

Applying the Estimated Method for Calculating Corporate Profit Tax: the Supreme Court's New Approach

FAO: taxpayers engaging contractors to perform works (provide services)

Pepeliaev Group advises that the Russian Supreme Court (the "Supreme Court") has published the Ruling of its Judicial Chamber for Economic Disputes dated 31 March 2026 in case No. **A56-83561/2023. By this Ruling, judicial decisions adopted by lower courts in favour of Vokforce LLC were overturned with respect to corporate profit tax. This court judgment is intended to adjust practice with regard to how the estimated method is applied in certain situations.**

The Supreme Court has concluded that a taxpayer loses the right to apply the estimated method when determining corporate profit tax (article 31(1)(7) of the Russian Tax Code – the "Tax Code") if the taxpayer:

- purchased works (services) from organisations imitating the actual performance of business operations (in fact, such works (services) were performed either by the taxpayer's own employees, or by employees who are employed only formally by the contractors, or by individuals who are not officially employed);
- knew (or should have known) about these circumstances, as the taxpayer either controlled the contractors in dispute or failed to exercise due care in selecting them;
- did not disclose to the tax authority the genuine service providers under the contracts (the business operations were not "brought out of the tax shadow");
- did not collect documentary evidence of all the expenses incurred in paying for the actual services (works).

In the Court's view, when the estimated method is applied in such a situation, this legitimises "technical" companies, while also complicating the state's efforts to combat tax abuses, and creating conditions for unfair competition in the market by engaging contractors offering lower prices on account of their not paying taxes.

This conclusion takes forward the approach determined by the Supreme Court in case No. A76-46624/2019 (Firma Mary LLC), but it modifies the practice of the Russian Supreme Commercial Court (Resolution No. 2341/12 of the Presidium of the Russian Supreme Commercial Court dated 3 July 2012 in the case of Kamsky Reinforced Concrete Structures Plant OJSC; clause 8 of Resolution No. 57 of the Plenum of the Russian Supreme Commercial Court

dated 30 July 2013), according to which expenses incurred on acquiring goods, works and services used to generate profit should be taken into account for corporate profit tax purposes without the above conditions and limitations.

In its Ruling dated 31 March 2026 in the Vokforce LLC case, the Supreme Court refers to certain evidence confirming that the taxpayer was aware of the shadow employment of workers of contractor organisations: not providing access control data and information about employees becoming familiarised with established occupational safety rules; and the fact that the contractors were controlled by a group of companies specialising in hiring foreign labour resources but not paying personal income tax for them (out of 3,323 foreign workers, data in Form 2-NDFL regarding income was submitted for only 400 individuals).

Other evidence in this case (set out in the Resolution of the Commercial Court for the North-West Circuit dated 21 August 2025) relates to the disputed contractors being part of the same group of companies as the taxpayer:

- most of them (eight out of nine) were excluded from the Unified State Register of Legal Entities after a tax audit of the taxpayer, owing to inaccurate information;
- they were not located at their registered address;
- they had no assets, warehouses or vehicles;
- their founders/managers had a nominal status and, without explanation, did not appear to be questioned before the tax authority;
- they had a minimal amount of corporate profit tax and VAT payments;
- there were tax claims against second-tier suppliers;
- the accounting and tax records of all the disputed companies and the taxpayer were maintained by the same organisation;
- tax reporting was submitted and banking transactions were carried out from a single IP address;
- that the disputed transactions of the contractors were not genuine is confirmed by cash flows in the bank accounts and purchase ledgers of both the contractors themselves and their counterparties.

Testimonies of the taxpayer's employees and of the officers of customers indicate that the taxpayer provided services to customers without engaging subcontractors.

Notably, the court of cassation placed on the taxpayer the burden of proving that the disputed contractors had performed the contracts, while also stating that the tax authority has no obligation to prove which counterparties actually supplied the goods (performed the works, provided the services).

The Supreme Court did not reiterate this conclusion but reached another, no less significant conclusion for taxpayers: the Court recognised that the basis for determining an actual tax liability lies in whether the economic substance of a transaction is authentic and whether it was genuinely performed (rather than data from the formal document flow). At the same time, the Court did not recognise the expert opinion submitted by the taxpayer, confirming that certain expenses were justified in economic terms (in the absence of economic

calculations by the tax authority), as documentary evidence that such expenses were incurred, as article 252 of the Tax Code requires.

What to think about and what to do

In our view, the taxpayers primarily exposed to risk are those purchasing works and services (cleaning, loading and unloading, packaging, transport, construction, etc.) from third-party organisations, especially where such organisations engage migrant labour and self-employed individuals.

The emerging judicial practice in tax disputes based on claims regarding whether taxpayers have exercised due care pushes businesses towards paying even closer attention to collecting evidence at the stage of concluding and performing contracts, which would subsequently allow the actual service providers in the transaction (both legal entities and individuals) to be identified. Customers of works (services) should consider preparing additional documentation confirming not only the fact of performance, but also the specific providers of the services, for example: maintaining logs of access to the customer's premises by representatives of the contractor, records of safety briefings for the contractor's personnel at the customer's sites, and so on.

We also recommend involving legal advisers as early as possible in providing support for tax audits and carefully monitoring whether the auditors are complying with the legislation on taxes and levies, both in terms of collecting evidence and adhering to the statutory conditions for applying a particular method of determining the actual amount of tax liabilities.

Help from your adviser

The lawyers at Pepeliaev Group stand ready to:

- advise on how to collect proper evidence both at the stage of entering into a contract and during tax procedures;
- provide support for tax audits at all stages: from when the decision is received to initiate the audit to when the audit decision is issued and when the audit decision is appealed (including by going to court);
- prepare the taxpayer's legal position for discussion with the tax authority;
- assist in preparing the calculations and professional expert opinions necessary to confirm that the prices applied by the taxpayer are of market level.

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