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## LT Digest

### Be in the know

#### Legislative initiatives

##### Labelling rules for perfumes, photographic goods, tyres, light industry goods released

On 8 January 2020, respective Government Resolutions (No [1953](#), [1956](#), [1957](#), and [1958](#)) were published on the official website. Voluntary labelling started on the same date, while mandatory labelling will be introduced in a phased manner.

- **Perfumes**

Mandatory registration in the state information system: by 31 March 2020.

Sale and import of unlabelled goods prohibited from: 1 October 2020.

Submission of data to the state information system mandatory from: 1 October 2020.

- **Photographic goods (except film cameras)**

Mandatory registration in the state information system: by 29 February 2020.

Sale and import of unlabelled goods prohibited from: 1 October 2020.

Unlabelled inventories not sold by 1 October 2020 must be labelled by 1 December 2020.

- **Tyres**

Mandatory registration in the state information system: within seven calendar days of producing, importing or selling tyres.

Production and import of unlabelled tyres, as well as their sale by direct distributors, is prohibited from 1 November 2020.

If any unlabelled inventories that were released for consumption before 1 November 2020 are in stock as of 15 December 2020, they must be labelled by 1 March 2021.

Submission of data to the state information system mandatory from: 1 March 2021.

#### • **Light industry goods**

Mandatory registration in the state information system: within seven calendar days of producing, importing or selling of labelled light industry goods.

Sale of unlabelled goods is prohibited from 1 January 2021.

All unlabeled inventories not sold by 1 January 2021 must be labelled by 1 January 2021.

[Official website of the Russian Government](#)

#### **Access rules for state labelled goods' database approved**

Released on 8 января 2020, Government Resolution No 1955 sets forth a procedure for accessing the information on labelled goods contained in the state information system and the sets of data available to users with different access profiles.

Ordinary stakeholders will be able to see public information and their transactions, while producers will also see the current holder of goods and their quantity.

The Resolution also lists the federal authorities that will be granted access to the database and their permitted usage objectives:

- Ministry of Agriculture
- The Federal Tax Service

- The Federal Customs Service
- The Federal Service For Alcohol Market Regulation
- The Federal Accreditation Service
- The Federal Statistics Service
- The Federal Consumer Rights Control Service
- The Federal Veterinary and Fitosanitary Control Service
- The Federal Antitrust Service.

[Official website of the Russian Government](#)

#### **Government: labelling of drugs to go mandatory in July**

Building on Federal Law No [462-FZ](#) of 27 December 2019, amending the Federal Law 'On circulation of medical drugs', the Government passed a respective resolution. Labelling of drugs will become mandatory from 1 July 2020 and all stakeholders must register with the state information system by 29 February 2020. Reporting transactions with drugs to the state information system will become mandatory also on 1 July 2020.

[Official Internet portal of legal information](#)

#### **VAT rate for fruits and berries lowered**

The list of goods eligible for lower VAT rates approved by Government's Resolution No [908](#) of 31 December 2004 was complemented with a new section Fruits and Berries (including grapes), listing watermelons, melons, tropical fruits, citrus fruits, berry seedlings, and wild berries.

Also, palm oil was marked as exception in the category Plant Oil and is now taxed at the regular VAT rate of 20 percent.

The changes will be backdated to 1 October 2019.

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## **Regulatory clarifications**

### **MinFin: Article 54.1 of the Tax Code does not mandate tax reassessment**

According to the Ministry's comments (not yet officially released), Article 54.1 of the Tax Code does not obligate the tax authorities to perform tax reassessment.

According to the Russian tax regulatory framework, tax reassessment is understood in the following way: if there is sufficient evidence that a taxpayer failed to record certain operations according to their economic substance, the tax rights and obligations of the taxpayer must be determined based on the effective economic substance of the challenged operations.

In other words, once a tax violation has been established, the exact amount of tax due must also be determined.

The Supreme Arbitration Court noted the need for tax reassessment as early as 2006 in its Resolution No 53 of 12 October 2006. However, Article 54.1 of the Tax Code does not provide for a tax reassessment mechanism.

At the same time, if interpreted literally, Article 54.1 empowers the tax authorities to challenge the entire amount of a transaction solely because the relevant contractual obligations were actually discharged by a party other than the contractual counterparty.

MinFin is not the first to articulate this position: the Federal Tax Service has also pointed out that the tax authorities are not obligated to perform tax reassessment (Letter No [CA-4-7/16152@](#) of 16 August 2017).

There was no court practice on this issue before the precedent-setting Case No [A27-17275/2019](#) (OOO Kuzbasskonservmoloko).

In the above case, the taxpayer procured raw materials via a chain of intermediaries, artificially inflating the price. The physical deliveries were made by agricultural producers, which are VAT-exempt.

Although they did not dispute the fact that the raw materials were indeed purchased, the tax authorities disallowed the recovery of input VAT and challenged the deductibility of the entire transaction amount for CIT purposes.

A court of the first instance supported the tax authorities only in terms of VAT recovery.

As for CIT deductibility, the court maintained that the amount of the legitimate tax liabilities must be established and only the artificially inflated margins should be disallowed.

The court noted that the tax authorities should calculate the amount of tax liabilities not only when a taxpayer has failed to provide the required documents (Article 31.1.7 of the Tax Code), but also when the documents provided were deemed unsatisfactory – or else taxpayers that did not provide any documents at all would find themselves in a better position than taxpayers who provided documents that do meet the requirements of Article 54.1.

An appellate court will hear this case on 14 January 2020.

Given the position of the tax authorities, taxpayers will likely have to assert their right to tax reassessment at

court (*as the tax authorities would rather disallow the whole amount of challenged transactions*).

As a reminder, a recent plenum of the Supreme Court [supported](#) the necessity of using the tax reassessment method during criminal proceedings on tax cases.

[RBK](#)

### **Package of bills on federal register of travel agents introduced to State Duma**

According to Bill No [877880-7](#), starting from 1 January 2021, a single federal register of travel agents will be established within the state information system Unified Federal Register Of Tour Operators. Travel agents will be recorded by tour operators; registration in the register will be a mandatory prerequisite for a travel agent to promote and sell tours. Rosturizm, the federal tourism watchdog, will be managing the register.

According to a complementary Bill No [875640-7](#), failure to register with/provide data to the register will be penalised (administrative fines from RUB 20,000 to RUB 100,000).

[Official website of the State Duma](#)

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## **International law**

### **EAEU countries agree on tobacco excises**

On 19 December 2019, deputy prime ministers of the EAEU countries signed an agreement on the principles of tobacco excise policy to harmonise excise rates across the member states and support the EAEU's tobacco market.

See the LT Digest of [14-20 October 2019](#) for more details.

[Official website of the Eurasian economic Commission](#)

### **EU publishes report on international tax evasion by individuals**

The report provides estimates of offshore wealth held by individuals (for major economies) and international tax evasion by individuals (for EU countries).

[Official website of the EU](#)

# 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](#).

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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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## TaxSmart app



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