UNOFFICIAL TRANSLATION
This document is an unofficial English translation.
For the verified content, please refer to the official Russian version.

№5, May 2025

Interaction with problematic counterparties: how to establish effective cooperation

Lyudmila Kruglova

Head of Corporate Tax and Structuring Practice
"Tomashevskaya & Partners" Law Firm

Practice shows that the financial well-being of a business largely depends on how properly the company has established a system of interaction with its counterparties. This applies not only to buyers/customers but also to suppliers/contractors. In particular, delayed payment by a buyer for delivered goods (or completed work), where the company has already incurred actual expenses, creates financial risks. Likewise, untimely deliveries may cause a “cascading” breach by the company of its obligations to its customers, resulting in reputational damage and losses in the form of penalty sanctions. All of this may trigger issues ranging from local cash flow disruptions to a large-scale financial collapse and a pre-bankruptcy condition.

This article will address the following aspects of the issue:

- whom we refer to as “problematic” counterparties;
- how the system of counterparty control and interaction is structured;
- methods for risk mitigation.

"PROBLEMATIC" COUNTERPARTIES

In practice, the term “problematic” counterparties encompasses two distinct categories.

The first category includes counterparties whose engagement ultimately results in civil law disputes and financial losses. These parties are either unable (or unwilling) to fulfill their obligations: to pay for delivered goods or completed work, or to deliver goods or perform work that has been prepaid. In essence, these are counterparties experiencing adverse financial conditions or bad-faith actors engaging in conduct bordering on fraud.

The second category is "counterparties with tax risks". These are companies or sole proprietors that are specifically created to implement aggressive tax optimization (particularly VAT and corporate profit tax) or are legitimate business entities that utilize the services of shell companies.

It is impossible to shield oneself from the tax consequences of deliberate dealings with shell companies, and we will not address that topic here. However, it is entirely possible to protect against the negative consequences of working with suppliers engaged in tax optimization schemes.

HOW THE SYSTEM OF CONTROL AND INTERACTION WITH COUNTERPARTIES IS STRUCTURED

Risk mitigation in relation to both of the aforementioned categories of counterparties is, in practice, achieved through the implementation of a counterparty control and interaction system. This system pursues two main objectives.

1. Identification of risk indicators— the basis for making a principal decision on whether it is advisable to enter into a contract and under what conditions.
2. Collection of information on the procedures for interaction with the counterparty during contract performance— this ensures, in advance, the gathering of evidence of the counterparty relationship and the company’s good faith in performing its obligations and enables timely detection of any failures by the counterparty to fulfill its obligations.

Formally, the counterparty interaction system should:

1. be synchronized with the company’s overall business processes.
2. be documented in internal regulations to which all employees directly or indirectly involved in counterparty interactions must be acquainted.

Ideally, the core business processes should be automated: interaction with counterparties should be recorded in the CRM system, where key documents are also uploaded. The CRM system itself should issue reminders about required actions (for example, requesting a due diligence document package from a potential supplier, or sending a payment request or claim notice to a customer upon the expiration of a relevant deadline). This facilitates the execution of many processes, thereby increasing the likelihood that employees will follow through with them.

The first stage of control is the selection of a counterparty. At this stage, an initial due diligence check is carried out.

This stage is arguably the simplest and is implemented, in one way or another, by nearly all companies. However, particular attention should be paid to the due diligence parameters and how the results are documented.

Conducting due diligence based on the parameters recommended by the author allows for the achievement of two primary objectives:

- verification as part of exercising “due diligence”, in order to reduce tax risks (i.e., to be presented to the tax authorities in case of inquiries regarding the counterparty’s tax integrity);audit to identify signs of financial insolvency, bad faith when interacting with

counterparties, and to assess the likelihood that the counterparty will not fulfill its obligations.
- verification to identify signs of financial insolvency or bad faith in dealings with counterparties, with the purpose of assessing the likelihood that the counterparty may fail to fulfill its contractual obligations.

In the author's opinion, it is advisable not to separate the verification process into these two objectives at this stage, since the information being collected overlaps. Moreover, the very concept of "exercising due diligence" has for many years been perceived by the tax authorities as a mere formality. In tax disputes, far greater evidentiary weight is given to proof of actual business activities with the counterparty. Furthermore, a taxpayer's verification of a potential counterparty's financial solvency and access to real resources serves as a stronger indication of the intention to perform the contract in substance than the mere collection of formal documents, such as copies of the charter, director appointment resolutions, or extracts from the Unified State Register of Legal Entities (EGRUL).

So, what parameters should be assessed during the counterparty selection stage, and which documents should be retained as supporting evidence (including as confirmation of having exercised due diligence)? These are outlined in Table 1 (see page 64).

Table 1. Verification parameters and required supporting documents

Verification parameter	**Supporting document**	**Comment**
Date of company registration. History of registration data changes	Extracts, analytical reports from systems such as SPARK, Kontur-Focus, Sbis, etc	A short "lifespan" of the company, frequent changes of founders, directors, or legal addresses may be negative indicators (although they must be assessed in conjunction with other factors) and may require additional analysis. Responses from the counterparty may be needed, as well as inclusion of "protective" contract terms.
Affiliation with a group of companies. Group history	Extracts, analytical reports from systems such as SPARK, Kontur-Focus, Sbis, etc..	Positive indicators include the significant size of the group to which the prospective counterparty belongs and its good business reputation. Other group companies (management, owners) may offer guarantees or pledges — provided the contract is material. Conversely, poor reputation of group companies, ongoing disputes, tax claims, registration in

		the list of unscrupulous suppliers, bankruptcies — all these support a decision not to contract.
Confirmation of the authority of the sole executive body (CEO) and of the person signing actual documents	Extract from EGRUL, charter, shareholder/participant resolution appointing the CEO, original or notarized copy of the power of attorney	Obtaining these documents helps avoid disputes in the future regarding the validity of the transaction.
Confirmation of approval or absence of approval requirement for the transaction	Charter, financial statements, shareholder/participant resolution approving the transaction	
Financial condition of the company	Accounting and Financial Statements (AFS) available from public sources	Analysis of financial statements provides insight into both the overall financial condition of the company and, in some cases, its production capacity (reflected in fixed assets). It is important to assess the dynamics of financial indicators over several years. It is recommended to analyze the annexes to the financial statements: notes to the balance sheet, cash flow statement, and statement of changes in equity. These disclosures will reveal how the company uses its funds, the composition of its fixed assets, whether it owns or leases property, and the structure of inventories (work materials, supplies, finished goods). If there are signs of insolvency, it is advisable either to refrain from entering into the contract or to provide for additional “protective” mechanisms in the agreement, such as financial security or performance guarantees from the counterparty.
Size of assets, level of accounts payable		

Company reputation	Reports from analytical systems on litigation, including cases with government authorities; information on frozen bank accounts; media publications	The existence of civil or tax disputes, unresolved enforcement proceedings, or blocked accounts due to tax claims is a significant negative factor. If such indicators are present, it is essential to clarify the causes and prospects of the situation.
Presence/absence of inaccurate information in the Unified State Register of Legal Entities (EGRUL)	Extract from EGRUL, reports from analytical systems	An inaccuracy in the registered address is not a critical deficiency, unless the record remains unchanged for more than two months and there is no indication of corrective filings. However, inaccurate records concerning the sole executive body or the founders unequivocally preclude further cooperation with the counterparty.
Actual composition of assets	Statement provided by the potential counterparty	Information on the actual composition of assets is necessary when assessing the counterparty's ability to fulfill specific obligations or produce goods to order (in cases involving a manufacturer rather than a reseller). However, such data may constitute a commercial secret — not all companies are willing to disclose the structure of their assets. A formal extract is not always required — some information can be obtained from open data, such as property tax records. The presence or absence of real estate can also be identified through analytical systems. If no such records exist, it can generally be assumed that the counterparty does not own real property. However, property may also be leased — this can only be clarified directly with the counterparty.

		The availability of this information may also support a taxpayer's position in a tax dispute regarding the counterparty's ability to perform real obligations (e.g., Decision of the Arbitration Court of the Samara Region dated 17.12.2024 in case No. A55-21231/2023).
Number of employees	Reports from analytical systems on the average headcount, or a certificate provided by the potential counterparty	Data on headcount is important for assessing the counterparty's capacity to fulfill obligations. For example, a company may operate under a "tolling" model, which explains a low number of in-house employees. Such clarification may be provided directly by the counterparty. Nonetheless, the absence of such data will generally be viewed as a negative indicator. A lack of information or insufficient staff may be considered indirect evidence of the technical nature of relations with the counterparty in tax disputes (see, for example, the ruling of the Moscow Circuit Commercial Court dated 20.10.2023, No. F05-24966/2023 in case No. A40-280852/2022).

RISK MITIGATION METHODS

When risk indicators are identified in relation to companies with which a contract is planned, the responsible person may take one of two decisions:

- not to engage with the counterparty.
- enter into a contract with additional "protective" provisions.

The following provisions may serve a protective function:

- the maximum possible amount of prepayment, if the counterparty is a buyer/customer.
- the maximum possible amount of post-payment, if the counterparty is a supplier/contractor.
- increased penalties for failure to fulfill obligation;
- provision of security for performance of obligations — e.g. guarantee or pledge from the owners, affiliated companies, or third parties.

If the company has an established long-term relationship with the counterparty, or if the contract is intended to be performed over a long period (i.e. more than six months), it is recommended to monitor the counterparty's condition regularly (at least twice per year), based on the parameters described above (except for the first two).

In the course of cooperation with the counterparty — both before and after the contract is concluded — it is also advisable to implement a system for collecting information on actual contract performance (see Table 2).

In conclusion, let me reiterate. The development and implementation of a counterparty management system — including the monitoring of negative indicators and the documentation of actual interaction with counterparties — will enable the company to reduce tax risks, as well as the risk of financial and reputational losses arising from dealings with problematic counterparties.

In the current difficult economic environment, the importance of this risk management tool cannot be overstated.

Table 2. Collection of information on the actual performance of the contract

Collected information	**Form of recording and storage**	**Commentary**
Contact details of all counterparties' representatives and relevant company employees (e.g. manager, accountant, lawyer, director)	Section "Contact Persons" / "Responsible Persons" in CRM	Contact details (full name, email address, phone number) of both the counterparty's representative and the employee on the company's side are important evidence of actual interactions, especially in the event of claims by the tax authority.

		This information may also support the company’s position in proving the counterparty’s ability to fulfill its contractual obligations (e.g. Decision of the Arbitration Court of the Samara Region dated 17.12.2024 in case No. A55-21231/2023).
Photo and video documentation of the contract signing process	Image and video files may be stored in the CRM or on secure servers, with a CRM link to the storage location	Photo and video documentation is used both to confirm the existence of a relationship with the counterparty for tax purposes and to avoid future disputes with the counterparty over whether the document was signed by an authorized representative.
Requests (applications) for performance of work or deliveries	Email (provided data is stored for at least five years), electronic counterparty archive, CRM	Most long-term contracts for the supply of goods, provision of services, or performance of work include a provision stating that relations between the parties shall be carried out on the basis of individual requests or orders. These requests are often transmitted by email, but frequently also through personal messages exchanged between managers or other contact persons of the contracting parties. Recording the date and content of such requests is important not only for tracking the timelines and volumes of deliveries or services rendered, but also for monitoring payments. Moreover, in practice, the existence of documented requests helps to confirm the reality of the business relationship between the parties. To prevent the loss of this critically important information, even small companies are advised to transfer such data into the CRM system — with indication of the request date and the sender — and to configure

		automatic tracking of contractual performance deadlines.
Document confirming the date of transfer of signed work completion certificate / service acceptance or delivery note to the counterparty	Electronic Document Exchange (EDE), CRM, courier/postal delivery confirmation documents	The absence of a signed acceptance document from the buyer or customer confirming the delivery of goods or the completion of work or services often becomes an obstacle to recovering debt from the counterparty for obligations actually performed under the contract. However, if the fact of having sent the documents for signature is confirmed, the court is highly likely to rule in favor of the claimant in a dispute over payment of the debt (see, for example, the ruling of the North-Western Commercial Court dated 18.12.2023, No. F07-17759/2023 in case No. A66-10119/202).