Legislative Tracking
Be in the know

Legislative initiatives
- Fiscal policy priorities for 2022-2024
- Proposal to reduce permitted offshore shareholding for seekers of Government subsidies
- Bill to fine-tune MET submitted to State Duma
- Foreign heavy haulers may be stopped from leaving Russia unless driving fines paid
- Decisions made at a meeting with metals companies

Media Review
- Ministry of Economic Development develops rules for climate change project implementation
- Government postpones its plans to increase recycling fee
- Taxes for foreigners investing in Russia may be halved
- Ministry of Finance proposes refining personal taxation system
- Russia may raise duties on wine, beer and perfumes from EU
- Russia to extend moratorium on extradition of illegal migrants

Court Practice
- New dispute over including royalties in customs value
- Case on assessment of PIT on proceeds from subsidiary’s capital reduction sent for retrial

International tax news
- G7 Finance Ministers report progress in global tax deal discussions
- Dutch Ministry of Finance releases tax plan for 2022
- European Commission proposes Directive for implementation of Pillar 2 in EU
- EU set to remove Seychelles from tax haven blacklist
Legislative initiatives

Fiscal policy priorities for 2022-2024

The Russian Ministry of Finance has released its budgetary, tax and customs policy priorities for 2022-2024.

A bill on the federal budget for 2022 and the 2023-2024 planning period, which includes annexes to the main tax policy priorities, has also been submitted to the State Duma.

An overview of the key provisions of these documents is presented below.

CIT:
- voluntary insurance expenses: there are plans to switch from a closed list of deductible expenses to one based on general deductibility criteria
- the rules for taxing transactions with digital assets should be defined
- a preferential tax rate of 15 percent will be extended to interest income on Russian tradeable bonds issued after 31 December 2021
- the tax accounting of leasing transactions will be regulated by the recently adopted Federal Accounting Standard “Lease”.

The proposals also call for additional tax benefits in the IT sector to be considered (which, as we understand, correlates with the recently published second package of support measures for IT companies).

Personal income tax (PIT):
- foreigners who pay income to individuals performing works and/or services in Russia (including in IT) will act as PIT withholding agents
- salaries paid for remote work outside Russia will be treated as Russian-source income
- the rules for taxing PIT on digital asset transactions will be formalised
- limits on PIT-exempt compensation for workplace expenses to remote employees will be set
- the tax treatment of proceeds received upon exiting or liquidating limited liability companies will be formalised
- tax incentives to foster private investment in long-term market instruments, including through the use of a new type of individual investment accounts, will be developed.

The option of charging the same PIT rate on the salaries of residents and non-residents will be considered in the future.

Property tax:
- given the changes ensuing from the new Federal Accounting Standard “Lease”, plans include addressing the issue of whether a lessor or lessee will pay property tax on leased property.

VAT:
- the proposals call for a significant reconsideration of the rules for determining the place of supply of services/works: they will be recognised as having been performed at a buyer’s location regardless of their type. This initiative will be implemented simultaneously with changes to the rules for the EAEU
- the VAT exemption threshold for advertising materials distributed free-of-charge will be increased from RUB 100 to 300
- it is proposed to explicitly stipulate in the Russian Tax Code that developer services rendered under co-investment agreements for non-residential premises are exempt from VAT (however, no such exemption will apply to apartments)
- contested issues concerning VAT on international shipments will be settled.

Special regimes:
- it is proposed to ease the burden on small businesses by letting them pay taxes and social contributions without tax returns. This option will be available for businesses that apply the simplified tax system provided that their headcount does not exceed five FTEs and their annual income is below RUB 60 million (tax will calculated based on the data from online cash registers).

International taxation:
- the further improvement of mechanisms to counteract the abuse of tax benefits. These mechanisms include the development of the beneficial income ownership concept, permanent establishment rules and a list of at-source incomes
- Russia plans to join the G20/OECD joint taxation reform (Pillar 1 and Pillar 2)
- the rules for conducting mutual agreement procedures, including those for requesting additional information and the mechanism for implementing decisions made (adjusting the tax base, tax refunds/offsets) will be clarified
- work on revising tax treaties with transit jurisdictions will continue.
Special administrative districts
• the special administrative districts regime will be further refined to incentivise the redomiciliation of foreign companies (a bill to that effect has already been drafted and is expected to be adopted in 2022).

CFC
• to avoid double taxation, it is proposed that the profits of unincorporated foreign entities should not be included in the controlling owner’s tax base if such profits cannot be determined due to the nature of the entity’s creation and operations set out in its personal law.

Tax controls:
• it is proposed that interim measures be applied at the stage of making an audit decision – the option of introducing a pledge in the amount of the difference between the average industry tax burden and the total amount of taxes paid by the taxpayer is being discussed
• the tax authorities may be entitled to collect taxes from taxpayers’ debtors
• the tax secrecy regime may be streamlined: subject to the taxpayer’s agreement, the tax authorities will be able to disclose relevant data to third parties
• it is proposed to introduce an electronic bank guarantee
• companies may be enabled to pay taxes through a “single tax payment”.

Tax benefits
• the bill provides for a transition to new rules for granting investment tax benefits, which will require the conclusion of investment agreements between an investor and the Russian Government
• efforts will be made to encourage the use of the investment tax credit
• a preferential tax regime will be introduced in the Kuril Islands.

Proposal to reduce permitted offshore shareholding for seekers of Government subsidies
The State Duma will consider a bill that proposes reducing the maximum permitted direct or indirect offshore shareholding in the charter capital of companies seeking Government subsidies from 50 to 25 percent.

The Ministry of Finance will be entitled to maintain a separate list of offshore jurisdictions, including transit jurisdictions.

The changes will allow for other jurisdictions that have not been blacklisted by the Finance Ministry (such as Cyprus and Hong Kong) to be counted as offshore.

Bill to fine-tune MET submitted to State Duma
The bill proposes:
• introducing an excise tax on liquid steel
• changing the taxation regime for iron ore, coking coal and fertilisers, multicomponent complex ore containing copper, nickel, platinum group metals mined in Krasnoyarsk Region, as well as apatite-nepheline, apatite-staffelite, apatite and phosphorite ores.

Per agreements reached between the business community and the government, an increase in the CIT rate was not included in the bill.

Foreign heavy haulers may be stopped from leaving Russia unless driving fines paid
A bill to that effect has been submitted to the Russian State Duma.

The document proposes detaining foreign trucks at border crossing points until any penalties have been duly settled.
Decisions made at a meeting with metals companies

On 23 September 2021, Mikhail Mishustin held a meeting with the members of the Russian Union of Industrialists and Entrepreneurs Bureau to discuss the tax burden on metals, fertiliser and coking coal producers.

Important agreements were reached on the widely discussed reform of the mineral extraction and income taxes:

• the government supported the MET rates agreed by the Ministry of Finance and the business community
• a proposal was also adopted to set the ad valorem component of the MET rate at 4.8 percent for iron ore and the excise tax rate at 2.7 percent for liquid steel
• a decision was made to remove the provisions of the bill that would increase the corporate income tax rate in the event that profits are used to distribute dividends.

The bill will be updated to take into account the agreements reached.

They include projects to protect forests from fires, improve the efficiency of fossil fuel usage and CO₂ recycling.

Kommersant

Government postpones its plans to increase recycling fee

Industry and Trade Minister, Denis Manturov, said the Russian Government will most likely not increase the recycling fee for cars until 2022.

TASS News Agency

Taxes for foreigners investing in Russia may be halved

Taxes on foreigners’ income from investing in Russian stocks may be reduced from 30 to 13 percent to attract foreign investors to the exchange, said Ivan Chebeskov, Head of the Financial Policy Department of the Ministry of Finance.

He said that identifying access to the Russian stock exchange for residents of other countries is another issue that must be resolved.

Entering the Russian stock market is currently quite challenging for foreigners, even those from EAEU countries.

Izvestiya

Ministry of Finance proposes refining personal taxation system

Changes in the personal taxation regime are provided for by the fiscal policy priorities for 2022-2024 (not yet published).

The proposals include:

• to charge PIT on individuals working for Russian companies from other countries
• to cap compensation of workplace expenses to remote employees that will be exempt from PIT

Media Review

Ministry of Economic Development develops rules for climate change project implementation

Draft orders establish the criteria and rules for classifying projects as related to “climate change” and introduce a template for implementation reports.

According to the documents, climate change projects are aimed at, among other things, achieving the objectives of the Paris Agreement, reducing emissions or increasing their absorption, complying with the principles and objectives of sustainable development, and are supplementary to the mandatory requirements of Russian legislation.

Project classification will be performed by accredited verifiers to whom companies will submit documents outlining their initiative implementation plans or progress.

Project implementation reports (also subject to verification) will be filed with the Ministry of Economic Development and a carbon units register operator.

The Russian Union of Industrialists and Entrepreneurs has already submitted information about the climate projects planned by the business community.
- to oblige the Pension Fund to disclose to the tax authorities the information on the use of maternity capital to analyse the legitimacy of claiming the deduction on the purchase of property
- to increase to 24 years the age of children whose education costs can be included in the social deduction.

Furthermore, as we have previously wrote, the proposal calls for charging the same personal income tax rate on salaries of residents and non-residents.

*Vedomosti*

**Russia may raise duties on wine, beer and perfumes from EU**

The Ministry of Economic Development has prepared a proposal to increase duties on certain consumer goods imported from the European Union, such as wines, beer, cologne, perfume, cosmetics, etc.

The new tariffs have not yet been determined.

These measures are seen as a response to EU restrictions on the import of Russian metals.

*Vedomosti*

**Russia to extend moratorium on extradition of illegal migrants**

Valery Fadeev, Head of the Presidential Human Rights Council, said the moratorium on the extradition of illegal aliens from Russia could be extended until after September 30.

*Kommersant*

**New dispute over including royalties in customs value**

A company has won a first-instance judgment over the inclusion of license fees in the customs value of goods.

It imported branded car shock absorbers into Russia under a foreign trade contract with a foreign manufacturer.

The company paid royalties in exchange for the right to place a trademark on the product and packaging.

The customs value of the imported goods was calculated with reference to the import transaction value, comprising the cost of the goods and transportation.

The declared value was accepted by the customs authority at the time of import.

However, based on the results of a customs audit performed after the goods had been released, the customs authority concluded that the royalties paid by the company should have been included in the customs value.

The company disagreed with this conclusion and went to court.

A first instance court took the company’s side citing the following arguments:

- under the terms of the license agreement, the obligation to pay royalties does not arise at the time of import, but upon further sale (resale) of the goods in Russia. The company could therefore rightfully import the goods without paying royalties
- the import and license agreements do not stipulate contract termination in the event of non-payment of royalties
- the payment of royalties is not related to the purchase of the goods; requirements are only established for the manufacturer and the buyer of the imported goods, not the seller
- the license agreement does not prohibit the manufacturer (seller) from manufacturing and/or selling goods created using the rightholder’s intellectual property to a buyer if royalties have not been paid
- there are no conditions in the license agreement that allow the licensor to control the manufacture of goods or their sale by the manufacturer to a buyer (only quality control is provided for).

This led the court to the conclusion that royalties are not related to or a precondition for the import of goods, and therefore, need not be included in their customs value.

*Electronic Justice: commercial courts files*
Case on assessment of PIT on proceeds from subsidiary’s capital reduction sent for retrial

A company’s charter capital was reduced in accordance with a decision of the sole equity holder in August 2015.

The amount by which charter capital was reduced was transferred to the equity holder in cash in 2015 and 2016.

According to the tax inspectorate, the company should have withheld PIT on the transferred amounts.

Courts of three instances supported the inspectorate on the grounds that the funds paid to the equity holder were sourced from the charter capital reduction and not from the equity holder, which created taxable gains for the latter.

The Supreme Court reversed the decisions of the lower courts and sent the case for retrial citing the following arguments:

• prior to 1 January 2016, the Russian Tax Code had not contained provisions for charging PIT on personal proceeds from a capital reduction, and therefore, general provisions should have been referenced
  o for PIT purposes, income should be calculated with reference to the economic benefits received, i.e. whether a person becomes better off financially
  o a capital reduction implies a partial refund of an earlier contribution (its value), therefore, income only arises insofar as it exceeds the original contribution
• the rules for determining taxable income in this situation were formalised in the Russian Tax Code as of 1 January 2016 – PIT is charged on proceeds less the expenses incurred to acquire a participation interest.

In the retrial, the Supreme Court has required the lower courts to assess whether the capital reduction generated an economic benefit for the equity holder.

It should be noted that the case involves specific nuances: the equity holder contributed land plots, but was paid back with cash, so the courts may well have to look into the capital reduction for indications of hidden dividend payments.

Electronic Justice: commercial courts files

G7 Finance Ministers report progress in global tax deal discussions

Finance ministers from the Group of Seven made some progress at reaching a joint position on a landmark global corporate tax deal, the UK Treasury said in a statement circulated on Wednesday following negotiations between the ministers (Britain currently chairs the G7).

All parties confirmed their readiness to work together to ensure that the reform is implemented in record time.

The reform proposed by the OECD comprises two pillars:

• a fundamentally new approach to the allocation of taxing rights with respect to business profits in the digital age (Pillar 1)
• global minimum taxation (Pillar 2).

A total of 134 countries (including Russia) joined the statement on international taxation reform this summer.

Final documents disclosing the key components of the reform should be released in October.

TASS News Agency

Dutch Ministry of Finance releases tax plan for 2022

The plan includes several tax proposals that are relevant for international companies.

• Proposals to combat the avoidance of corporate income tax through international interpretational differences of the arm’s length principle, commonly referred to as transfer pricing mismatches. A downward adjustment should therefore be prohibited if the other state does not impose a corresponding upward adjustment
• Reverse hybrid entities would be treated as Dutch tax residents for corporate income tax purposes, and these reverse hybrid entities would be a withholding agent for purposes of the dividend withholding tax act and the conditional withholding tax act on interest and royalties.

The changes are expected to enter into force on 1 January 2022.

Read more in the Tax@Hand of 21 September 2021.
European Commission proposes Directive for implementation of Pillar 2 in EU

The European Commission will issue a Directive on the implementation of the minimum effective corporate tax rate proposed by the OECD as part of its global international tax reforms.

The directive will be issued once an agreement on a global solution has been reached, the technical details of which are to be published in October 2021.

The Commission will spare no effort to ensure that a final agreement is reached over the autumn, with all EU Member States on board.

So far, 134 states (including Russia) have joined the statement on international taxation reform. Estonia, Hungary and Ireland have yet to lend their support to the initiative.

The reform is based on two Pillars:

- a fundamentally new approach to the allocation of taxing rights with respect to business profits in the digital age (Pillar 1)
- global minimum taxation (Pillar 2)

EU set to remove Seychelles from tax haven blacklist

European Union finance ministers are set to remove the Seychelles, Dominica and Anguilla from the bloc’s blacklist of tax havens next week because they have committed to undergo a supplementary review of their tax systems with the Global Forum on Transparency and Exchange of Information for Tax Purposes.

The three jurisdictions are expected to be moved to the EU’s "grey list" of countries that have shown commitment to tax reforms, raising the number of countries on the list to 12. The updated black list will comprise nine jurisdictions: American Samoa, Fiji, Guam, Palau, Panama, Samoa, Trinidad and Tobago, the US Virgin Islands and Vanuatu.

States that are blacklisted are subject to stricter controls on transactions with the EU. The list is revised annually.

Reuters
Russian Carbon Regulation

The regulation of greenhouse gas ('GHG') emissions in Russia is currently at an early stage. The main document in this area is the Federal Law On Limiting Greenhouse Gas Emissions ('the Law'); it was published on 2 July 2021 and will come into force on 30 December 2021. The Law provides the necessary terminology, sets out the measures aimed at limiting GHG emissions, outlines the powers and responsibilities of the governmental bodies, sets GHG emission targets, and establishes the general provisions of climate-related projects.

The Law is conceptually consistent with the Presidential Decree [2] On the Reduction of Greenhouse Gas Emissions ('the Decree'), which provides for a 70-percent reduction of GHG emissions by 2030 as compared to 1990 (based on the maximum possible absorptive capacity of forests and other ecosystems).

According to the Decree, the Russian Government will prepare a low-carbon development strategy for the country until 2050. The first version of the strategy was released in 2020, but after the President's address to the Federal Assembly in April 2021, the document was significantly changed (its approval is expected by year end).

Read on for more details in our LT in Focus of 21 September 2021.

EU carbon border tax

As part of the EU commitment to reducing emissions by at least 55 percent by 2030 and making Europe a climate-neutral continent by 2050, the European Commission presented a draft climate package including new proposals and amendments to the existing regulations.

In particular, among the proposed initiatives, the package introduces a Carbon Border Adjustment Mechanism (CBAM), which provides for necessity to buy carbon certificates which should be sold by a specially created authorized body for carbon-intensive products imported into the EU according to an established list.

The CBAM will be phased in gradually: a reporting system will apply as from 2023 and importers will start paying a financial adjustment in 2026.

Read on for more details in our LT in Focus of 20 July 2021.

New accounting standard – new challenges

On 7 June 2021, the Ministry of Justice registered the Ministry of Finance's Order No. 62n of 16 April 2021, approving the Federal Accounting Standard (FAS) 27/2021 Accounting Documents and Document Flow ("the Standard").

The document enters into force as of 1 January 2022, but can be applied voluntarily already now.

The Standard incorporates some of the previous provisions and introduces new ones.

One of the most important changes is the requirement to keep accounting documents and the respective databases in Russia.

Read on for more details in our LT in Focus of 15 July 2021.

An unexpected development of the dispute on economic substance of intra-group restructuring

Moscow Arbitration Court released its resolution on the high-profile case of AO Trading House Perekryostok, dealing with the economic substantiation of intragroup restructuring.

The first-instance court resolved in favour of the taxpayer. This came as a surprise because two years ago, when an earlier episode with identical circumstances was disputed, courts of all instances supported the tax authorities.

The majority of arguments refuted back then have now helped the taxpayer defend its position.

Read on for more details in our LT in Focus of 9 August 2021.
Contacts
Tax & Legal

Pavel Balashov
Managing Partner
Tax & Legal
pbalashov@deloitte.ru

Irina Androncheva
Director
iandroncheva@deloitte.ru

Tamara Arkhangelskaya
Partner
tarkhangelskaya@deloitte.ru

Emil Baburov
Director
ebaburov@deloitte.ru

Dmitriy Bespalov
Digital Director
dbespalov@deloitte.ru

Oleg Berezin
Partner
oberezin@deloitte.ru

Svetlana Borisova
Partner
sborisova@deloitte.ru

Veronika Varshavskaya
Director
vvarshavskaya@deloitte.ru

Artem Vasyutin
Partner
avasyutin@deloitte.ru

Vladimir Elizarov
Partner
velizarov@deloitte.ru

Oksana Zhupina
Partner
ozhupina@deloitte.ru

Anton Zykov
Partner
azykov@deloitte.ru

Gennady Kamyshnikov
Partner
gkamyshnikov@deloitte.ru

Tatiana Kiseliova
Partner
tkiseliova@deloitte.ru

Anna Klimova
Director
aklimova@deloitte.ru

Elena Kovalevich
Partner
ekovalevich@deloitte.ru

Nikita Korobeynikov
Director
Russia Legal Leader
nkorobeinikov@deloitte.ru

Tatiana Kofanova
Partner
tkofanova@deloitte.ru