



## LT Digest

### Be in the know

#### Court practice

##### [Supreme Court reviews case on field audit appointed long after amended return is filed](#)

A tax inspectorate appointed a field audit based on an amended tax return almost two years after it was filed and almost five years after the respective tax period ended.

The taxpayer appealed the appointment of the field audit citing the expiration of the limitations period, but courts of three instance supported the tax authorities.

The courts noted that inasmuch as the Tax Code of the Russian Federation does not preclude the taxpayers from filing an amended return after the three-year limitations period expires, the possibility to appoint a related field audit after such period has expired does not interfere with the balance of public and private interests.

The Supreme Court agreed that there is no limitation on the period of appointing a field audit on an amended return.

At the same time, the Court noted that a repeated audit may not be appointed without due regard of whether the amended return was filed a reasonable time ago.

The Court also cited the principle of legal certainty and noted that the taxpayers should be reasonably able to foresee the consequences of their actions and be certain as to the immutability of their officially recognised

[Supreme Court reviews case on field audit appointed long after amended return is filed](#)

[Supreme Court declines Telegram's claim to invalidate FSB's order on disclosure of encryption keys](#)

[Telegram turns to ECHR over requirement to surrender encryption keys](#)

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status and the rights acquired, specifically in what concerns the extent of their tax liabilities and whether they have been fully and accurately discharged.

At the same time, the Court did not define what a “reasonable time” is, noting that, when estimating the reasonableness of the period after which a field tax audit is appointed, all the circumstances should be taken into account: were the tax authorities in a position to timely establish all the evidence of unjustified tax benefit; is the taxpayer able to defend its position, given the mandatory document retention period of four years; did the taxpayer attempt to counter the tax control measures, etc.

Importantly, the Court believes that the burden of proof in such cases lies with the tax authority.

The Court noted that two years after the filing of an amended return is a considerable period, while the lower-instance courts failed to give a legal treatment to the circumstances accompanying the appointment of a field audit.

The Court repealed the rulings of lower-instance courts and remitted the case for retrial.

[Electronic Justice: commercial courts files](#)

### **Supreme Court declines Telegram’s claim to invalidate FSB’s order on disclosure of encryption keys**

On 20 March 2018, the Supreme Court acting as a first-instance court reviewed a civil claim filed by Telegram, seeking to invalidate the FSB’s order on disclosure of the information needed to decrypt user messages. The Court disallowed the claim.

[Kommersant](#)

### **Telegram turns to ECHR over requirement to surrender encryption keys**

Telegram, a popular Internet messenger, appealed the fine of RUB 800,000 imposed by Meshchanskiy District Court of Moscow with the European Court of Human Rights (ECHR). The company was fined for refusal to provide information on user messages decoding to the Federal Security Service.

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## **Legislative initiatives**

### **President of Russian Federation signs off a federal law streamlining regulation of loan repatriation**

The law proposes expanding the list of instances when the residents do not have to credit foreign or Russian currency to their accounts with authorised banks, such as:

- The issue of loans denominated in foreign or Russian currency by a resident to a non-resident, if such loans are intended to finance geological surveys, mineral exploration and/or production, provided that the relevant loan agreement sets forth that loan repayment depends on particular production volumes and/or sales revenues targets and is not repaid if such targets have not been met
- The off-set of homogenous counter-claims under loan agreements between a resident and a non-resident, provided that the non-resident’s counter-claim arose out of a loan granted to the resident and

In its appeal, the company cited Article 10 of the European Convention on Human Rights that grants the right to freedom of expression and information without interference by public authority and regardless of frontiers, which was breached by the administrative sanctions.

According to the claimant, the Russian authorities failed to establish a balance between their public security efforts and private interests: the Russian Security Service had requested unlimited access to the confidential correspondence of six possible Telegram users, having provided no relevant court warrants or data protection guarantees that are critical for ensuring the messenger users’ privacy.

To remind, on 20 March 2018, the Supreme Court of Russia rejected Telegram’s claim seeking voidance of the Federal Security Service’s order demanding disclosure of user messages encryption keys.

[Vedomosti](#)

### **Court rejects class-action lawsuit filed by Telegram users seeking voidance of Russian Federal Security Service (FSB) order requiring disclosure of message encryption keys**

Meshchansky District Court of Moscow dismissed the lawsuit filed by 35 Telegram users over the illegitimacy of the FSB’s request to disclose the encryption keys to all user messages.

According to the claimants, the FSB violates the constitutional privacy rights, the secrecy of correspondence and other communications.

The Court had not found a breach of rights and freedoms of the claimants and dismissed the lawsuit on that account.

[Vedomosti](#)

paid into to the resident’s account with an authorised bank

- The issue of a loan in foreign currency or roubles by a resident to a non-resident to finance investment and/or innovation activities, if, contingent upon conditions specified in the loan agreement, the resident is not repaid the loan invested into capital, securities or debt instruments of the same non-resident or if the resident is not repaid due to the non-resident’s bankruptcy (insolvency).

The law also proposes entitling the currency control agents to request and obtain from the residents and non-residents the documents underlying their currency transactions, account opening and maintenance, including performance bonds and other documents verifying the transactions and settlements.

[Official Internet Portal for Legal Information](#)

### **Bill on digital financial assets submitted to Duma**

The bill sets forth a procedure for the creation, issuance, storage, and transfer of digital financial assets and enforcement of smart contracts.

Cryptocurrency and tokens are defined as types of digital financial assets that are created with the use of cryptographic technology.

The bill provides that all transactions in digital financial assets must be conducted via designated operators that can be only legal entities, either qualified traders or exchanges.

The bill allows exchange of tokens for roubles or foreign currency. The list of other permitted transactions, their procedure and terms are determined by the Central Bank of Russia and the Government.

The bill regulates ICOs by analogy with IPOs and provides for specific details of dealing in digital financial assets.

[Official website of the Russian State Duma](#)

### **Bill on crowdfunding submitted to Duma**

The bill sets out the rules of crowdfunding by legal entities or sole traders and establishes a legal framework for crowdfunding platforms.

The bill sets the requirements for the crowdfunding platform, its operator and participants, the procedure for crowdfunded investment, including mass-issue securities offered through the platform, and disclosure requirements.

To become a crowdfunding platform operator, a company need to be incorporated in Russia and be included by the CBR to the register of crowdfunding platform operators; the minimum capital threshold is RUB 3 million.

Sale of tokens issued by investment projects will be one of the permitted investment mechanisms for the platforms.

To execute and discharge contracts between investors and investees (fund-raisers), smart contracts may be used.

At the same time, the Ministry of Economic Development and the CBR already prepared a set of [amendments](#) to the bill, some of them factored in before it was submitted to the Duma. To name but a few:

- To allow all types of entities and sole traders to raise funds through crowdfunding, not only to commercial companies
- To purge the biased requirements for crowdfunding platforms from the bill
- To set up a procedure for oversight over crowdfunding platforms by the CBR
- To detail the qualifying requirements to crowdfunding platform operators
- To authorise crowdfunding platform operators to act as PIT tax agents
- To exempt crowdfunding platform's services from VAT on analogy with qualified securities traders

[Official website of the Russian State Duma](#)

### **Bill introducing dividend requirements for companies with government participation over 50 percent submitted to Russian State Duma**

The bill proposes obliging the companies, in which the federal or a municipal government hold a stake of more than 50 percent, to distribute at least 50 percent of their net profit (net of the gains on investment revaluation) in dividends.

[Official website of the Russian State Duma](#)

### **Bill expanding grounds for banning entry to foreigners passes first reading**

In particular, it is proposed to bar foreign citizens or stateless persons from entry to the Russian Federation, if their funds and/or other assets were frozen or financial transactions suspended as an AML/CFT measure.

[Official website of the Russian State Duma](#)

### **Federal Tax Service approves procedure for stamping tax free receipt at customs to confirm export of goods**

Tax free receipts will be stamped at customs points at the Russian state border after the customs officials have checked the goods and the passport of a foreign buyer.

[Official Internet Portal for Legal Information](#)

### **Russian Government sets new recycling multipliers for wheeled vehicles (chassis) and trailers**

According to the updated list, three multipliers will apply to each vehicle/trailer category:

- The lowest multiplier is set for the vehicles manufactured based on the chassis of vehicles produced in 2017
- Higher rates are set for the new vehicles, except those manufactured based on the chassis of vehicles produced in 2017
- The highest multiplier will apply to vehicles older than three years

The existing list contains only two multipliers that apply to the new vehicles and vehicles older than three years.

[Consultant Plus](#)

### **CBR's key rate lowered**

On 23 March 2018, the Central Bank of Russia announced a decrease of its key rate from 7.5 percent to 7.25 percent.

[Official Russian Central Bank website](#)

## International taxation news

### FATCA: RO certification extended

On 16 March 2018, the IRS announced an extension to the FATCA Certification due date and published a draft of certification questions for the one-off certification of pre-existing accounts and the periodic certification for the different types of FFI required to certify.

According to the FATCA certification requirements, a designated Responsible Officer (RO) of a Participating Foreign Financial Institution (FFI) has to certify the FFI's FATCA compliance by submitting certifications to the Internal Revenue Service (IRS). Originally, the FATCA certifications had to be filed by 1 July 2018.

According to the IRS, the FATCA Certification will be enabled in a FFI's account at the IRS' FATCA portal similarly to the FFI Agreement renewal solution. The certification will not be launched until July 2018, therefore, the IRS will extend the FATCA Certification due date by at least three months from the date that the FATCA portal becomes available. This means that the ROs will have at least until 1 October 2018 to review their compliance and submit the necessary FATCA RO Certifications.

[Official website of the IRS](#)

### MLI to enter into force on 1 July 2018

The OECD announced that the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) will first enter into force on 1 July 2018, following Slovenia's deposit of the fifth instrument of ratification of the MLI on 22 March 2018.

Ratification instruments already have been deposited with the OECD by Austria, the Isle of Man, Jersey, and Poland.

Withholding tax provisions will have effect for payments made after 1 January 2019.

Russia joined the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting of 24 November 2016 on 7 June 2017.

For Russia, the Convention will be not be effective until ratified.

For more details about the contents of the draft, please refer to LT in Focus of [14 June 2017](#)

[Official OECD website](#)

### European Commission proposes tax on high-tech companies

If the tax is adopted, companies will have to pay corporate income tax in each EU member state where

they have a significant digital presence.

The changes are expected to enter into force on 1 January 2020.

For more details, please refer to EU Alert of [23 March 2018](#).

### EU to establish multilateral court for settlement of investment disputes

On 20 March 2018, the EU Council approved the [directive](#) for a convention establishing a multilateral court for the settlement of investment disputes

The overall objective for creating the court is to set up a permanent body to decide investment disputes as part of the EU's new dispute settlement approach.

The European Commission is planning to start negotiations with its trade and investment partners under the auspices of the United Nations Commission on International Trade Law (UNCITRAL).

[Official website of the Council of the European Union](#)

### OECD releases intermediary report on tax issues in digital economy

The report analyses the changes in business models and the implications for the international taxation brought about by the development of the digital economy. The impact of digitalisation on the development of tax systems across the world, providing the tax administrations with new tools to enhance collection of fiscal revenues and fight tax evasion.

[Official OECD website](#)

### OECD releases report for G-20

The report analyses the changes in business models and the implications for the international taxation brought about by the development of the digital economy. The impact of digitalisation on the development of tax systems across the world, providing the tax administrations with new tools to enhance collection of fiscal revenues and fight tax evasion.

[Official OECD website](#)

### OECD releases additional guidance on attribution of profit to permanent establishment

This [additional guidance](#) sets out high-level general profit distribution principles and considers particular examples of the attribution of profit to permanent establishments.

[Official OECD website](#)

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## Media review

### Prospects of legal control over non-tax revenue

According to First Vice Prime Minister Igor Shuvalov, the Government and the Duma will decide on the regulation of non-tax revenue.

Both enacting of a separate federal law and the Ministry of Finance's suggestion to add a new chapter to the Tax Code are considered.

Six payments closest to taxes might be included into the Tax Code, the recycling, environmental and tourist duties among them.

A list of non-tax payments will be introduced via a separate federal law, including the federal, regional, and municipal payments and providing for the principles of introducing and amending them.

As a reminder, the most recent version of the [bill](#) on the regulation of non-tax revenue was approved by the Ministries of Finance and Economic Development. In September 2017, it was introduced to the Government.

For more details on the bill, please see the LT in Focus of [19 February 2018](#).

[Kommersant](#)

### **Ministry of Finance, Central Bank reach agreement on crypto bill**

The Ministry of Finance will yield to the Central Bank of Russia in their argument over cryptocurrency exchange in Russia.

The regulator insists on prohibiting any exchange of cryptocurrencies for roubles, foreign currency or other assets, exempting only the tokens issued during ICOs in Russia. Earlier, MinFin voiced its dissent, arguing that a regulatory prohibition of cryptocurrency transactions will spawn a grey market for them.

As a reminder, in January 2018, both agencies published their versions of the bill on the regulation of digital financial assets.

[Vedomosti](#)

### **MinFin finalises list of non-tax payments for inclusion into Tax Code**

Road toll charged by the Platon system, telecom operator payments, pollution charges, environmental, tourist, and recycling duties will be formalised in the Tax Code.

These payments were selected as they are paid into the federal and regional budgets.

Going forward, another group of payments can be added to the Tax Code: patent registration fees, stamp duty for providing extracts from state registers and registries, payments for building/refurbishment permits, tobacco and alcohol excise duties.

The third group of payments, including the state expert examination fee, service fees charged by state-owned companies, many regional and municipal payments will be regulated by a separate law.

A separate full list of non-tax payments will be formed. After 1 July 2020, payments not on the list will not be charged.

[Kommersant](#)

### **Russian Government develops large-scale e-transport incentives**

As part of the sustainable transport and infrastructure roadmap, by 20 September 2018, the Russian Ministry for Economic Development is to analyse the global e-vehicle trends, their impact on the Russian economy, and the possible integration into the national policy.

The proposals for extending the zero import duty for e-cars, the aligned approach to subsidised car loans, leasing, and car insurance meant to boost the demand for such cars are to be submitted by the Ministries of Economic Development, Industry, and Trade and Finance.

Furthermore, Deputy Prime Minister Arkady Dvorkovich has tasked the government agencies with the development of incentives for the sector similar to those already applied for the conventional automotive industry, including the lower loan rates, subsidised leasing rates, public procurement quotas, etc.

[Kommersant](#)

### **Rosstandart establishes Technical Committee to develop hotel business standards**

The Technical Committee will revise the outdated national hotel standards, compile a glossary of professional terms, such as 'cluster approach' and 'hotel classification', and will determine the methods for calculating the tourist flow.

To remind, Federal Law No. [16-FZ](#) on mandatory classification of tourist facilities was adopted on 5 February 2018 (for more details, please refer to LT of [9 January 2017](#) and LT Digest of [9-14 January 2018](#)).

Hotel classification regulations and hotel business rules have also been designed (for more details, please refer to LT Digest of [5-18 March 2018](#)).

[Rossiyskaya gazeta](#)

# Deloitte publications

## **The Russian State Duma to consider a bill on reciprocal measures against the USA and other foreign states**

A bill enabling the Russian Government to implement reciprocal (counter) measures in response to the hostile actions of the USA and other foreign states towards Russia was submitted to the Russian State Duma on 13 April 2018.

For more details, please refer to Legislative Tracking in Focus of 17 April 20178.

## **Streamlining non-tax charges: incorporation in the Tax Code or a separate law?**

In their effort to put together a uniform list of non-tax charges, the Russian Ministry of Economic Development and Russian Ministry of Finance developed a draft law that would regulate the mandatory payments charged on legal entities and individual entrepreneurs and bring consistency to the non-tax charges framework.

The legislative initiative is meant to improve the business environment and improve transparency of non-tax payments administration. Including the non-tax charges into the Tax Code is another option currently on the table. The draft law that is going through the public hearings now will introduce a number of important developments.

For details, please refer to Legislative Tracking in Focus of [19 February 2018](#).

## **The Customs Code of the Eurasian Economic Union (EEU) enters into force**

The EEU Customs Code (the "Code") entered into force on 1 January 2018 and replaced the Customs Code of the Customs Union.

The Code contains quite a few references to the resolutions of the Eurasian Economic Committee (the "EEC"), thus expanding its authority. Some of the EEC resolutions were enacted together with the Code (e.g. those that regulate the automatic release of goods and introduce the form of application for release of goods prior to filing of customs declaration).

The new Code is intended to considerably simplify the customs formalities and improve the efficiency of cooperation between the customs authorities of the EEU member states, in particular, due to the improvement of electronic document flow systems and implementation of unified customs regulations. At the same time, closer cooperation between the customs authorities of the EEU member states will allow them to analyse the information available (e.g. on customs values of identical/similar goods imported into different EEU member states) and to increase control over the intra-EEU transactions (e.g. via track&trace mechanisms).

For details, please refer to Legislative Tracking in Focus of [6 February 2018](#).

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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



## [deloitte.ru](https://deloitte.ru)

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