



LT Digest

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Court practice

[Full text of resolution on VKontakte and Double Data dispute released](#)

The Ninth Commercial Court of Appeals has released its resolution of 6 February 2018 in Case No. A40-18827/2017, which partially grants the appeal filed by VKontakte against Double Data, a developer of big data solutions.

The social media company sought the acknowledgement of user data extraction by the Defendant as a breach of its exclusive rights. Double Data was accused of using the profiles of VKontakte users for its own business purposes (e.g. selling to banks for credit scoring purposes).

The Court of Appeals acknowledged that Vkontakte is the developer of the database, containing the user data, and admitted the breach of its exclusive rights by Double Data.

The following conclusions were made:

- Social media user profiles qualify as a database as defined by Item 1, Article 1260 of the Russian Civil Code, i.e. a collection of information organised for machine processing and the associated rights, and are subject to protection

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- VKontakte incurred significant financial, organisational, and other expenses to create, collect, process, and accommodate information components in the database
- The expenses are also evidenced by the total number of profiles which exceeds 10,000 by an order of magnitude
- The materials on file confirm that Double Data used social media profiles for its own business purposes
- Unauthorised extraction and use of database elements constitute an offence as per Item 3, Article 1335.1 of the Russian Civil Code

[Electronic Justice: commercial courts files](#)

Russian Constitutional Court calls for differentiation of liability for parallel imports and imports of counterfeit merchandise

The Russian Constitutional Court considered a disputable issue of parallel import, whereby original goods labelled by a foreign producer's trademark are

Legislative initiatives

Tax-free to be piloted in four regions

In 2018, tax-free shopping will be made available in Krasnodar Territory, Moscow Region, Moscow, and St. Petersburg.

The Russian Government [has named](#) the locations and other participation criteria for retailers.

To take part in the pilot, a retailer or its branch must

- Operate in a location named in the list
- Have a market track record of at least two years
- Have no outstanding tax liabilities as at the first date of the month when it applies for participation

The register of retailers offering tax refunds will be [maintained](#) by the Russian Ministry of Industry and Trade.

The Russian Government has also approved a [list](#) of border checkpoints, exit through which will enable the foreigners to claim a VAT refund on their purchases.

[Official website of the Russian Government](#)

Accreditation procedure for token platforms developed

A draft resolution of the Russian Government defines a digital token as an encrypted record made in a distributed information system, entitling its holder to claim the nominal value of the token from the token issuer by producing such token via the above-mentioned system.

The document provides for the voluntary five-year accreditation of organisations enabling the issue of digital tokens with the Russian Ministry of Communications and Media.

Token platforms will have to meet a number of requirements:

- To be registered in Russia
- To have a minimum charter capital of RUB 100 million

brought into the country by importers other than the trademark owner or its official distributors and without the former's permission.

The Constitutional Court acknowledged that Russia's statutory principle of exhaustion of IP rights that bans importation of trademarked goods without a trademark owner's consent does not **contradict** the Russian Constitution.

At the same time, certain IP owners may wrongfully use their trademark rights and restrict importation of certain goods into Russia or set prices above the Russian market.

In that case, legal remedies **against abuse of rights** should be used.

Penalties charged on importers should be calculated on a case-by-case basis and **may not be the same** for parallel importers and the importers of counterfeit products (unless the caused damage is comparable in both instances).

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

- To be licensed to engage in the development, production, and distribution of encryption instruments
- To have a bank account for transactions involving the proceeds from sale of digital tokens
- To have approved token issue rules, binding on the issuers, that provide for the following:
 - Any bearer can redeem tokens at their nominal value, based on an irrevocable public offer
- Tokens must be denominated in roubles; cashless settlements must be available
- Using the proceeds from the sale of digital tokens only for the purposes of maintaining the capacity to redeem tokens at their nominal value

Accreditation will be granted or denied within 30 days of filing an application.

[Federal Draft Regulations Portal](#)

Moscow City Duma passed bill on movable property tax exemption for companies

The bill proposes granting the exemption envisaged for movable property by Item 25, Article 381 of the Russian Tax Code in 2018.

[Official Moscow Duma website](#)

Russian Ministry of Finance calls for testing customs control improvement initiatives

The initiatives aimed at improving the customs control of on-line purchases and streamline cooperation between international e-commerce operators and the Russian customs authorities will be tested from 15 May to 31 December 2018.

One of the initiatives requires that a register of goods shipped internationally be maintained to include personal items purchased and shipped from foreign e-stores.

The pilot goes live on 15 May 2018 with respect to the goods priced above the current duty-free threshold of EUR 1,000 (will be decreased to EUR 500 in January 2019).

According to the proposal, customs duties and taxes on personal items purchased from foreign e-stores and shipped internationally will be paid by e-stores on behalf of the buyer, including by way of upfront payments.

[Federal Draft Regulations Portal](#)

Russian Ministry of Economic Development turns down suggestion to reset maximum prices for medicines

The Ministry has given negative feedback on a bill that proposes resetting the maximum prices for pharmaceuticals, citing, among other reasons, the extra costs for the business that may be passed on to consumers.

The original bill proposed resetting the maximum prices for all vital and essential medicines in 2018.

[Official website of the Russian Ministry of Economic Development](#)

Russian Ministry of Economic Development turns down initiative to impose additional charges on movie theatres

Speaking at an investment forum, Deputy Minister of

Economic Development said the Ministry rejected the Ministry of Culture's initiative to charge three percent of box office results to support the Russian film-making industry.

For more details, please refer to LT Digest of [28 August – 3 September 2017](#).

[Kommersant](#)

Customs authorities of EAEU states to apply new procedure of confirming export from EAEU customs territory

The confirmations will be exchanged electronically between the customs authorities of respective states.

The new procedure regulates the adjustment and cancellation of e-confirmations, confirmation of exportation of goods carried through the territories of non-EAEU states and/or by sea from the EAEU customs territory, as well as confirmation of the exportation of goods from the EAEU customs territory to declarants or its agents.

The new regulation will enter into force on 1 September 2018 and will apply to confirmation of export, temporary export, export for processing, re-export, and other special customs regimes.

[Consultant Plus](#)

Clarifications from government bodies

Russian Ministry of Finance clarifies voluntary submission of country-by-country reports for fiscal years starting from 2016

The Ministry has clarified that country-by-country (CbC) reports for fiscal years starting from 2016 can be filed in a state where a surrogate parent company of an MNE group is a tax resident, if such filing is required by the laws of such state.

The regulator emphasised that the filing of CbC reports on MNE entities qualifying as strategic enterprises, strategic joint-stock companies or their subsidiaries are subject to the provisions of Item 5, Article 105.16-3 of the Russian Tax Code, requiring that the disclosure of such information to the foreign competent authorities

be approved by a federal authority, designated by the Russian Government.

[Consultant Plus](#)

Russian Ministry of Finance clarifies calculation of VAT on consulting services procured from foreign entity with PE in Russia

The Ministry has clarified that if consulting services are procured by a foreign entity itself, not by its permanent establishment (PE), such services will not be deemed supplied in Russia, which makes them non-VATable.

[Garant:Prime](#)

Media review

Russian Federal Tax Service (FTS) to test new CRS filing tool

A special tool called [the foreign accounts report](#) will be used by Russian financial institutions (FI) to report on their foreign clients; it will be tested from 15 February to 15 March 2018.

During the soft launch, the stakeholders will be able to try the new tool, which enables the electronic generation and filing of foreign account reports. Once tested, the tool will be improved based on user feedback.

The FTS website now has a special section "[Financial reports on foreign accounts](#)" that posts up-to-date

information on Russia's participation in the automatic exchange of tax information under the OECD standards, on CRS reports filed by financial institutions, and draft forms of reports on financial accounts of non-residents, reports, and protocols of information exchange between the FTS and the FIs.

[Official Russian Federal Tax Service website](#)

Companies failing to formalise employment relations to be deprived of tax benefits

Thus, if an audit discovers that more than 10 percent of the headcount or more than 100 employees of a

company do not have formal employment contracts, the company will be disqualified from all tax preferences.

The bill is expected to be submitted to the Russian State Duma in late February - early March 2018.

[Parlamentskaya Gazeta](#)

First alternative energy SPIC signed

The SPIC was signed on 15 February 2018 by the Russian Ministry of Industry and Trade, OOO Vestas Manufacturing RUS, and Ulyanovsk Region.

The project is set up to develop and scale up the production of rotor blades for wind energy turbines that are unique for Russia and have a high export potential.

The SPIC is signed for eight years and will require investments of ca. RUB 1.4 billion with expected production output worth over RUB 22.3 billion and total tax payments nearing RUB 1 billion.

The project is expected to create 234 new jobs.

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

International taxation news

OECD announces further developments in BEPS implementation

The OECD released Additional [Guidance](#) on Country-by-Country Reporting that addresses the definition of total consolidated group revenue and the consequences of non-compliance with the appropriate use condition and approaches that may be used by tax authorities to ensure the appropriate use of CbCR information.

The regulator further released the [Guidance](#) on the Implementation of Country-by-Country reporting, containing a compilation of approaches adopted by member jurisdictions and an updated [table](#) of preferential regimes as part of BEPS Action 5.

[Official OECD website](#)

Deloitte publications

Federal Law on Tax Free in Russia signed

On 27 November 2017, the President of the Russian Federation signed a [federal law](#) (the "Law") that sets forth the key principles of the tax-free system in Russia. According to the Law, citizens of foreign non-EAEU states will be entitled to a refund of VAT paid on the purchases made in Russian retail stores, provided the purchased goods are then moved outside the EAEU customs territory.

The new regime is primarily aimed at boosting the retail sales and fostering tourism. Tax-free was discussed for quite a while in Russia, but never made it into the legislation until recently. Now the implementation is expected in 2018.

Read on for an overview of the key provisions of the Law and opinions of Deloitte's specialists, who were actively involved in the development of the Russian tax-free system, on its systemic impact on the Russian retail industry and the economy in general.

For details, please refer to Legislative Tracking in Focus of [8 December 2017](#).

Changes in VAT law: electronic services; payers of unified agricultural tax; "5% rule" for input VAT allocation; zero VAT rate for international transportation, freight forwarding services and re-export of goods; and more

Federal Laws No. 335-FZ and No. 350-FZ, introducing amendments to Parts One and Two of the Russian Tax Code and setting forth, in particular, the new rules for

accounting for and payment of VAT with respect to certain transactions, were officially published on 27 November 2017.

Some amendments will enter into force starting from 1 January 2018, some – from 1 January 2019.

For details, please refer to Legislative Tracking in Focus of [30 November 2017](#).

The CbC Law: Overview Of Key Provisions

On 22 November 2017, the Federation Council approved the Federal Law On Amendments To Part One Of The Russian Tax Code (the "CbC Law", or the "Law"), aimed at implementing the international automatic exchange of financial account and multinational enterprise information.

Read on for an overview of the key aspects of the Law that regulates the preparation and the scope of documentation to be filed by multinational enterprise groups ("MNE Group").

In our previous overview we analysed the key provisions of the Draft Law. In this paper we focus on the latest amendments.

For details, please refer to Legislative Tracking in Focus of [27 November 2017](#).

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 Kamyshnikov
Managing Partner
Government Relations
gkamyshnikov@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



Alexander Sinitsyn
Director
Global FSI
asinitsyn@deloitte.ru



Tatiana Kofanova
Director
Automotive
tkofanova@deloitte.ru



Alexandra Konova
Director
Oil & Gas, Energy & Resources, Mining
akonova@deloitte.ru



Yulia Krylova
Director
Real Estate
ykrylova@deloitte.ru

TaxSmart app



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