



# Tax Compliance

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# BGP Litigation is a law firm whose primary areas of focus include tax compliance

With the rapidly changing tax legislation, tax control methods and court practice, services for identifying tax risks and minimising them are becoming increasingly more essential. The BGP Litigation lawyers help clients find the best solutions to mitigate their tax exposure.

Tax compliance implies taking steps aimed at identifying and minimising taxation risks, building an efficient strategy for managing tax risks, as well as excluding reputational losses for the company's management.

## Tax compliance structure

### ANALYSING THE COMPANY'S BUSINESS PROCESSES AND STRUCTURE

- Due diligence of the company's internal documents and by-laws and their content in view of the changing external legal environment
- Studying the specifics of the industry
- Analysing economic performance
- Monitoring the efficiency of internal tax risk management

### IDENTIFYING POTENTIAL TAX RISKS

- Analysing source documents, tax registers, accounting and tax statements and reports
- Researching statutory requirements, regulations of the supervisory authorities, and court practice
- Checking whether the counterparties meet the "good faith" test

### ELABORATING AN ACTION PLAN AND RECOMMENDATIONS

- Creating a strategy for tax risk management
- Formulating the legal case for the Client's tax disputes and issues
- Elaborating the legal case and the supporting defence files



The key risks for the company are determined based on Art. 54.1 of the Russian Tax Code. This Article follows the practice underlying Resolution of the Plenum of the Russian Supreme Court No. 53 of 12 October 2006 in terms of criteria for declaring the tax benefits enjoyed unjustified. It is important to understand that this Article contains no radically new ideas, but rather puts an emphasis on establishing whether the taxpayer's business operations make sense economically and whether the works completed are real. The tax authorities successfully use this test in demonstrating that tax benefits are unjustified. Accordingly, tax compliance is intended to minimise the existing risks, find and eliminate potential threats so as to reduce the possible additional tax assessments as a result of a tax audit.

## Key People



**Alexander Golikov**

Partner, Attorney —  
Tax Disputes,  
International Tax  
Planning



**Denis Savin**

Senior Associate,  
Attorney —  
Tax Disputes

# Selected Projects

## **A COMPANY WITHIN A LEADING ENERGY PRODUCTION AND TRADING HOLDING**

The Firm's lawyers conducted a tax due diligence of the company for the period of two years, identifying the following risks:

- the risk of additional tax assessments in view of requalification of borrowings raised from the founder, into investments. The BGP Litigation specialists established that there were grounds for including the loan received by the company, into taxable income. For this reason, there was a risk of imposition on the borrower of unpaid income tax in the amount of RUB 650 million, as well as penalties and a fine in the amount of up to RUB 260 million;
- a material risk of tax claims in view of dealings with bad faith counterparties. The estimated amount of potential VAT and income tax assessments exceeded RUB 92 million.

Based on the due diligence of the company, the BGP Litigation team suggested recommendations to manage the tax risks found.

## **A LEADING RUSSIAN INDEPENDENT INFRASTRUCTURE OPERATOR**

Our lawyers completed a due diligence of the business of a major Russian infrastructure operator and owner of antenna mast structures. As a result of analysis of the financial and business operations, we found risks of claims by the tax authorities.

These risks were assessed using two criteria:

- circumstances evidencing material violations by the company that could entail claims from tax inspectors during audits;
- the materiality of risks and the possibility of their being established by the tax authorities.

The key tax risks were due to the impossibility to include RUB 185 million into the amount of expenses for the purposes of calculating the corporate income tax, as well as the tax authorities' refusal to make a deduction for VAT amounts of RUB 21 million. The project team produced recommendations on minimising the tax risks found.

## **A SHOPPING AND ENTERTAINMENT CENTRE**

The Firm's specialists established three groups of tax risks during the due diligence of the Client's tax liabilities, including:

- the risks related to its tax benefits being declared unjustified to the extent related to dealings with counterparties that demonstrated indicia of being bad faith taxpayers, for the amount of RUB 150 million;
- the risk of additional assessment of tax on the amounts of dividends requalified from interest under a loan raised from the parent company for the total amount of RUB 138 million that exceeded the applicable threshold. We identified a threat of the inspectorate calculating the tax from the time of accrual of interest under the loan, rather than from its payment;
- the risks related to additional VAT assessments on deposits received from lessees in the amount of RUB 103 million, including fines and penalties.

The BGP Litigation team built several potential scenarios and formulated recommendations for each in terms of minimising the risks found, as well as elaborated roadmaps for implementing the measures required to do that.

## **A LEADING DEVELOPMENT COMPANY**

Our lawyers conducted a tax due diligence of the target company for the period of three years, identifying the following risks:

- a risk of additional tax assessments in view of requalification of interest under loans raised from a foreign company, into "disguised" dividend payments. That situation created a ground to hold the company liable for failure to fulfil its obligations as a tax agent to withhold and pay taxes assessed on these dividends. The potential fine could amount to 40% of the total tax due.
- a risk of overstatement of the value of assets by RUB 215 million, by which deferred tax assets exceeded the total deferred tax liabilities. The BGP team established that it was not possible to use the deferred tax assets to reinforce the company's financial stability;
- methodological risks in terms of calculation of the income tax in the amount of RUB 191 million, due to the omission of a comparison of tax registers against the information reported in income tax returns.

Based on the due diligence of the company that would be the target for investments, our lawyers developed a comprehensive set of recommendations on minimising the tax risks identified.

# Comprehensive Business Protection

The firm BGP Litigation was founded in 2006. The firm is currently employing over 70 lawyers, litigation and criminal attorneys, as well as tax and investment experts. Experience of the Team enables the firm to work efficiently on global projects that require simultaneous support of a significant number of parallel proceedings at various levels and in multiple jurisdictions.

BGP Litigation team has a full range of competencies necessary to protect the interests of the clients, including the coordination of negotiations, support in Russian and cross-border courts, bankruptcy cases and arbitration proceedings, restructuring of the business, international tax advice, support of tax disputes and criminal law defense of business and beneficiaries.

A significant part of the implemented projects has a substantial cross-border element, which includes support during international arbitration disputes and courts, coordination of assets recovery and obtaining of interim measures in various jurisdictions. Global focus, together with Russian presence, allows the firm to find the most effective and cost-efficient solutions for the protection of clients.

## Our Practices



### Dispute Resolution

Support for complex disputes in Russia and cross-border proceedings



### Bankruptcy

Clients' representation in bankruptcy cases, including major cross-border disputes, as well as levying execution upon assets in the Russian Federation and abroad



### M&A and Corporate Restructuring

Comprehensive support of M&A transactions, corporate restructuring, and special situations projects resolution



### International Arbitration

Client's representation in international commercial arbitration proceedings mainly focusing on complex cross-border disputes



### Family Law

Support of family, inheritance and housing disputes, as well as in their settlement by way of mediation



### Life Sciences & Technology

Comprehensive support of businesses on all issues of legal regulation of the healthcare industry. Regulatory and transaction support of life science companies



### Tax Disputes

Identification and reduction of tax risks, support for field and desk tax audits



### International Tax Planning

Analysis of the existing asset holding structures concerning the tax efficiency and potential risks



### Antitrust/Competition

Representing clients during antitrust disputes, public procurement, within the frames of the advertising law and the investment in strategic enterprises law



### White Collar Criminal Defense

Represents clients in criminal proceedings, with a particular focus on white collar matters and in criminal proceedings against public interests



### Attorney investigations

Detection of violations and abuses on the part of the employees, partners, contactors, analysis of the company's risks (projects and transaction)



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