



LT Digest

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Legislative initiatives

Russian State Duma holds first reading of bill on antimonopoly compliance

Bill No. [789090-7](#) on antimonopoly compliance passed the first reading (for more details, please refer to LT Digest of [2-8 September 2019](#)).

[Official website of the Russian State Duma](#)

Russian State Duma to consider banning use of amnesty declaration in criminal proceedings

According to the bill, the fact of declaration filing, its content and supporting documents will be deemed inadmissible evidence if entered not by the declarant, but by law enforcement authorities.

Seizing a declaration filed under Federal Law No. [140-FZ](#) of 8 June 2015 as part of investigation of entrepreneurial crimes might also be banned.

[Official website of the Russian State Duma](#)

Bill rescheduling roll out of track and trace system for pharmaceuticals submitted to State Duma

The powers to regulate the system roll-out, including the deadlines, will be delegated to the Government.

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[President of Russia tasks Government to ensure non-usage of disclosed data against capital amnesty declarants](#)

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[Global Forum on tax transparency reveals new compliance ratings for nine jurisdictions](#)

[Congressional Research Service releases report "Issues in International Corporate Taxation: 2017 Revision"](#)

The bill also sets forth that the 'high-cost nosologies' pharmaceuticals put on the market before 1 October 2019, as well as regular pharmaceuticals put on the market before 1 July 2020, can be stored, transported, dispensed, sold, and otherwise distributed unlabelled until their respective expiration dates.

[Official website of the Russian State Duma](#)

Russian State Duma to consider package of bills expanding territorial scope of self-employment tax

The bill proposes adding 19 regions, including St. Petersburg and Leningrad Region, to the territory of the tax pilot.

The tax may also be charged on income from personal consumer services, which were previously exempt from the personal income tax.

Respective changes to the tax laws introduced by Bill [837128-7](#) were also submitted to the State Duma.

The bill also proposes decreasing the volume of tax filings. Average headcount data will be reported to the tax authorities as part of social contribution reports for the respective reporting period.

[Official website of the Russian State Duma](#)

Criminal sanctions may be introduced for non-payment of special, anti-dumping, compensatory duties

The bill to that effect is now posted on the Federal Draft Legislation Portal.

It proposes changes to Article 194 of the Criminal Code, which envisages criminal sanctions for evading customs duties on a large scale (above RUB 2 mln) or grand scale (above RUB 6 mln).

The bill proposes applying the provision to special, anti-dumping, and compensatory duties as well.

[Federal draft legislation portal](#)

Deadlines for mandatory labelling of dairy products set

The Government resolved that labelling of dairy products must become mandatory as of 1 June 2020.

The Ministry of Industry and Trade is to ensure that the distribution of unlabelled dairy products not entered into the labelling information system is permitted until 1 December 2020.

[Official website of the Russian Government](#)

Ministry of Industry and Trade prepares labelling guidelines for pilot part

The guidelines were approved for:

- [bicycles and bicycle frames](#) (the pilot runs from 16 September 2019 to 31 May 2020)
- [perfumery](#) (the pilot runs from 1 July to 30 November 2020)
- [certain light industry products](#) (the pilot runs from 27 June to 30 November 2019)
- [cameras and flashlights](#) (the pilot will run from 15 May through 30 November 2019)
- [tyres](#) (the pilot will run from 20 June through 30 November 2019).

Except for bicycles and bicycle frames, labelling of the above-mentioned products will be mandated as of 1 December 2019.

[Garant:Prime](#)

Tver Region introduces investment allowance

The allowance will be offered to organisations and their branches that:

- are located in Tver Region
- are engaged in qualifying activities (manufacturing, hospitality, catering, water transport, etc.), generating at least 70 percent of the total revenue
- implement high-priority regional projects.

The allowance of 50 percent will apply to all fixed assets except passenger vehicles.

For allowance cap calculation purposes, the regional tax component will be set at five percentage points.

The unused allowance can be carried forward to up to five consecutive future tax periods.

The allowance will be granted as of 1 January 2020.

[Official Internet Portal for Legal Information](#)

North Ossetia-Alania introduces investment allowance

The allowance will be granted to local companies or branches except those producing beverages, tobacco, power, engaged in gas and steam supplies, air conditioning, wholesale, retail, finance, and insurance).

The allowance will be capped at 90 percent of fixed assets of Depreciation Groups Three to Seven.

For the purposes of calculating the investment deduction cap, the rate of profit tax payable to the regional budget will amount to five percent.

The allowance balance carryforward will be regulated by the general provisions of the Russian Tax Code.

The allowance will be granted as of 1 January 2020.

[Official Internet Portal for Legal Information](#)

Regulatory clarifications

Ministry of Finance clarifies legal status of OECD's Model Tax Convention and Commentaries

The ministry reminded that in accordance with the Supreme Court's Plenum Resolution No. [5](#) of 10 October

2003, in case of difficulties with interpreting the generally recognised principles and provisions of international law and Russia's international treaties, international conventions should be consulted.

According to Resolution of the Supreme Commercial Court Presidium No. [8654/11](#), the OECD's Model Tax Convention is a framework document that establishes general principles and approaches to elimination of double taxation.

The Commentaries to the Model Tax Convention contain a separate section describing positions of non-OECD economies.

Paragraph 5 of the preamble to the section sets forth that the Russian Federation agrees with the interpretation and application of all key provisions of the Model Tax Convention and Commentaries thereto.

According to the ministry, Russia recognises the right to be guided by the provisions of the Model Tax Convention and the commentaries thereto, which can be referenced for interpretation of Russia's double tax treaties signed under the terms of the Convention.

A similar position was expressed in the Federal Tax Service's Letter No. [CA-4-7/9270@](#) of 17 May 2017.

[Consultant Plus](#)

Ministry of Finance comments on VAT rate for sale and/or import of fruit, berries, palm oil

The ministry reminded that Law No. [268-FZ](#) of 2 August 2019 introduced as of 1 October 2019 a VAT rate of 10 percent for the sale and/or import of fruit and berries (including grapes), while palm oil is to be VATted at the rate of 20 percent.

The Ministry of Agriculture is now working on a [draft](#)

government resolution that proposes assigning codes to fruit and berries taxed at the rate of 10 percent and palm oil taxed at the 20-percent rate.

The changes are expected to apply as of 1 October 2019.

[Consultant Plus](#)

Federal Tax Services releases e-signature confidentiality guidelines

The guidelines are posted at the official website Tax Policy and Practice, sponsored by the tax regulator.

The guidelines recommend to:

- clearly distribute employee powers and allocate private e-signature keys recorded on separate media accordingly
- establish internal procedures that would make remotely signed documents legally binding
- preclude transfer of e-signature to third parties
- ensure safe-keeping of signing keys.

Other measures include a timely change or revocation of the electronic signature when company details or positions are changed or signature holders leave the company and, in the event of loss of a qualified electronic signature, ensuring its prompt revocation (immediately notifying the certification centre to prevent the fraudulent signature use, e.g. for money theft, fictitious transactions, etc.).

[Tax Policy and Practice \(available here\)](#)

Media review

Ministries of Industry and Trade and Ministry of Agriculture approve labelling guidelines for certain dairy products

The guidelines were developed in accordance with Government Resolution No. [836](#) of 29 June 2019 "On labelling of certain dairy products in Russia".

Milk (except raw milk); cream; powdered milk, freeze-dried skimmed milk (not more than 1.5 percent fat content); freeze-dried powdered milk and cream, including whole milk; butter, butter pastes, melted butter, milk fat, spreads and mixtures of melted butter and vegetable oils; cheeses, cheese products, and cottage cheese; milk and cream, condensed or with sugar/other sweetening additives (not powdered); etc.

The document regulates the labelling rules and interfacing with the Labelling and Mercury information systems, describes options for integration with these two systems, depending on the individual stakeholder's technical capacities.

The text of the document has not yet been officially published.

A detailed review of the main guidelines provisions will follow shortly.

[Official website of the Russian Ministry of Industry and Trade](#)

Bill on digital profiles to be reworked

The [changes](#) were necessitated by the negative

feedback from the Federal Security Service.

According to the agency, processing data in an integrated infrastructure considerably aggravates the risks of leakage.

The bill is inconsistent with the principles of the Personal Data law, since "...it does not set forth specific goals the proposed volumes of data processing are needed for".

The comments to the bill were also prepared by the State Duma's Committee on Federal Structure, which believes that the bill must more thoroughly address personal data protection issues to avoid their compromising and fraudulent use.

The Committee also warned that the implementation of the initiative would be burdensome for the federal and regional budgets and proposed postponing its consideration until 31 March 2020, when the digital profile infrastructure pilot has ended.

[Kommersant](#)

President of Russia tasks Government to ensure non-usage of disclosed data against capital amnesty declarants

The President of Russia Vladimir Putin said the Government needs to carefully monitor how the law on capital amnesty is being implemented, in particular, to make sure that the declarations are absolutely not used as evidence in criminal cases.

On 30 October 2019, [clarifications](#) to that effect were released by the Supreme Court (for more details, please refer to LT Digest [28 October-3 November 2019](#)).

[RBC daily](#)

Federation Council members propose clamping down on online distribution of information

Apart from mass media, senators proposed extending the foreign agent status to individuals (primarily, bloggers).

A bill introducing penalties for breaches committed by mass media treated as foreign agents will be updated for the second reading to define the individuals qualifying for the status: not only media owners, but also (online) bloggers, posting information to the general public, particularly abroad.

The bill heard by the State Duma in the first reading in January 2019 is nearly finalised and may be passed by the end of 2019.

[RBC daily](#)

BRICS nations discuss creation of new crypto for unified payment system

Head of the Russian Direct Investment Fund (RDIF) Kirill Dmitriev said that the BRICS Business Council supported the idea of creating a single payment system for settlements between the member countries (Brazil, Russia, India, China, and South Africa), based on a cryptocurrency.

The BRICS countries are shifting away from the US dollar. In Russia, US dollar settlements in foreign transactions decreased from 92 to 50 percent, while rouble settlements grew from 3 to 14 percent.

The creation of the BRICS payment system is currently under discussion.

[Kommersant](#)

Court refuses suppressing amnesty declaration from trial

The Smolninsky District Court of St. Petersburg refused to exclude from trial the amnesty declaration filed by co-owner of Ust-Luga OAO accused of shifting funds abroad during construction of the Ust-Luga port in Leningrad Region. The capital amnesty law bans referencing declarations of assets in criminal cases unless the declarants so request.

In 2017, the court sanctioned the seizure of the capital amnesty declaration that was further used as

prosecution's evidence.

According to the Smolninsky Court's resolution, prosecutors claimed not using the declaration and related materials as evidence, therefore, there were no grounds for granting the suppression request filed by the defence.

However, the defence requested suppressing not only the declaration, but also the documents containing related information, e.g. a report by a Federal Security Service officer that triggered the case.

On 30 October 2019, [clarifications](#) to that effect were released by the Supreme Court (for more details, please refer to LT Digest [28 October-3 November 2019](#)).

[Vedomosti](#)

Initiative to cancel criminal prosecution for non-repatriation of FX revenues and money transfers to non-residents under forged documents

Amendments to the Russian Criminal Code, abolishing Articles 193 and 193.1 that penalise the above-mentioned offences were drafted by the Ministry of Finance.

The bill proposes to stop treating them as separate offences, treating them only as criminal activities within other crimes, primarily, money laundering.

In view of the above, Articles 174 and 174.1 of the Russian Criminal Code, which set forth sanctions for money laundering, might be expanded with new element – transfer of money to non-residents under forged documents, penalised by imprisonment for up to five years. Therefore, to hold a person accountable, law enforcement authorities will first have to prove the underlying crime, shifting of funds in a foreign currency abroad under forged documents being just a *modus operandi*.

The ministry also proposes abolishing criminal prosecution for non-repatriation of currency.

Another bill modifying criminal sanctions for currency crimes was prepared and submitted to the Government by the Ministry of Justice. It calls for abolishing Article 193 of the Criminal Code only, also treating currency non-repatriation as a criminal activity within other crimes.

The Government has not yet discussed the initiatives. A number of government agencies and the Central Bank of Russia keep lobbying against the abolishment of these articles.

[Vedomosti](#)

Court practice

Constitutional Court to consider which transactions of bankrupt taxpayer are non-VATable

A meat factory purchased pigs from a bankrupt vendor. The latter singled out the VAT amount in its invoice, which the meat factory reclaimed in its Q4 2016 return.

[The first instance and appellate courts](#) awarded the case to the tax authorities, citing that under the Russian Tax Code, the sale of bankrupt counterparty's property is VAT-exempt, therefore, the seller had no reasons for

indicating VAT as a separate line item in its invoices.

The Commercial Court of the Central District sought the constitutionality review of Sub-paragraph 15, Paragraph 2, Article 146 of the Russian Tax Code.

In the meat factory's opinion, the provisions do not allow to reliably determine, which operations of the bankrupt taxpayer are tax-exempt: those involving all of its property or those involving the property included in the bankruptcy estate.

Despite the fact that the seller has already paid VAT, the buyers are actually forced to pay the sales tax not formalised by law under the guise of VAT.

The provisions also enable violation of the constitutional principle of equality, as they create materially different taxation conditions for businesses on the mere grounds that their vendors went bankrupt after the contract signing.

The Constitutional Court will hear the petition on 14 November 2019.

[Official website of the Russian Supreme Court](#)

Supreme Court extends capital amnesty guarantees to administrative cases

Additional clarifications on capital amnesty guarantees were approved by the Presidium of the Supreme Court on 13 November 2019.

The Supreme Court held that by virtue of Parts 3 and 4, Article 4 of Federal Law No. [140-FZ](#) of 8 June 2015, the declaration and its contents can neither be used as a basis for initiating administrative and/or tax proceedings against a declarant and/or nominal shareholder, nor as evidence in such proceedings.

The Supreme Court also noted that the capital amnesty law held the declarant and other persons disclosed in the declaration harmless against administrative and tax sanctions subject to requirements of Federal Law No. 140-FZ of 8 June 2015.

All conflicts between the provisions of Federal Law No. 140-FZ of 8 June 2015 and other federal laws must be resolved in favour of the former.

On 30 October 2019, [clarifications](#) to that effect were released by the Supreme Court (for more details, please refer to LT of [31 October 2019](#)).

[Official website of the Russian Supreme Court](#)

International law

Global Forum on tax transparency reveals new compliance ratings for nine jurisdictions

Six jurisdictions – Andorra, Curaçao, the Dominican Republic, the Marshall Islands, Samoa, and the United Arab Emirates – demonstrated progress in implementation of the standard and received an overall rating of Largely Compliant.

These jurisdictions have demonstrated progress on the deficiencies identified in the first round of reviews, including improving access to information, developing broader EOI agreement networks, monitoring the handling of increasing incoming EOI requests.

Saudi Arabia maintained its overall rating of Largely Compliant.

Panama was rated overall as Partially Compliant with the standard as challenges remain, in particular to ensure the availability of accounting information.

[official OECD website](#)

Congressional Research Service releases report “Issues in International Corporate Taxation: 2017 Revision”

The report describes changes in the US corporate taxation rules effected in 2017, as well as international taxation issues and options that might be considered to address them.

[Official US Congress website](#)

Deloitte publications

The law on large scale amendments to the Tax Code is adopted

On 29 September 2019, the President of the Russian Federation signed Federal law No. [325 FZ](#), setting the priorities of the national fiscal policy.

Many of the changes have been widely discussed: mutual agreement procedures, ban on use of the unified tax on imputed income by retailers selling labelled goods, extension of loss carryforward timelines, and VAT treatment of corporate reorganisations with further switching to special taxation regimes.

Nevertheless, there were some surprises, such as the unexpected expansion of the list of real estate categories taxed on their cadastral value and the implementation of a security mechanism for tax arrears.

For details, please refer to Legislative Tracking in Focus of [26 September 2019](#).

Consulting services for foreign companies in Russia: a surprise twist in ONEXIM Group case

On 9 September 2019, the Commercial Court of Moscow District made an unexpected decision in the OneximGroup Case (No. [A40-142855/2018](#)) over the place of supply of consulting and legal services to foreign related companies.

The tax authorities were quite inventive in proving that the foreign companies were actually managed from Russia, therefore, all service revenues were subject to Russian VAT.

Decisions of the courts of two instances favoured the tax authorities, but were partially reversed by the court of cassation.

For details, please refer to Legislative Tracking in Focus of [13 September 2019](#).

Disclosure of information by foreign tax administrations: a new twist?

On 19 July 2019, Commercial Court of Ivanovo Region ruled on Case No. [A17-11142/2018](#) (Extra, OOO) over the applicability of the concept of beneficial income ownership.

The situation considered by the court is quite trivial: a Russian company paid to its Cypriot shareholder dividends, which are beneficially owned by a resident of Estonia that Russia had no double tax treaty ("DTT") with.

The case could become one of the many but for one interesting detail: to confirm the conduit nature of the dividends, the Russian tax authorities requested from

the Estonian tax authorities statements of the Cypriot shareholder's account with an Estonian bank for 2014 and 2015.

Formally, the Estonian tax authorities had all rights to reject the request: with no DTT in place, mutual assistance in tax matters between Russia and Estonia is regulated by the Strasbourg Convention on Mutual Administrative Assistance in Tax Matters of 25 January 1988, which entered into force in Russia only as of 1 July 2019 and applies to the tax periods starting from 1 January 2016.

Although requested for the periods not covered by the Convention, the information was still provided.

For details, please refer to Legislative Tracking in Focus of [29 August 2019](#).

Beneficial ownership of income: has the wind of change finally blown?

In Letter No. [ED-4-13/15696@](#) of 8 August 2019, the Federal Tax Service reaffirmed its commitment to giving up the formal approach to testing the beneficial income ownership.

The tax regulator emphasized that "the activities carried out primarily in the form of investments and financing of group companies or related/affiliated companies **cannot per se indicate** the existence of a wholly artificial arrangement."

The reference to the "holding company" or "investment activities" **cannot be considered as a self-sustaining** evidence, proving or denying beneficial income ownership.

Will this entail principal changes in the beneficial income ownership test?

For details, please refer to Legislative Tracking in Focus of [22 August 2019](#).

Reclassify this: how your active income can turn into passive

Tax-free payments abroad has always riveted attention of the tax authorities.

Recently, we have witnessed a trend towards reclassifying some types of payments into passive income –which is taxable at source.

For details, please refer to Legislative Tracking in Focus of [12 August 2019](#).

We hope that you will find this edition interesting and informative. Should you have any questions on this subject, please do not hesitate to contact us.

Best regards,
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