pepeliaev group®

PROVIDING LEGAL SUPPORT WITH RESPECT TO CLAIMS RELATING TO INTRA-GROUP SERVICES

Law firm
Pepeliaev Group

THE TEAM

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ABOUT THE FIRM

160 lawyers

Our lawyers include twenty Doctors of Law and PhDs in Law

2000 clients

20 practice areas

6 offices

Moscow, St Petersburg, Nizhnekamsk, Krasnoyarsk, Vladivostok, Dubai

Ratings:

CHAMBERS EUROPE · CHAMBERS GLOBAL · INTERNATIONAL TAX REVIEW · The LEGAL 500 · World Trademark Review · IFLR1000 · Best Lawyers · Expert · ПРАВО 300 · RGRU РЕЙТИНГ ЮРИСТОВ · PRO банкротство

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Please scan the following QR codes for more detailed information about our company and services:

Website

Brochures and presentations

THE TYPES OF INTRA-GROUP SERVICES

- Administrative services
- Financial services
- Consulting services
- Licence contracts
- IT services
- Marketing and PR services
- HR services
- R&D, etc.

TAX AUTHORITIES ARE TAKING AN INCREASING INTEREST IN INTRA-GROUP PAYMENTS AND ARE:

- challenging the deduction of expenses on intra-group services and other forms of providing resources inside an international group of companies
- reclassifying intra-group payments as the payment of passive income generated in Russia and assessing withholding tax
- imposing 40% fines for deliberately reducing the tax base

TAX AUTHORITIES' CLAIMS

1. **The tax authorities are challenging whether services have genuinely been provided, on the following grounds:**
   - the services are duplicated or the employees' job duties coincide with the list of intra-group services
   - these are shareholder expenses and there is no link between the expenses and the benefits of the recipient of the services
   - an accidental benefit has been obtained or such benefit has resulted only from the entity being part of a group of companies
   - the service provider does not have the necessary personnel or equipment
   - the services are activities that are in line with common business practice, such as: telephone calls, personal communication and electronic correspondence
2. **The tax authorities are placing an increased focus on whether the services are confirmed by documents because the tax authorities believe that:**
   - the documents confirming intra-group services contain insufficient details
   - there is no data based on which the actual scope of services could be determined and/or compared against the price paid (for example, there are no time sheets of the service provider)
   - the documents confirm only that employees inside the group have interacted and exchanged corporate experience
3. **The tax authorities consider that the method used to determine the price for intra-group services is incorrect:**
   - if the allocation keys are used that characterise the status of the service recipient in the group of companies, but not the actual scope of services, such allocation of costs is not provided for by Russian tax legislation
   - there is no link between the value of the service that has actually been received and the price formed in the above way
   - similar services can be provided by other service providers in a more prompt and efficient way

OUR SERVICES

1. Structuring intra-group services
2. Identifying and analysing tax risks relating to intra-group services and advising how to mitigate such risks
3. Preparing "security files" with a justification for intra-group payments
4. Developing bilateral pricing agreements for intra-group services between the Russian Federal Tax Service and major taxpayers, and being involved in discussing such agreements with the Russian Federal Tax Service
5. Liaising with the tax authorities at the audit stage and at the pre-tax control stage
6. Preparing a strategy for working with the tax authority and the procedure for submitting documents within the framework of pre-audit measures, tax audits and transfer pricing audits
7. Supporting employees when clarifications are provided regarding intra-group payments
8. Holding training sessions for the taxpayer's employees on how to behave during tax control measures
9. Preparing a strategy for defending the expenses that the tax authority denies with a view to ensuring that there are good chances for the expenses to be deducted abroad, reducing the risks of criminal and administrative liability measures, and minimising the amounts of sanctions under articles 122 and 123 of the Russian Tax Code
10. Representing the client in international procedures for preventing and settling disputes on intra-group services: MAP and ICAP

"DON'T WAIT FOR THE AUDIT TO END. YOU NEED TO BEGIN INTERACTING TO GOOD EFFECT WITH THE TAX AUTHORITY AS SOON AS POSSIBLE".

SAMPLE PROJECTS

Auditors' claims being settled

Pepeliaev Group's lawyers provided support to the client in the out-of-court settlement of a dispute between the tax inspectorate and a Russian subsidiary of a group of companies. The dispute was regarding whether the cost of intra-group services provided by the US and German companies of the group may be deducted as expenses.

The tax inspectorate had raised a range of claims regarding such services which included:

- a lack of documentary confirmation that such services were useful;
- a lack or insufficiency of evidence that the results of such services were used in the activities of the Russian subsidiary;
- the price not being consistent with the result achieved.

Our lawyers prepared the objections to the audit report, in which they separated out unlawful claims of the auditors from lawful ones, justified such separation and helped the client to prepare documentary justification. As a result we managed to convince the inspectorate that taxes may be additionally assessed only with regard to the group of services against which the auditors' claims were lawful. The other claims were removed from the body of the proposed assessments and the sanctions were reduced to minimal amounts.

Additional assessments being withdrawn following objections to an audit report

The tax inspectorate concluded that a client that was operating under a franchise agreement with a foreign company of the group was actually a representative office of that company, rather than a subsidiary of it. Based on this, it was proposed to eliminate the payment of royalties, because royalties for the use of intellectual property may not be collected within the same legal entity. The inspectorate relied on an unfavourable court precedent.

Our lawyers prepared a legal justification to prove that the claims were unlawful. This legal justification was used in the objections to the audit report and, having considered it, the tax inspectorate withdrew the additional assessments entirely.

Having a decision of the tax inspectorate to reassess taxes upwards quashed

Pepeliaev Group's lawyers succeeded in having the court quash the tax inspectorate's decision to reassess VAT and profit tax upwards after it classified as non-deductible the expenses on services of a related company provided under an inter-company services agreement and framework marketing services agreement. The work which made this result possible included, among other things, preparing a set of additional documents confirming that the services had actually been provided.