



LT Digest

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Legislative initiatives

Updated bill changing SPIC regulation releases

The updated version:

- Clarifies the applicability of regulatory changes:
 - Introduces a grandfather clause, exempting SPIC participants from the disadvantageous changes in tax legislation (except VAT and excises)
 - Does not, unlike the earlier text, list the specific taxes SPIC participants are protected from changes in
 - Sets forth that SPIC participants will enjoy the grandfather rights until their status or the tax privileges expire
- Despite the negative feedback on the first version, the updated bill retains the provision that only parties to the federal SPICs (that the Russian Federation is a party to) will be treated as participants of SPIC for taxation purposes, the status will also be unavailable to consolidated taxpayer groups, special economic zones, advanced development territories, regional investment projects, and companies applying special tax regimes
- Parties to the federal SPICs signed under the old rules will also qualify as participants of SPICs for taxation purposes

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- The taxpayers will be able to choose how to apply the federal tax benefits (one of the three available options must be formalised in the taxpayer's accounting policy):
 - To the entire tax base, provided that the revenues from SPIC's products account for at least 90 percent of the total
 - To the separately recorded SPIC's profit
 - If none of the above applies, the lower rate may be used during the SPIC's term, until the total benefit exceeds 25 percent of the total investments into the project
- The document also sets forth the tax payment rules for the SPICs terminated by a court decision over a material breach of contractual obligations by the parties.

For more details about the original version, please refer to LT Digest of [6-12 August 2018](#).

The public hearings of the bill will be conducted before 4 October 2018.

You may also read about the [bill](#) that amends the SPICs' legal framework in our LT Digest of [27 August – 2 September 2018](#).

[Federal draft legislation portal](#)

Draft protocol on electronic information exchange between CIS states for tax administration purposes approved

The Protocol was approved at the meeting of the CIS Economic Council.

The document provides for an automatic annual exchange of information on personal income, property, and beneficial ownership between the tax authorities of the agreeing states, which is expected to facilitate the tackling of the shadow economy, wealth concealment, and tax avoidance.

With the Protocol signed at the CIS leaders' meeting in November 2018, the exchange may start in 2019.

[Official website of the Russian Federal Tax Service](#)

Government expands list of retail locations offering tax free shopping

The list now includes retail stores at Kuznetsky Most,

Clarifications from government bodies

Ministry of Finance clarifies certain CRS issues

In its letter of 28 August 2018, the Russian Ministry of Finance clarifies issues relating to compliance with the OECD Standard for Automatic Exchange of Financial Account Information (Common Reporting Standard, or CRS) by Russian financial institutions. According to the Ministry, when treating a contract as a financial services contract and defining the scope of a bank account (deposit) information to be disclosed for CRS purposes, financial institutions must be governed by the provisions of Russian Government Resolution [No. 693](#) "On Implementation of Automatic Exchange of Financial Account Information with Foreign Competent Authorities."

It should be noted that in its comments on startups

Nikolskaya, Bolshaya Dmitrovka, Petrovka, and Noviy Arbat Streets and Stolesnikov Lane.

[Official website of the Russian Government](#)

Russian State Duma to consider ratification of provisional free trade zone agreement between EAEU and Iran

A [provisional](#) free trade zone agreement between the EAEU and Iran was approved by the Russian Government and signed on 17 May 2018 in Astana.

The agreement sets forth the trading terms similar to the WTO rules: the countries commit to waiving the quantitative restrictions and non-tariff measures with respect to certain merchandise. The Agreement has been signed for three years.

[Official Internet Portal for Legal Information](#)

Ministry of Culture proposes limiting show monopoly of foreign movies

The proposal calls for limiting the screening of each foreign film to 35 percent a day for multiplexes and 35 percent per month for single-screen theatres.

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

[Official website of the Russian Ministry of Culture](#)

Ministry of Labour lobbies for more non-quota foreign specialists

The Ministry proposes expanding the list of occupations that the foreign specialists do not require quotas for with operator/maintenance technician of sewing and cutting equipment, operator of digital cutting systems, operator of digital (automatic) sewing equipment, warehouse inventory controller, technical equipment servicing specialist, process unit operator/technician, and several others.

[Federal draft legislation portal](#)

being treated as active entities, the Ministry cites not only the provisions of Resolution No. 693, but the general CRS provisions as well, which means that in the event of any issues not covered by the Russian laws, the OECD CRS provisions may apply.

[Consultant Plus](#)

Ministry of Economic Development comments on energy efficiency classes for residential and non-residential properties

According to the Ministry, to buildings, for which the development of specifications began before 1 July 2015, SNiP (construction standard) "23-02-2003. Thermal insulation" should apply.

In particular, energy efficiency classes are established by provisions of Para 4.5, Section 4 of the mentioned SNiP for the following types of buildings:

- Residential multifamily buildings, hotels, and dormitories
- Public buildings
- Medical facilities and orphanages
- Pre-school institutions and hospices
- Service, culture and entertainment buildings, technoparks, and warehouses
- Administrative buildings (offices)

The energy efficiency class is verified by an energy passport issued in compliance with Appendix D to SNiP 23-02-2003.

Therefore, taking into account the above-mentioned statutory provisions, the Ministry concluded that the Russian laws do provide for the assignment of energy efficiency classes both to residential and public (non-residential) buildings.

Similar clarifications were earlier released by the Ministry of Construction (please refer to LT Digest of [10-16 September 2018](#)).

Please note, that the courts (including the Supreme Court) have been unanimous about the inapplicability of property tax benefits to buildings other than multi-unit residential buildings, citing the lack of relevant regulations on the assignment of energy efficiency classes.

We are to wait and see if the recent clarifications of the construction regulator will reverse the taxpayer-unfriendly trend.

[Garant: Prime](#)

Ministry of Finance clarifies applicability of Germany-Russia DTT provisions on unlimited deduction of advertising costs

According to the Germany - Russia Income and Capital Tax Treaty ("the Treaty"), advertising costs, including those that are to be limited by virtue of Para 4 Article 264 of the Russian Tax Code, can be deducted without limitation for profit tax purposes subject to the following conditions:

- The costs meet the requirements of Para 3 of the Protocol that regulates a German resident's participation in Russian entities
- Deductible advertising costs do not exceed the amounts that would have been agreed by independent entities in comparable conditions

The Ministry underlined that, according to the Treaty, the unlimited deduction of costs is not subject to any German participation threshold.

At the same time, the competent authorities of the contracting states have agreed under Article 25 of the Treaty that the provisions of Clause 3 of the Protocol to the Treaty will not apply if there is no real economic basis for such capital participation and when such participation is made solely to obtain the benefits provided for in Clause 3 of the Protocol.

It actually means that the companies that deduct advertising costs without limitation on the grounds of having German shareholders will have to confirm that such participation is not a formality and has business reasons other than the use of tax preferences.

The same position was expressed in the Ministry's letters No. [03-08-P3/9491](#) of 5 March 2014 and No. [03-08-13/375](#) of 13 January 2014.

[Consultant Plus](#)

Ministry of Finance reaffirms waiver of apostilles on residency certificates

Citing its letters No. [03-08-07](#) of 5 October 2004 and No. [03-08-13](#) of 1 July 2009, the Ministry has advised that an original foreign tax residency certificate issued by a competent foreign authority sufficiently evidences that a foreign entity is permanently based in a foreign state that Russia has a tax treaty with, even if such treaty does not regulate the apostilling and the legalisation of residency certificates.

The Ministry also noted that Para 1, Article 312 of the Russian Tax Code does not require a notarised translation of the foreign residency certificate, either.

[Consultant Plus](#)

Federal Tax Service comments on calculation of property tax if cadastral value changes

The Federal Tax Service (FTS) reminded that the change of cadastral value is not normally taken into account for tax base purposes in the period when the change takes place or preceding periods, subject to a few exceptions:

- The adjustment of erroneous cadastral value is factored in starting from the tax period, in which the error was made
- The change of cadastral value based on an authorised commission's or a court's decision is factored in starting from the tax period, in which a revaluation claim was filed, but not earlier than the date, when the challenged cadastral value was entered in the real estate register

It is worth reminding of the notorious retrospective increase of cadastral value in Moscow in 2016, when the Moscow Government amended its Resolution No. 688-PP of 21 November 2014 "On approval of results of cadastral valuation of property in Moscow", making the cadastral value of certain properties skyrocket.

Although the changes were made only in the end of 2016, the tax authorities insist on applying the new cadastral values as of 1 January 2016.

The judicial practice is currently favouring the tax authorities (Cases No. [A40-87972/2018](#) and No. [A40-49977/18-115-1747](#)), but the situation may well change.

Several companies appealed to the court, seeking the nullification of Clause 3 of Moscow Government Resolution No. [973](#) that enacts the document.

According to the plaintiffs, the use of the original cadastral value in 2016 was treated as a tax base underestimation by the tax authorities.

The claim was dismissed by a ruling of Moscow City Court of 27 June 2017, upheld by the court of appeal; however, the [Supreme Court](#) concluded that the disputed provisions did affect the legitimate interests of the plaintiffs and sent the case for retrial.

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Ministry of Finance clarifies provisions banning regional profit tax rates

The Ministry reminded that Federal Law No. [302-FZ](#) of 3 August 2018 banned the lowering of profit tax rates by the regions, with a few exceptions expressly set forth by Chapter 25 of the Russian Tax Code.

Media review

Russian Ministry of Finance plans to reward exporters for rouble contracts

Exporters signing rouble contracts may be offered:

- Privileges with respect to the repatriation of currency earnings
- Other currency control preferences
- Tax-related incentives (e.g. expedited VAT refunds)

[Vedomosti](#)

Oil companies to enjoy new production incentives

The Russian Ministries of Energy and Mineral Resources have developed six types of oil-production incentives, to name but a few:

- Accelerated depreciation for Western Siberia investment projects
- Exploration incentives
- Additional greenfield privileges
- Privileges granted upon achieving one-percent site depletion instead of fixing the start and end dates for MET exemption
- Incentives fostering the tertiary methods of increasing oil production (use of polymers and CO₂ injections for enhanced oil recovery)

[Kommersant](#)

Russian Union of Industrialists and Entrepreneurs suggest lowering social contributions for pre-retirees

The Russian Union of Industrialists and Entrepreneurs, the Chamber of Commerce and Trade, and the Opora Rossii movement petitioned Prime Minister Dmitry Medvedev, proposing a reduction of the social contributions for pre-retirees from 22 percent to 10-12 percent and of the Social Security Fund contributions for the pre-retirees that complete health check-ups from 2.9 to 2.5 percent.

[Kommersant](#)

Federal Customs Service to simplify customs procedures in Free Port of Vladivostok and advanced social development territories

The plan to extend the applicability of free customs

At the same time, the lower corporate profit tax rates set before 1 January 2018 will apply until they expire, but no later than 1 January 2023.

Thus, as of 1 January 2019, taxpayers will be able to apply the lower rate of the regional profit tax component until the benefit expires (but in any case not after 1 January 2018), provided such lower rate was set before 1 January 2018.

Applying the lower rates set in 2018 will become illegitimate starting from 1 January 2019.

[Garant: Prime](#)

zone (FCZ) regime was announced by Head of Federal Customs Service Vladimir Bulavin at the Eastern Economic Forum's session on the customs issues of the Free Port of Vladivostok (FPV) and advanced development territories (ADTs). A bill, simplifying the organisational procedures for setting up customs zones on the sites of ADT and the FPV's residents, has already been developed. The residents will be able to apply the simplified procedures if

- It is only equipment that is placed under the FCZ regime
- A security is provided for the resident's customs and tax liabilities
- An automated inventory accounting system is implemented

The changes will allow easing the requirements to customs control zones without losing on control efficiency.

The bill is now pending approval by the Ministry of Economic Development and Ministry for the Development of the Russian Far East and is expected to be adopted early in 2019.

[Official Russian Federal Customs Service website](#)

FTS sums up results of tax monitoring regime in oil & gas industry

In 2017, the tax monitoring regime was applied by 14 of 115 subsidiaries of Russia's oil and gas giants Rosneft, Gazpromneft, Lukoil and Novatek, paying RUB 662 billion in taxes (22 percent up from 2016).

As the tax revenues increase, the users of this regime enjoy more relaxed tax control, with the number of desk audits decreasing by eight times, document inquires – by 2.4 times, and requests for explanations – by 1.8 times.

The FTS (*Federal Tax Service*) also developed the first Standard Audit File for Tax (SAF-T) to automate the analysis of tax returns, reduce the audit's timeline, and improve the transparency and audit coverage of high-risk operations.

[Official Russian Federal Tax Service website](#)

EAEU states to harmonise financial market regulations

On 17 September 2018, the Chairmen of central

(national) banks of the EAEU member states signed the agreement on the harmonisation of financial market legislation.

The Agreement regulates the harmonisation of national banking, insurance, and securities market regulations based on the international principles and standards or the best financial market practices.

The document aims to foster the development of the common financial market, ensure mutual recognition of banking, insurance and securities licences, and grant indiscriminate access to the EAEU states' financial markets.

The Agreement will be followed by an action plan, setting forth the stages and timeline of the harmonisation, and a roadmap towards aligning the

national financial markets regulations.

[Official Eurasian Economic Committee website](#)

Ministry of Communications and Media: computers imported in Russia must come pre-installed with domestic antivirus programs

The Ministry calls for the formalisation of this requirement for all computers imported or produced in Russia starting from 1 August 2020 for national security purposes, a measure permitted by the WTO.

Similar measures are applied irrespective of the country of origin and to Russian-made computers as well.

[Kommersant](#)

Court practice

Court on intellectual property rights differentiates liability for parallel and counterfeit imports

The court on intellectual property rights released its adjudication on case No. A40-45121/2017 of 11 September 2018 over trademark infringement dispute between Heineken and InterBev OOO.

InterBev OOO ("the Company") imported Heineken-branded beer without the trademark owner's pre-authorisation.

Heineken filed a no-use action, seeking a compensation twice the customs value of imported goods (RUB 50,000).

The first instance court and the court of appeal supported Heineken's position.

The IP court upheld the lower courts' decisions regarding the trademark infringement.

According to the court, unauthorised import of genuine goods is illegitimate, regardless of whether the goods were legitimately trademarked.

Notwithstanding the above, the IP court sent the case for retrial to reconsider the size of compensation, citing the following circumstances:

- The lower courts failed to take into account that the legal consequences of importing the illegitimately

trademarked goods and the legitimately trademarked goods are different

- The lower courts failed to take into account the Russian Constitutional Court's position expressed in Resolution No. [8-P/2018](#) of 13 February 2018 (see LT Digest of [12-18 February 2018](#)), resolving that the size of compensation awarded in parallel import cases should be less than for the proven import of counterfeit products, unless the caused damage is comparable
- The courts acknowledged the unauthorised import of trademarked goods into Russia, but did not establish that the goods were counterfeit
- The losses from parallel imports are not as material as from the imports of counterfeit trademarked products
- The court did not establish if the damage from the parallel imports were comparable with those from counterfeiting

Thus, the court repeatedly acknowledged the need to differentiate between the compensations for the counterfeit goods and for parallel imports.

[Electronic Justice: commercial courts files](#)

International law news

US President signs new CAATSA-related executive order

On 20 September, 2018 US President Donald Trump signed a new executive [order](#) authorizing the implementation of certain sanctions set forth in the countering America's adversaries through sanctions Act

The document authorises the Secretary of State or the Secretary of the Treasury to take financial or visa measures against individuals and companies and bans US financial institutions to deal with sanctioned entities.

In particular, the order prohibits any United States financial institution from making loans or providing credits to the sanctioned person totaling more than \$10,000,000 in any 12-month period.

Furthermore, it prohibits any transfers of credit or

payments between sanctioned financial institutions to the extent that such transfers or payments are subject to the jurisdiction of the United States and involve any interest of the sanctioned person.

The US Department of State added another 27 individuals and six companies to the sanctions list.

[Kommersant](#)

Dutch Ministry of Finance releases 2019 tax agenda

On 18 September 2018, the Dutch Ministry of Finance published the government's tax plans for 2019.

The tax package includes the following legislative proposals:

- Implementation of the EU Anti-Tax Avoidance Directive (ATAD 1), in particular, the earnings stripping rule and controlled foreign company (CFC) rules, which must be introduced by 1 January 2019
- Gradual reduction of the corporate income tax rate

- Abolition of the current dividend withholding tax etc.

For details, please refer to World Tax Alert of [21 September 2018](#).

Deloitte publications

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](#).

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](#).

Revolution in residential construction: developers obligated to switch to escrow accounts

Federal Law No. [175-FZ](#) (the Law), which changes the rules of funding for the residential construction projects, entered into force on 1 July 2018.

It lays the groundwork for the transition from the joint investment schemes to project financing via escrow accounts.

The new provisions ban raising funds from off-plan buyers for projects where the first 'co-investment contract' (i.e. the first property sale) was filed for state registration after 1 July 2019, and require the use of escrow accounts instead.

At the same time, alongside such rigid funding limitations, developers will be granted certain regulatory easing.

For details, please refer to Legislative Tracking in Focus of [23 July 2018](#).

Is audit secrecy a secret?

On 17 July, bill No. [96436-7](#) that entitles the tax authorities to request for documents received by audit firms during their engagements passed the third reading.

The bill was developed to comply with the OECD recommendations following Phase I of the Russian legislation's peer review in the framework of the Global Forum on Transparency and Exchange of Information for Tax Purposes.

The provisions of the bill reflect the global trends to improve transparency and fight aggressive tax planning.

For details, please refer to Legislative Tracking in Focus of [19 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

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

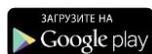


Alexandra Konova
Director
Oil & Gas, Energy & Resources, Mining
akonova@deloitte.ru



Yulia Krylova
Director
Real Estate
ykrylova@deloitte.ru

TaxSmart app



deloitte.ru

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