



LT Digest

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Tax disputes

Russian Supreme Court to consider dispute over treating controlled debt as “direct investment” for tax treaty purposes

A tax inspectorate denied a lower withholding tax rate on the interest, exceeding the statutory cap, on a loan received from a related Cypriot company, reclassifying such interest into dividends under the thin capitalisation rules.

The court supported the tax inspectorate’s opinion that DTT rates are not applicable as there is no direct investment: the foreign lender did not have interest in the Russian taxpayer’s capital.

In its claim filed with the Russian Supreme Court, the taxpayer cited Clause d, Subparagraph 15, Paragraph 2 of Commentaries on Article 10 of the OECD Model Convention that sets forth that “when a loan or other contribution to the company does not, strictly speaking, come as capital under company law but when on the basis of internal law or practice (‘thin capitalisation’, or assimilation of a loan to share capital), the income derived in respect thereof is treated as dividend under Article 10, the value of such loan or contribution is also to be taken as as ‘capital’ ”.

According to the taxpayer, controlled debt, interest on which was reclassified into dividends, should be treated

[Russian Supreme Court to consider dispute over treating controlled debt as “direct investment” for tax treaty purposes](#)

[Russian Supreme Court acknowledges extension of loan repayment period to be material term of related-party loan agreement signed before 1 January 2012 and upholds requirement to file notice of controlled transaction](#)

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DTT. This is fully consistent with the interpretation of the term "capital", offered in Item 14 of the 'Digest of court rulings in cases on the applicability of certain provisions of Section V.1 and Article 269 of Russian Tax Code', approved by the Presidium of the Russian Supreme Court on 16 February 2017 (the Digest).

The Supreme Court accepted the taxpayers' arguments and escalated the case to the Supreme Court's Panel on Economic Disputes.

Please note that despite the position expressed by the Russian Supreme Court in the Digest, the judicial practice has been negative for the taxpayers (see cases No. [A50-17405/2016](#), [A40-176513/2016](#), [A55-13611/2016](#), [A55-12851/2016](#), and [A29-6805/2015](#)).

In the opinion of the Russian Ministry of Finance expressed in Letter No. [03-08-05/56823](#) of 5 September 2017, the reclassification of controlled debt into direct investment considered in the Digest applies only to loans received from founders and should not be regarded as universally applicable.

We hope that the Russian Supreme Court will put an end to these disputes.

The court hearing is scheduled for 2 March 2018.

[Electronic Justice: commercial courts files](#)

Russian Supreme Court acknowledges extension of loan repayment period to be material term of related-party loan agreement signed before 1 January 2012 and upholds requirement to file notice of controlled transaction

A company failed to report a loan agreement signed with a foreign related party in 2010 in its controlled transactions notification for 2014.

In the tax authorities' opinion, the loan agreement must be included in the notification since the company signed an extension addendum to this agreement after 1 January 2012.

The courts supported the taxpayer in that maturity date was not a material term of the loan agreement and, therefore, in accordance with the transitional provisions, the loan agreement in question did not need to be reported.

Conversely, the Russian Supreme Court ruled in the tax authorities' favour, citing that the extension of the loan term did constitute a change of material terms of the controlled transaction that the company had to report in a manner envisaged by Sub-Items 1 and 2, Article 105.16 of the Russian Tax Code, i.e. by 20 May 2015.

[Electronic Justice: commercial courts files](#)

Federal Tax Service releases digest of court decisions in tax litigations for Q4 2017

The digest includes the following judgements:

- Russian Constitutional Court Ruling No. [39-P](#) of 8 December 2017, in which the court reaffirmed the legitimacy of collecting corporate tax debts from

individuals charged with respective tax offences only once the primary debts are acknowledged uncollectible (for more details, please refer to LT Digest of [4 - 31 December 2017](#) and [15 January 2018](#))

- Russian Constitutional Court Resolution No. [34-P](#) of 28 November 2017, in which the court ruled against the retrospective applicability of judgements that are disadvantageous to the taxpayers
- Ruling of the Russian Supreme Court of 3 October 2017 in case No. [A40-189344/2014](#), in which the court re-affirmed the legitimacy of reclaiming input VAT on the imports of overpriced goods paid to the customs authorities (for more details, please refer to LT Digest of [2-8 October 2017](#))
- Ruling of the Russian Supreme Court of 27 November 2017 in case No. [A56-42572/2016](#), reaffirming the legitimacy of reclaiming input VAT on the reconstruction of a cultural heritage site, if no evidence of intent to obtain an unjustified tax benefit is available
- Resolution of the Commercial Court of North-Western District of 27 July 2017 in case No. [A56-40261/2016](#), in which the court confirmed that if a taxpayer did not exceed a five-percent VAT cap, it has the right to reclaim the entire input VAT (including on VAT-exempt transactions)

At the same time, the regulator also included the cases with opposite judgements (such as Ruling of the Russian Supreme Court of 12 October 2016 in case [A40-65178/2015](#) and of 24 September 2015 in case No. [A27-6566/2014](#)).

Please note that the matter was legislated effective 1 January 2018.

- Resolution of the Commercial Court of North-Western District of 22 June 2017 in case No. [A56-7556/2016](#), in which the court denied the applicability of a property tax benefit envisaged by Item 3, Article 380 of the Russian Tax Code to electricity-generating assets

See more of tax dispute statistics in the Tax Benefits and Other Government Incentives newsletter of [27 November 2017](#).

- Ruling of the Russian Supreme Court of 31 October 2017 in case No. [A40-101850/2016](#), where the court reaffirmed the right of the FTS to reverse the lower tax authorities' decisions made in the taxpayers' favour
- Ruling of the Russian Supreme Court of 2 November 2017 in case No. [A55-12793/2016](#), supporting the applicability of lower tax rates on gains from the revaluation of foreign currency balances by a SEZ resident, citing the relevance of the attribution of gains (losses) to its core business, including the instances when gains (losses) were generated at the stage of investment in fixed assets that were to be employed in such business.

[Official Russian Federal Tax Service website](#)

Legislative initiatives

Russian State Duma considers package of bills

The Russian State Duma has considered a package of bills, including:

- Bill No. [276412-7](#), enabling the denomination of salaries in foreign currency in the instances envisaged by the law, passed the third reading
- Bill No. [322981-7](#), amending the regulation of residential property developers, passed the first reading (for more details, please refer to LT of [27 November – 3 December 2017](#))
- Bill No. [326908-7](#), introducing administrative sanctions for non-compliant foreign media that are recognised as foreign agents (for more details, please refer to LT of [27 November – 3 December 2017](#))

Official website of the Russian State Duma

Russian Ministry of Finance introduces bill on digital financial assets

The bill governs the creation, issue, storage, and distribution of digital financial assets and the rights and obligations under smart contracts. The document also regulates initial coin offerings (ICOs) in a manner, similar to IPOs', and the circulation of digital financial assets.

The Ministry [informed](#) of the difference of opinions with the Central Bank of Russia (CBR) on whether the cryptocurrencies can be exchanged for roubles, foreign currency and/or other assets: the CBR believes that such exchange should be permitted for tokens only, while the Ministry of Finance would permit such exchange for all cryptocurrencies, provided such exchange transactions are conducted via digital financial asset exchange operators that meet certain criteria.

[Official Ministry of Finance website](#)

Bill on distributed national crypto-mining submitted to Russian State Duma

The bill regulates the legal status of digital financial assets, such as crypto-rouble, and transactions involving such assets.

Crypto-rouble is defined as a digital financial asset (cryptocurrency), recognised as legal tender in Russia, protected by the cryptographic methods, and used by the participants of distributed registers of digital transactions.

The bill calls for recognising this digital financial asset as legal tender, universally used and accepted throughout Russia.

The document also proposes defining the concept of "crypto-mining" as a business activity, aimed at maintaining a distributed register of digital transactions and generating new blocks of crypto-roubles, which can be remunerated with new units and/or agency fees.

The miners (individuals, individual entrepreneurs, and companies that offer their CPU capacities for the

performance of above-mentioned activities) will have to register in the distributed register of digital transactions. The registration will be performed via the uniform identification and authentication system used for granting access to the government-operated databases.

If adopted, the law will come into force 30 days after the official publication.

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

Bill on crowdfunding developed

The bill regulates raising of funds by business entities or individual entrepreneurs with the use of information technologies and creates a legal framework for operators of crowdfunding (investment) platforms.

The document sets forth the requirements for an investment platform, its operators and participants, platform-based placement of securities, and information disclosure requirements.

The crowdfunding platforms can be operated by Russian legal entities included in the register of investment platform operators maintained by the Central Bank of Russia. The crowdfunding operators may not act as credit institutions or non-credit financial institutions, but are permitted to act as trading platform operators, brokers, managers, depositories or registrars.

The minimum capital of such operator is set at RUB 5 million.

Buying tokens issued by investment projects is named as one of the crowdfunding investment options. Smart contracts can be used to formalise the relations between the investors and the crowdfunding operators.

[Federal draft regulation portal](#)

Goods labelling pilot to extend to footwear

Voluntary labelling of footwear is planned to be piloted out during 1 June - 31 December 2018.

[Federal draft regulation portal](#)

Russian State Duma to take up bill on user registration with social networks

The bill proposes the following developments:

- The registration of new users must be based on a user agreement with the social network operator
- Such new user must produce an electronic copy of his ID and his consent to personal data processing
- Minors under 14 y.o. can only be registered by their legal representative who must produce their consent to the registration, the IDs and a proof of authority to act as the legal representatives
- The identification procedures for the individuals that submitted the above-mentioned documents will be determined by the social network operator

If adopted, the law will enter into force upon its official release and will require aligning the existing accounts with the new requirements within a year.

Another [bill](#) is to be considered by the State Duma, introducing administrative penalties for social network operators failing to comply with the above-mentioned registration requirements.

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

Rules regulating cooperation between online networking operators and investigation or security authorities amended

Thus, the online networking operators, such as online messengers or social media, must treat as confidential any information on their contacts with the law enforcement authorities. For such contacts, they may not use the software or hardware based abroad.

If such operators are requested to provide metadata on transmitted messages, user information, message content, or decoding keys, the remote access to their IT systems must be provided during three months of such request.

The changes will apply effective 30 January 2018.

[Official Internet Portal for Legal Information](#)

Media review

Russian Government calls for easing Yarovaya law requirements

In contrast to the original plan, user data retention volume is proposed to be calculated on the basis of the actual traffic, not based on the mobile operator's installed capacity.

To store traffic data, the operators will be able to use the existing infrastructure and equipment, once they are upgraded in accordance with the technical requirements designed by expert teams involving the Russian Ministry of Communications and Media, Federal Security Service, equipment developers, and operators themselves.

The deadlines for the implementation of user data retention requirements might also be postponed from July to October 2018.

The text of the Russian Government's proposals has not been officially published yet.

[Kommersant](#)

Association of Russian Banks (ARB) calls for modifying subsidised car loan programme

The ARB sent a letter to Minister of Industry and Trade Denis Manturov, requesting amendment of the draft regulation on subsidised car loans.

The banking community is concerned about the term of such subsidised loans, which in 2015–2017 was limited

Federal Anti-Monopoly Service rejects draft roadmap towards public health improvement, prevention and control of non-infectious diseases until 2025

The regulator objects to the [following proposals](#):

- To ban the retail and online sale of alcohol-containing liquids
- To gradually raise alcohol excise tax: in the regulator's opinion, raising the tax may drive the decrease of legitimate output and foster the grey market expansion
- the proposal to introduce health labels on food products aiming to support healthy choices by consumers: in the regulator's opinion, such labels may lead to the discrimination of other food producers
- To impose the excise tax on sweetened beverages and foods with high salt content: these measures are discriminatory and premature as they are not based on actual consumption data

For more details about the content of the draft, please refer to LT of [16 January 2018](#).

[Official Russian Antimonopoly Service website](#)

to 36 months and is now increased to 60 months, effective 2018.

Shorter terms lead to relatively high loan payments. A subsidised loan agreement cannot be extended or refinanced, so if a borrower's financial position deteriorates, there is no way of reducing the monthly payments.

[Kommersant](#)

Russian Ministry of Communications and Media develops crypto-mining regulations

The concept contains the following important provisions:

- Permits mining activities to be performed by individuals and entities, subject to governmental control
- Proposes a special miner identification mechanism: the state will match the capacity of used equipment against the volume of cryptocurrency declared by a miner at a cryptocurrency exchange
- Miners will have electricity quotas and special rates, will be obliged to maintain accounting records, and will enjoy a two- or five-year tax holidays
- Cryptocurrencies can be exchanged into fiat money at a special Russian crypto-exchange; exchange limits will differ for individuals and legal entities

The concept is expected to be finalised by 1 February 2018.

[Vedomosti](#)

International legislation news

Eight countries removed from EU black list of non-cooperative jurisdictions

De-listed jurisdictions include Panama, South Korea, United Arab Emirates, Barbados, Grenada, Macao, Mongolia, and Tunisia.

The jurisdictions were included in the list of countries that failed to comply with the EU tax standards, but have committed to implementing the necessary changes in 2018-2019.

The list of non-cooperative offshore jurisdictions was approved by the heads of EU Ministries of Finance in December 2017. For more details, please refer to LT Digest of [4 - 31 December 2017](#).

[Official website of the European Council](#)

OECD welcomes new members of BEPS Convention

On 24 January 2018, Barbados, Côte d'Ivoire, Jamaica, Malaysia, Panama, and Tunisia signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting, bringing the total number of signatories to 78.

As a reminder, Russia joined the Convention on 7 June 2017, but has not ratified it yet (for more details, please refer to LT in Focus of [14 June 2017](#)).

[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,
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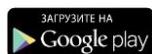


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