



LT Digest

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Legislative initiatives

President of Russia signs several federal laws

- Federal Law No [386-FZ](#) of 2 December 2019 **on the ratification of the agreement on traceability of goods imported into the EAEU customs territory** (for more details, see LT Digest of [10-16 June 2019](#));
- Federal Law No [388-FZ](#) of 2 December 2019 **on the ratification of the protocol on amendments to the agreement on the rules for establishing the country of origin of goods in the CIS** (for more details, see LT Digest of [21-27 October 2019](#));
- Federal Law No [398-FZ](#) of 2 December 2019 **on amending regulation of cash transactions in foreign currency**;
- Federal Law No [405-FZ](#) of 2 December 2019 **on administrative liability for non-compliance with personal data localisation requirements** (for more details, see LT Digest of [18-24 November 2019](#));
- Federal Law No [425-FZ](#) of 2 December 2019, requiring **that sellers of digital devices install Russian software before the sale**, starting from 1 July 2020.

[official Internet portal of legal information](#)

[President of Russia signs several federal laws](#)

[State Duma passes bill banning use of capital amnesty declaration as criminal evidence and several others](#)

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[Comments on Pillar 2 released](#)

State Duma passes bill banning use of capital amnesty declaration as criminal evidence and several others

- Bill [837124-7](#) on expanding the territory where tax on professional income is available passed the third reading, where mostly the technical amendments were made (for more details, see LT Digest of [11-17 November 2019](#));
- Bill No [835592-7](#) on banning the use of the capital amnesty declaration as evidence in criminal cases, passed the first reading (for more details, see LT Digest of [11-17 November 2019](#));
- Bill No [778665-7](#), clarifying the use of foreign-flagged vessels in commercial navigation, passed the first reading (for more details, see LT Digest of [26 August – 1 September 2019](#));
- Bills No [748684-7](#) and No [748744-7](#) on the migration to electronic labour books have passed the third reading (for more details see LT Digest of [18-24 November 2019](#)).

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

President of Russia signs federal law on registering international foundations in special administrative districts

It will permit non-profits to register in special administrative districts via the redomiciliation or incorporation mechanisms, obtaining the status of international foundations. The foundations will be governed by Russian law, but the use of a foreign law will be permitted for their internal matters.

The law sets forth the key regulatory principles for international funds, reporting requirements, registration procedure, and rules for governmental control over their activities.

The law provides restrictions regarding the objectives and operations of such funds, their founding members and assignment of their rights.

To illustrate, an international fund cannot be created/operated to:

- distribute income among the founders or making other payments to the founders or other parties;
- manage estate of a deceased person;
- abuse the limited liability of the international fund.

These limitations make it virtually impossible to create/operate international funds as private funds.

The law expressly prohibits the application of the federal law on endowments to international funds.

The law does not introduce any specific taxation rules for such international funds.

[official Internet portal of legal information](#)

Government legalises on-line sales of jewellery

Prime Minister Dmitry Medvedev signed a government resolution legalising online sales of jewellery – subject to mandatory certification of gems and presence of a hallmark on each sold item.

Online sales of jewellery were not expressly banned, so many jewellery stores traded online even before the resolution was signed. Although the Russian Criminal

Code penalises unlawful trade/breaches of sales rules for precious metals and gems, jewellery items are out of scope.

[official Internet portal of legal information](#)

Mandatory labelling developments

The CRPT, Russia's single operator of mandatory labelling, reported a successful completion of pilot projects on digital labelling of perfumes, tyres, photo cameras, and several light industry goods types.

According to Government Resolution No 792-p of 28 April 2018, starting from 1 December, perfumery, tyres, photographic goods, and certain light industry products are subject to mandatory labelling. However, no rules for labelling of these categories of goods have been approved by the Government yet.

The operator prepared a negative report based on the regulatory impact assessment procedure for labelling rules for tyres and photographic goods and sent them back for rework. Reports for perfumery and light industry goods are pending.

From 1 October 2020, imports and sales of unlabelled perfumes and photo cameras, from 1 November 2020 – of unlabeled tyres, from 1 January 2021 – of light industry goods will be banned. Draft labelling rules for other categories of goods determine the stages and the effective dates for labelling requirements for other types of goods, including the unlabelled inventories.

[official site of the CRPT](#)

Ingushetia introduces investment allowance

Organisations or their branches will qualify for the allowance, if they implement investment projects in the Republic of Ingushetia in the processing or construction sectors.

The allowance will amount to 20 percent of fixed asset acquisition costs or 50 percent of fixed asset upgrade costs.

To regional portion of the CIT rate for allowance cap calculation purposes will be set at 10 percent.

As the regional law does not provide for unused allowance carryforward, the general norms of the Tax Code will apply. The allowance will be available from 1 January 2020.

[official Internet portal of legal information](#)

Sakhalin Region clarifies terms of investment allowance

Starting from 1 January 2020, construction of motor-roads and motorways, bridges and tunnels have been added to the list of qualifying activities. The allowance will be available for fixed assets of Depreciation Groups Three to Ten (except buildings, constructions, and transmission infrastructure of Groups Eight to Ten).

[official Internet portal of legal information](#)

Saratov Region and Republic of Tuva introduce investment allowance

In [Saratov Region](#), the allowance will be available to organisations and their branches that meet all of the

criteria below:

- are located in Saratov Region;
- are engaged in any of 10 qualifying activities, generating at least 70 percent revenues;
- implement investment projects involving capital expenditure in Saratov Region;
- are party to an investment agreement, public-private partnership agreement, or a concession agreement.

Organisations that already claimed other regional tax benefits (reduced CIT rate) will not be eligible for the allowance.

The allowance will be capped at 40 percent of investment into fixed assets of depreciation groups three and four, except passenger cars.

The regional portion of CIT rate for allowance cap calculation purposes will be set at 10 percent.

The unused part of the allowance can be carried forward to up to three consecutive tax periods.

The allowance will be made available on 1 January 2020.

In [the Republic of Tyva](#), the allowance will be available to organisations or their branches located in the republic and will be capped at 50 percent of their capital expenditure in the region.

The regional portion of CIT rate for allowance cap calculation purposes will be set at 10 percent. No carryforward of the unused part of the allowance will be permitted. The allowance will be made available on 1 January 2020.

[official Internet portal of legal information](#)

Tula Region clarifies availability criteria for investment allowance

The allowance will not be available to organisations whose principal activity is retail trade or lease of real estate or to those already utilising other regional tax benefits (reduced CIT rate).

The allowance will be available for all fixed assets, except passenger cars over RUB 3 mln in value and motorcycles.

The allowance cap has been lowered from 70 percent to 60 percent of capital expenditure.

The regional portion of CIT rate for allowance cap calculation purposes has been increased from seven percent to eight percent.

The unused part of the allowance can be carried forward to up to three consecutive tax periods.

The changes will come into effect on 1 January 2020.

[official Internet portal of legal information](#)

Regulatory clarifications

MinFin comments on investment criteria for reduced tax rate on dividends when look-through approach is used

The ministry considers the following case: a Russian company pays dividends to its shareholder, a Dutch resident, whereas the ultimate recipient is a Finnish resident that holds interest in the Russian company indirectly.

According to the DTT with Finland, dividend income is taxed at:

- five percent, if the Finnish shareholder directly holds at least a 30- percent interest in the Russian company, and the total investment is at least USD 100,000 as of the date the dividends are declared and paid;
- 12 percent in all other instances.

MinFin believes that the five-percent rate may be used only when the ultimate recipient of the dividends had made a direct capital contribution, exceeding USD 100,000, into the Russian company.

If, however, the ultimate payee (a Finnish resident) holds **an indirect** interest in the Russian company, it is not eligible for the five-percent rate.

Interestingly, as far as the DTT with Germany is concerned, which has similar, but not identical, provisions, MinFin [admitted](#) (although not expressly) that the five-percent rate can be used to withhold tax at source in Russia, when the look-through approach is used. Conversely, regarding the DTT with Cyprus, MinFin is of the same opinion as regarding the Finnish DTT.

Based on all of this, we believe that when the look-through approach is used, each case should be considered individually, through the optics of the

respective DTT and opinions of its other party. The general trend is toward not permitting the use of reduced DTT rates under the look-through approach, where a minimum interest, direct investment, or other criteria are required to qualify.

[Konsultant Plus](#)

Discussion on legalisation of parallel import continues

According to Deputy Head of the Federal Anti-monopoly Service Andrey Kashevarov, the issue of parallel import needs be resolved at the EAEU level.

Permitting the parallel import of the following groups of goods is primarily discussed:

- medical drugs;
- medical products;
- cars and spare parts.

According to FAS, legalising the parallel import would prevent discriminating against the Russian consumers price-wise, quality-wise, and selection-wise, and be a safeguard against various sanctions.

It also noted the drawbacks, such as the increasing counterfeit supplies and limited availability of post-sale maintenance.

Andrey Kashevarov also informed of the measures toward parallel import legalisation in Russia:

amending the EAEU Treaty to empower the Intergovernmental Council to introduce the principle of exhaustion of rights for certain goods, if:

- the goods are not available in the market or their supply is limited;

- the goods are available at higher prices than in other countries;
- the selection of goods and/or the quality of goods are inferior to those in other countries

launching a parallel import pilot for some types of goods.

[the official web-site of the Federal Anti-monopoly Service of Russia](#)

Media review

Russia to boost cooperation with OECD

Russia is planning on intensifying cooperation with the OECD, which is instrumental in forming the international evaluation of the country's investment climate.

Negotiations on ascension to the OECD were suspended by the OECD unilaterally after the Crimea joined Russia in 2014.

Russia and the OECD regularly approve cooperation roadmaps (the current one is for 2019-2020), but the cooperation remains perfunctory.

The Ministry for Economic Development put forward an initiative to boost cooperation with the OECD to facilitate development of the national economy and promote Russian export trade.

[RBKDaily](#)

Government to introduce MET on associated gas from 2022

The initial rate will be RUB 50 per thousand cubic meters, with subsequent increases to RUB 100 in 2024 and to RUB 150 in 2026.

Also in 2022, tax allowances will be made available to producers of ethane and liquefied hydrocarbon gases: RUB 9,000 per tonne of ethane and RUB 4,500 per tonne of liquefied hydrocarbon gases (to be increased to RUB 7,500 per tonne in 2026).

To qualify for the allowances, production facilities must be commissioned after 1 January 2022 or at least RUB 65 bln must be committed to their upgrade.

[RBKDaily](#)

Court practice

Resolution of Supreme Court's plenum on EAEU Tax Code-related court practice

The resolution cancels Resolution No [18](#) "On certain issues of judicial enforcement of customs legislation" of 12 May 2016.

It considers customs regulation in Russia and the EAEU, the rules for determining the customs value of imported goods, correctness of imported goods' classification as per the EAEU's FEACN, customs control and customs payments, recovery of overpaid customs duties and taxes, and the special procedure for reviewing cases involving private individuals.

The courts are advised to take notice of the WCO Kyoto [International Convention of 18 May 1973](#) (the International Convention on the Simplification

and Harmonisation of Customs Procedures) as amended by Protocol of 26 June 1999, in particular, the provisions on:

- refraining from material penalties for unintentional goods declaration errors;
- on the limited period within which the customs authorities may charge and collect duties and taxes;
- on the need to ensure that erroneously collected customs payments are refunded.

Watch out for more details in the upcoming LT in Focus on this issue.

[official website of the Supreme Court of the Russian Federation»](#)

International law

Comments on Pillar 2 released

The OECD released a public consultation document on the global anti-base erosion proposal (GloBE), addressing tax challenges arising from the digitalisation of the economy ([Pillar 2](#)) on 8 November 2019.

The document addresses the use by MNCs of structures channeling income into low-tax jurisdictions.

[OECD's official website](#)

Deloitte publications

Additional taxes loom for intra group restructuring transactions

On 3 October 2019, the Moscow Arbitration court released a resolution on one of the most high profile cases of the year.

The dispute dealt with the economic substance of the intra group restructuring of a major Russian retailer: the X5 Retail Group.

The additional tax exceeded RUB 1 billion.

Additional assessments were made following a tax review of the consolidated taxpayer group (the "CGT").

Although claimswere made against Torgoviy Dom Perekrestok JSC , the litigant was Agroaspect LLC , as the CGT's responsible member.

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

EU Mandatory Disclosure of Tax Aggressive Cross Border Arrangements (DAC6)

With a view to enhancing tax transparency in the EU, discouraging the taxpayers from entering into aggressive tax planning strategies, and providing the EU tax authorities with additional tools to promptly react to harmful tax practices and close the regulatory loopholes, the EU Council Directive 2018/822 (DAC6) has been adopted. Its provisions will be transposed into the national legislation of the EU Member States by 31 December 2019.

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

A foreign counterparty was found to be a conduit company. Is it possible to recover additional tax?

The tax authorities assessed additional withholding tax on a Russian company (PJSC Metcombank) in respect of the interest paid to a Cypriot company.

The reason is rather commonplace: the Cypriot lender was not the beneficial owner of the income.

The company decided not to argue with the tax inspectors, hoping to recover additional tax and late payment interest from the Cypriot entity (see Case No [A60-39931/2019](#))

For details, please refer to Legislative Tracking in Focus of [23 December 2019](#).

Electronic submission format of the document for inventory acceptance and/or differences identified during the acceptance process

The electronic submission format of the document for inventory acceptance and/or differences identified in the acceptance process was approved by Federal Tax Service Order No. [MMV 7 15/423@](#) of 27 August 2019 ("the Order").

Here, inventories mean both tangible assets and the results of work/services (deliverables) or property rights.

The format can be used to:

- register the acceptance of inventories without any differences;
- register the acceptance of inventories that have differences in price, quantity and quality;
- register differences using identification numbers for labeled goods.

The document can be compiled regardless of whether the supporting delivery documents are provided (uninvoiced deliveries).

For details, please refer to Legislative Tracking in Focus of [4 December 2019](#).

New federal laws adopted for electronic employment record books

The Russian President has signed federal laws on electronic labour books (e-labour books) that will introduce amendments [to the Russian Labour Code](#) and the [Federal Law "On Individual \(Professional\) Reporting in the Mandatory Pension Insurance System"](#).

For details, please refer to Legislative Tracking in Focus of [17 December 2019](#).

Various track & trace (T&T) contract templates for pharmaceuticals have been approved

Ministry of Industry and Trade ("Minpromtorg ") has approved the following contract templates between the Advanced Technologies Centre (ATC), and Russian companies and Russian branches of foreign entities:

- contract for the provision of labelling codes to pharmaceutical companies;
- contract for the free of charge provision of LGRs to pharmaceutical companies;
- contract to provide pharmaceutical companies with free of charge, remote access to LGRs;
- contract for the free of charge provision of LDRs to pharmaceutical companies.

For details, please refer to Legislative Tracking in Focus of [9 December 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,
Deloitte CIS Partners

Contacts

Tax & Legal



Svetlana Meyer
Managing Partner
Tax&Legal, Deloitte CIS
smeyer@deloitte.ru



Gennady Kamysnikov
Partner
Private & Corporate Tax
gkamysnikov@deloitte.ru



Oleg Berezin
Partner
Pharmaceuticals
oberezin@deloitte.ru



Oxana Zhupina
Partner,
Consumer Products
ozhupina@deloitte.ru



Yulia Orlova
Partner
Metals and Processing
yorlova@deloitte.ru



Vladimir Elizarov
Partner
Technology, Media, Entertainment &
Telecommunications
velizarov@deloitte.ru



Artem Vasyutin
Partner
Retail, Wholesale and Distribution
Tourism and Hospitality
avasyutin@deloitte.ru



Yulia Krylova
Director
Real Estate
ykrylova@deloitte.ru



Tatiana Kofanova
Partner
Automotive
tkofanova@deloitte.ru



Yuliya Menshikova
Director
Oil & Gas, Energy & Resources, Mining
ymenshikova@deloitte.ru



Anna Kostyra
Managing Partner
Deloitte Legal
akostyra@deloitte.ru



Anton Zykov
Partner
Tax Dispute Resolution
azykov@deloitte.ru



Yuliya Bolshakova
Senior Consultant
Art & Finance
ybolshakova@deloitte.ru



Dmitry Pozharniy
Director
Aviation & Transportation
dpozharniy@deloitte.ru

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