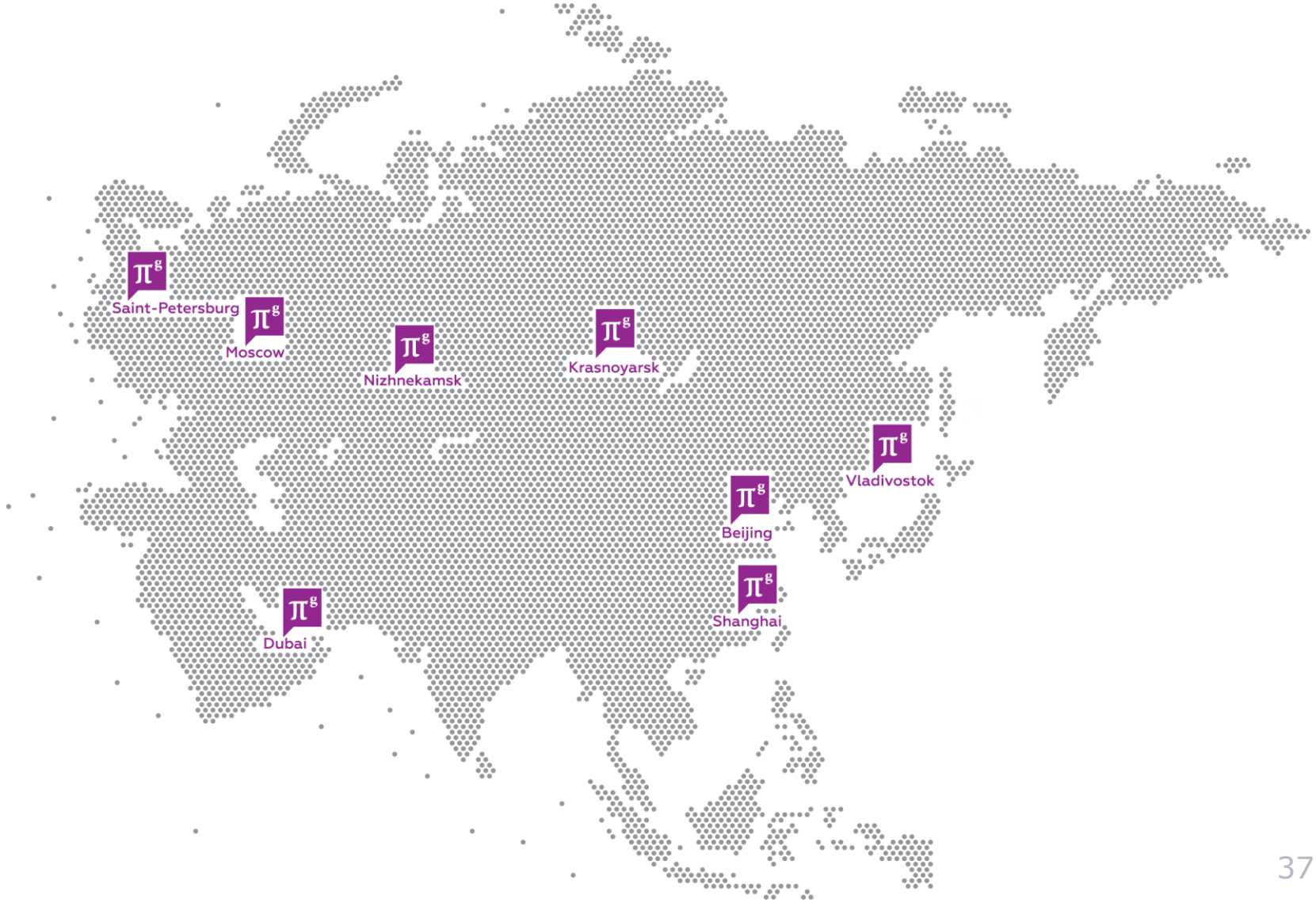
- Representative offices in Beijing and Shanghai.
- Support for Chinese investors in Russia and for Russian investors in China.
- We have strategic partners on the Chinese market.
- Comprehensive legal support.

Korean Desk

- Legal advice to Korean companies in Russia and to Russian investors in Korea.

Middle East Desk

- PG TAX Consultancy LLC provides services on tax structuring and tax consultancy in UAE and GCC.



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