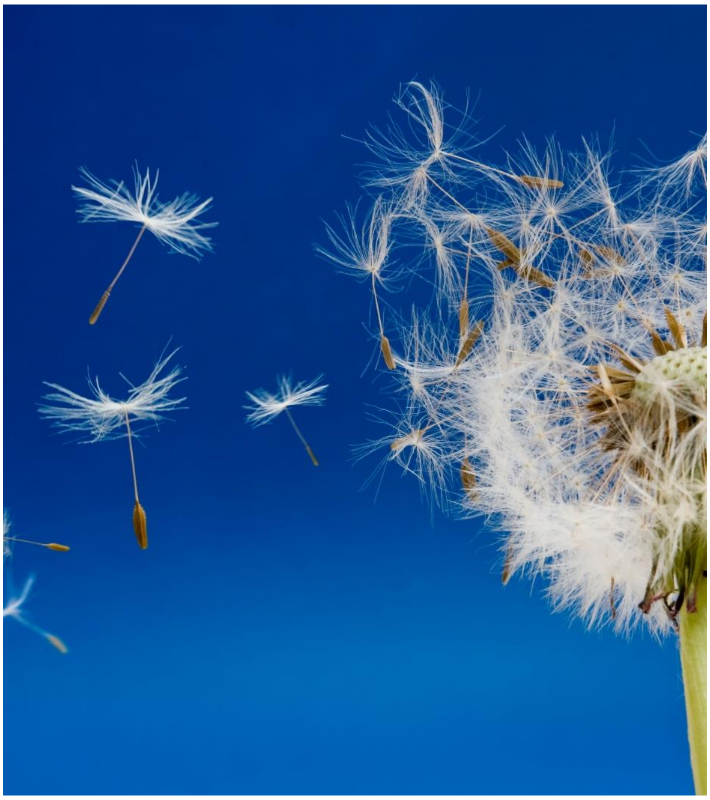

LT Digest
Be in the know

Legislative initiatives

President of Russia signs package of tax laws

The package includes the following laws:

- Federal Law No. 424-FZ of 27 November 2018, **clarifying the provisions on deoffshorisation, tax treatment of CFCs, dividends, and shareholder's exit and liquidation proceeds**
- Federal Law No. 422-FZ of 27 November 2018 on the **self-employment tax experiment**
- Federal Law No. 425-FZ of 27 November 2018 on **tax experiments**
- Federal Law No. 446-FZ of 28 November 2018, **banning retailers from returning unsold products** to producers
- Federal Law No. 451-FZ of 28 November 2018, **streamlining the procedural laws**
- Federal Law No. 428-FZ of 28 November 2018 on **ratification of the EAEU international treaties** with third countries, international organisations or international integration associations

- Federal Law No. 429-FZ of 28 November 2018 on ratification of **provisional free trade zone agreement between EAEU and Iran** (for more details, please refer to LT Digest of 17-23 September 2018)
- Federal Law No. 430-FZ of 28 November 2018 on **Russia's accession to 2002 Protocol to Athens Convention** relating to the carriage of passengers and their luggage by sea (for more details, please refer to LT Digest of 8-14 October 2018).

Official Internet Portal for Legal Information

Investment deduction for donation expenses allowed

The investment deduction for profit tax purposes might cover up to 100 percent of donations of capital funds to federal or municipal cultural facilities and non-for-profit organisations (foundations). The decision to enforce the investment deduction for donations, as well as the deduction cap and eligible donation recipients, will be made by the regions.

The law also regulates the deduction of donation expenses for PIT purposes (the social deduction).

In particular, a region may resolve on increasing the social deduction cap to 30 percent of income of a donor of capital funds to the federal/municipal cultural facilities and non-profit organisations (foundations) and determine the categories of eligible facilities/organisations.

Official Internet Portal for Legal Information

Bill establishing unified framework for special business territories developed

The bill proposes creating a unified regulatory framework for special economic zones.

A decision to create a special regional economic zone will made by the Government based on the established feasibility criteria.

One region will be able to accommodate only one special economic zone.

Activities permitted in the special economic zones will include mineral resource production/field development (except oil and gas), production and recycling of excisable goods (with few exceptions).

The special economic zones regime will apply for nine years and will be non-renewable.

Residents of the special economic zones will be entering into investment agreements, setting forth the obligations of the parties, and will enjoy a number of government incentives:

- tax benefits
- customs benefits
- government subsidies (co-investment)
- federal and regional guarantees
- grandfathering of benefits.

The total benefits may not exceed the invested amount (with few exceptions) and will be formalised in the investment agreement.

If adopted, the law will become effective as of 1 April 2019. Starting from 1 January 2020, new special economic zones will be set up under the new rules only.

A three-year transitional period is envisaged, starting on 1 January 2020.

The special territories established prior to the enactment of the new rules (free economic zones, advanced development territories, the free port of Vladivostok, R&D hubs, industrial parks, etc.) will continue until their respective expiration dates.

Federal draft legislation portal

Bill on tax benefits for residents of special economic zones developed

The residents of special economic zones (SEZ) may be granted the following benefits:

- reducing (up to zero) of the federal and regional profit tax components (the tax rate and the period of exemption to be specified in an investment agreement)
- zero territorial coefficient (ktd) for mineral resources production
- zero transportation tax rate
- tax exemption for property produced or acquired during SEZ residence and located in such SEZ (the period of exemption to be set by the investment agreement)
- tax exemption for land located within SEZ
- zero social contribution rates (to be specified in the investment agreement).

SEZ residents will also be entitled to accelerated depreciation (up to x2 the normal rate).

The benefits of SEZ residents and investors will be grandfathered.

The bill was developed as a step towards the unification of investment incentives for special territories' residents.

Other pending regulations set forth

- the land allocation and use procedures for SEZ purposes
- SEZ land planning and development guidelines
- the administrative sanctions for SEZ residents.

As a reminder, the SEZ bill was posted on the Federal Draft Legislation Portal.

If adopted, the law will enter into force on 1 January 2019.

Federal draft legislation portal

Employment regulations for special economic zones developed

The bill proposes adding Article 351.6 to the Labour Code that would regulate employment of personnel by residents of special economic zones (SEZs). The bill sets forth that:

- SEZ residents may employ foreigners without obtaining special permits
- such foreign employees will be issued work permits outside the quotas
- all other things being equal, Russian employees will be given priority
- certain statutory benefits due to the employees of SEZ in the Far North regions and equivalent territories can be monetised, with the employees' written consent, in a manner provided for by the collective agreement.

If adopted, the law will enter into force on 1 June 2019.

As a reminder, the SEZ bill was posted on the Federal Draft Legislation Portal.

Federal draft legislation portal

Environmental tax and recycling fee to be added to Tax Code

According to a recently developed bill, the new tax may replace the former pollution charges, while the recycling fee may be introduced instead of the now-applicable environmental and recycling fees.

Federal draft legislation portal

Entrepreneurs may get additional safeguards against unfair prosecution

A bill pending with the Russian State Duma calls for the following changes:

- the list of crimes that are not prosecuted subject to reimbursement of damages will be expanded to include:
- Part 1, Article 146 (Plagiarism); Part 1, Article 147 (Misappropriation of invention, utility models or industrial designs); Part 1, Article 159.1 (1) (Credit fraud); Article 160 (Embezzlement); Article 165 (Property damage through deceit or breach of trust), and several others

to exempt first-time wage theft offenders from liability, if the unlawfully withheld amounts and interest on them are repaid within two months following the initiation of criminal proceedings

- to ban provisional detention for certain entrepreneurial crimes
- to prohibit the unjustified use of measures that may interrupt a legal entity's or individual entrepreneur's operations, including the seizure of data storage devices.

Official website of the Russian State Duma

Russian Government approves testing of highly automated vehicles

The test will run from 1 December 2018 to 1 March 2022 in Moscow and Tatarstan.

Official website of the Russian Government

Sanctioned banks to be exempt from mandatory disclosures

The Government developed the exemption criteria for banks and other credit institutions.

Official website of the Russian Government

Eurasian Economic Commission Panel develops medical device classification guidelines

They will apply if a product cannot be classified based on the EAEU regulations.

The document provides guidance on whether disinfectants, general-purpose products, rehabilitation aids for disability patients, exercise therapy appliances, personal protective equipment, packaging and storage equipment, physical therapy equipment and household products, furniture, medicine-containing products, and in vitro diagnostics products can be classified as medical devices.

The document places a greater focus on medical software.

The guidelines are recommended for use starting from 16 May 2019.

Garant:Prime

Clarifications from government bodies

Ministry of Finance explains tax agent VAT liabilities in respect of services provided by foreign company having presence in Russia

According to the Ministry of Finance, VAT on the services supplied by a foreign provider in Russia must be paid by such foreign provider, tax-registered in Russia or having a permanent establishment in the country, while the Russian buyers of such services will not be acting as withholding agents, even if the services were directly supplied by the foreign supplier's head office and not by its permanent establishment.

Garant:Prime

Finance Ministry clarifies registration of foreign e-service suppliers by agents

The Ministry reminded that, starting from 1 January 2019, foreign suppliers of BTB and BTC e-services in Russia will be obliged to obtain a Russian tax registration and pay VAT on the supplied services.

A foreign supplier may engage a third party to act as a withholding agent as per Para 10, Article 174.2 of the Russian Tax Code, provided the e-services are rendered via such third party on the basis of an agency contract or a similar arrangement.

Consultant Plus

Ministry of Finance explains whether foreign e-service supplier with Russian permanent establishment must register for tax purposes

The Ministry reminded that, pursuant to Para 4.6, Article 83 of the Russian Tax Code, a foreign supplier of e-services in Russia (except the suppliers operating via a Russian branch) that accepts payments directly from the customers must be registered with the Russian tax authorities.

Article 83 of the Russian Tax Codes offers no exceptions for foreign suppliers having Russian branches that are not involved in provision of e-services.

Consultant Plus

Ministry of Finance clarifies how to classify distributions from subsidiary liquidation

The Ministry reminded that the taxable liquidating distributions to shareholders are determined as a difference between the market value of such distributions as at the time of receipt and the shareholder's equity stake value.

However, pursuant to Para 1, Article 43 of the Russian Tax Code, if the value of liquidating distribution exceeds the shareholder's equity stake in the liquidated company, such excess will be treated as **dividends**.

The liquidating distribution will be recognised for tax purposes based on its market value determined as at the date of receipt.

If assets received as liquidating distribution are further re-sold, the shareholder will be entitled to deduct the relevant acquisition and sales costs from the sales proceeds for income tax purposes.

Garant:Prime

Federal Tax Service: VAT cannot be deducted from cadastral value

The regulator reminded that VAT cannot be deducted from a property's cadastral value for corporate property tax purposes.

According to the Russian Supreme Court's Ruling No. 5-KG17-258, assessing a property does not create a VATable event unless such property is subsequently sold.

Consultant Plus

Media review

Ministry of Industry and Trade proposes preserving VAT rate for SPIC

The Ministry calls for preserving the 18-percent VAT rate for the existing SPICs and compensate the difference from the budget.

Kommersant

Ministry of Transport may postpone data localisation requirements for booking agencies

The Ministry is working on amendments to its July's order, requiring that ticket booking agencies store and process personal data on local servers, starting from 1 January 2020.

Compliance deadlines are expected to be rescheduled to 31 October 2021.

Kommersant

Ministry of Communications and Media proposes banning creation of databases of personal data using government sources

The Ministry calls for banning individuals and legal entities from creating of public databases, using personal data collected from government information systems.

Personal data operators that receive data from individuals and place them for processing with third parties will have to oversee the use of such data.

Non-compliance penalties will reach up to RUB 2,000 for individuals, RUB 6,000 for company officers, RUB 10,000 for individual entrepreneurs, and RUB 30,000 for legal entities.

Vedomosti

Federal Tax Service and business community discuss VAT changes

Starting from 1 January 2019, foreign suppliers of e-services in Russia will be paying VAT on their B2B deals.

The FTS officials underlined that the new requirement will neither increase the tax burden for the foreign players, nor create risks for their Russian clients.

To register, the foreign suppliers will be able to use the VAT office, a platform enabling online communications with the Russian tax authorities.

For non-recurrent intragroup deals, the foreign supplier may authorise an agent, i.e. a Russian buyer of its services, to tax-register the supplier, file its tax returns, and pay the tax.

The FTS promised to answer the most frequently asked questions regarding VAT changes by the end of 2018.

Official Russian Federal Tax Service website

Russian government to consider banning changes to Law On Trade

The initiative to set a one- or two-year moratorium on amendments to the Law 'On the framework of state regulation of trade in the Russian Federation' was put forward at the meeting of Russia's largest retailers with Deputy Prime Minister Dmitry Kozak on 26 November 2018.

The moratorium will facilitate the industry's adaptation to prior changes and help to more effectively prepare to those that are yet to come.

The meeting participants also discussed the changes to certain existing statutory provisions.

RBCdaily

Independent gas stations hammer out re-wording of fuel price agreement

Independent gas station operators struck a deal with the Russian Antimonopoly Service to change the wording of the price freeze agreement signed with the government in early November 2018.

In particular, the operators will be entitled to a price raise of up to four percent vs. the retail prices of major players (and not vs. the indicative prices as envisaged by the agreement).

The authorities said they already finalised the clarifications addressing the interpretation uncertainties.

As a reminder, oil companies earlier committed to a fuel price freeze (for more details, please refer to LT of 6 November 2018).

RBCdaily

Market dominance threshold for retailers may raise

The Ministry of Industry and Trade may raise the market dominance threshold for retailers from 25 to 35 percent of the market volume; however, no specific date or timing are indicated.

Vedomosti

OMTPL reform postponed

The Russian Ministry of Finance reportedly will not submit the OMTPL (Obligatory Motor Third-Party Liability) price reform bill during the State Duma's autumn session.

As a reminder, OMTPL price is derived from the basic rate, using certain coefficients. The reform will extend the rate floor and cap by 20 percent and will repeal the engine capacity and vehicle registration location coefficients (as of 1 September 2019 and 1 September 2020, respectively). The change of rates will be addressed by the Central Bank of Russia, while the coefficients will be handled by the Ministry of Finance.

The wording of the bill will be finalised by spring 2019.

Vedomosti

Government will not raise non-compliance penalties for Internet companies

Deputy Prime Minister Maxim Akimov said the Russian Government had no plans to raise the penalties for Internet companies, failing to comply with the Russian laws, to one percent of their annual Russian-sourced revenue, despite what Reuters had previously reported.

Economica i Zhizn

Russian Government may revamp industry support landscape

A proposal on the industry support reform currently pending with Deputy Prime Minister Dmitry Kozak's office may soon be submitted to the Government.

The new mechanism will transform the existing subsidy policies for the engineering, chemical, pharmaceutical, timber, and other industries.

The funds will no longer be earmarked, but will be allocated based on the uniform principles.

The Ministry of Industry and Trade will be setting the annual subsidy limits and barriers to entry based on the share of export sales in the total revenues of the engineering, chemical, metals, timber, pharmaceutical, cosmetic and light industries, etc.

During the first year, the mechanism will factor in the market players' targets. If a producer fails to meet the targets by the end of a year, it will have to return the subsidy pro rata to the outstanding target. If the funds are not returned for six months, the subsidy agreement will be terminated and the producer will have to return the entire subsidy amount and the accrued interest.

The companies seeking subsidies will have to file their requests along with the export targets to the Ministry of Industry and Trade by 1 March 2019. They will be included in a single register, based on which the subsidies will be disbursed.

The registered companies will be ranked in terms of performance and will be assigned a production localisation multiplier.

The systemically important enterprises will sign subsidy agreements with the federal authorities, while other companies – with the regional bodies.

The document has not been officially published.

Some businesses believe that the proposed system does not factor in the peculiarities of individual industries and, therefore, will not be effective.

The new mechanism will apply as of 1 January 2019.

Kommersant

Russia to have national data management system

The system is expected to be finalised by 2022 and will accumulate the data on citizens, goods, facilities, and companies, aggregated from the state information systems, registers, and databases.

The concept of the system was developed by the Government's analytical centre.

The accumulated data will be classified according to and kept in the format defined by the law.

Vedomosti

International taxation news

First results of automatic information exchange summed up

The Global Forum on Transparency and Exchange of Information for Tax Purposes held its annual meeting in Punta del Este, Uruguay, on 20-22 November, bringing together over 200 delegates from more than 100 jurisdictions, international organisations, and regional groups.

The Global Forum's members took stock of the tremendous progress made in the implementation of the AEOI (automatic exchange of information) standard, which enabled 4,500 successful bilateral exchanges by 86 jurisdictions in 2018.

Official OECD website

OECD releases Automatic Exchange of Information Implementation Report 2018

The report outlines the following facts and figures:

- in 2018, around 4,500 bilateral exchanges took place, the leaders in the number of exchanges being Belgium, Denmark, Finland, Ireland, Luxembourg, Poland, Portugal, Spain, Italy, Slovenia, and Germany, with Anguilla, Saint Kitts and Nevis, Lebanon, Panama, Monaco, and Macau lagging behind
- 11 jurisdictions (Anguilla, the Bahamas, Bahrain, Bermuda, the British Virgin Islands, the Cayman Islands, the Marshall Islands, Nauru, Qatar, the Turks and Caicos Islands, and the United Arab Emirates) exchanged information only on a non-reciprocal basis (i.e. they send but do not receive information)
- 14 jurisdictions temporarily did not exchange information, citing technical or legal implementation issues.

Official OECD website

Court practice

Supreme Court expresses opinion on legitimacy of charging PIT on capital reduction proceeds

The Russian Supreme Court released its ruling No. 308-KG18-11090 of 22 November 2018 on case No. A32-32855/2017, which settles a dispute between the tax inspectorate and OOO Stroyneftegaz-SMU-7 over the PIT treatment of capital reduction proceeds received by individual shareholders.

The taxpayer said the proceeds were paid out proportionally to the original capital contribution, hence no taxable benefit arose.

The taxpayer also cited amendments to Sub-Para 1, Para 1, Article 220 of the Russian Tax Code that had formalised the issue as of 1 January 2016.

The courts of all three instances supported the tax inspectorate in that PIT had to be charged on the entire amount of the proceeds and not on the proceeds less the shareholder's capital contributions.

The lower courts agreed that the provisions of the Russian Tax Code applicable as at the time of the tax audit had not directly regulated the PIT treatment of gains received by individual shareholders from a subsidiary's capital reduction.

In the courts' opinion, since the shareholders' gains had not resulted from the disposal of their stakes, the portion of the stake paid to them is subject to PIT without any deductions.

The Supreme Court returned the case for re-trial, citing that, despite the lack of direct regulatory provisions, the courts were supposed to investigate whether the individuals had received any benefit, and the size of it.

If the proceeds paid out to a shareholder do not exceed the original capital contribution, such shareholder will not benefit from them, but will have its previous position reinstated, which, by virtue of Article 41 of the Russian Tax Code, cannot be classified as income generation; otherwise, capital gains tax would have to be charged.

Although Chapter 23 of the Russian Tax Code had lacked, until 1 January 2016, express provisions on the tax treatment of capital reduction proceeds, it must not be interpreted as permitting to tax such proceeds in breach of Articles 3, 41, and 209 of the Russian Tax Code.

Electronic Justice: commercial courts files

Deloitte publications

Russia modernises data privacy legislation

On 10 October 2018, Russia signed Amending Protocol ETS No. 223 to the Council of Europe Convention for Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No.108). The accession to the Convention will require ratification of the Protocol by the Russian parliament and will entail changes in the Russian data privacy laws and enforcement practices.

For details, please refer to Legislative Tracking in Focus of 28 November 2018.

And yet it moves! Or does it?

Starting from 1 January 2019 movable property would be exempt from taxation.

It creates a shortfall in the regional fiscal revenues, which have been estimated by Minister of Finance Anton Siluanov at up to RUB 181 billion.

This, in turn, may lead to more litigations over the tax authorities' attempts to classify movable property as immovable to collect more tax.

For details, please refer to Legislative Tracking in Focus of 23 November 2018.

First prosecution for FATCA non-compliance, 12 September 2018

On 11 September 2018 in federal court in Brooklyn, Adrian Baron, the former Chief Business Officer and former Chief Executive Officer of Loyal Bank Ltd pleaded guilty to conspiring to defraud the United States by failing to comply with the Foreign Account Tax Compliance Act (FATCA). The Loyal Bank is an off-shore bank that has offices in Budapest, Hungary and Saint Vincent and the Grenadines.

According to court documents, in June 2017, an undercover agent met with Baron and explained that he was a U.S. citizen involved in stock manipulation schemes and was interested in opening multiple corporate bank accounts at Loyal Bank.

For details, please refer to Legislative Tracking in Focus of 12 September 2018.

Amendments to the Russian Tax Code

Federal Law No. 302-FZ «On amendments to Part I and II of the Russian Tax Code» (The Law) introduced a number of changes aiming to reduce the administrative burden for VAT payers. In particular, the Law optimizes the list of documents to be field with the tax authorities to justify the application of a zero VAT rate.

For details, please refer to Legislative Tracking in Focus of 23 August 2018.

Increase of Russian VAT rate

Federal Law No. 303-FZ 'On Amendments to Certain Tax Laws of the Russian Federation' of 3 August 2018 (hereinafter, "Federal Law No. 303-FZ") has introduced amendments to the Tax Code of the Russian Federation (hereinafter, the "Russian Tax Code"), including an increase of the general VAT rate from 18 to 20 percent.

The raise is expected to generate additional budget revenue of RUB 620 billion p.a., starting from 2019.

Along with the added revenue from the oil and gas 'tax maneuver', the measure is viewed as a source of financing for the national development agenda outlined by the President of the Russian Federation in May 2018.

For details, please refer to Legislative Tracking in Focus of 17 August 2018.

The Convention on the legal status of the Caspian Sea

Meeting at the summit in Aktau on 12 August 2018, the leaders of Russia, Kazakhstan, Azerbaijan, Iran, and Turkmenistan signed a milestone document, which brings the relations among the countries to a new level - the Convention on the legal status of the Caspian Sea. It has taken the five neighbors more than 20 years to come to an agreement.

For details, please refer to Legislative Tracking in Focus of 17 August 2018.

New approach to tax treatment of transactions between related parties

On 15 June 2018, the Nineteenth Commercial Court of Appeals considered a dispute between PepsiCO and the Russian Federal Tax Service (FTS) over the tax treatment of intragroup transactions.

Courts of two instances supported the tax authorities in classifying the arrangement between the plant and the trading/holding company as free of charge provision of services.

According to the tax authorities, the plant's advertising and marketing expenses had contributed to an increase in the earnings of the trading/holding company and not the plant itself.

For details, please refer to Legislative Tracking in Focus of 31 July 2018.

*****

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

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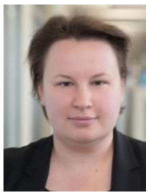

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