



LT Digest

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Court practice

Russian Supreme Court: untimely document provision cannot lead to cancellation of tax benefits

A company has been engaged in the healthcare business and applied a zero profit tax rate since 2014.

It failed to timely submit a 2015 tax return and data confirming its eligibility for the tax benefit (4 April 2016 instead of 28 March 2016).

In a tax inspectorate's opinion, due to the untimely filing, the taxpayer must have applied the 20 percent tax rate.

The courts of three instances adjudged in the tax inspectorate's favour, while the Supreme Court supported the taxpayer, having made the following important conclusions:

- The tax authorities decide on the taxpayers' benefit eligibility based on the tax audit results after studying all of the documents confirming the compliance with the lower tax requirements, including those submitted after the tax return filing, but before the end of the tax audit;
- The fact of untimely filing of a tax return and the documents underlying the use of the lower tax rate is not in itself grounds for denying the tax benefit;

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- Article 284.1 (6) of the Russian Tax Code cited by the tax inspectorate and the lower courts requires that the tax be paid even if the taxpayer has breached the filing deadlines, yet no ban is set for the use of the zero tax rate, provided the breach comes down to the late filing and was rectified by the time of the tax audit (tax audit findings review);
- Otherwise, an obligation to assess and pay the tax at the rate of 20 percent becomes a penalty for the

breach of filing deadlines by the taxpayer whose eligibility for the zero tax rate was not challenged by the tax authorities. However, according to Articles 107 (1) and 108 (1) of the Russian Tax Code, the tax penalties must be expressly provided for by Chapters 16 and 18 of the Russian Tax Code and be fair and adequate.

[Electronic Justice: commercial courts' files](#)

Legislative initiatives

Bill on self-employment tax pilot submitted to Russian State Duma

The pilot will run from 1 January 2019 to 31 December 2028 in Moscow, the Moscow and Kaluga Regions, and Tatarstan.

The tax regime can be chosen by individuals, including individual entrepreneurs, operating in a respective region.

Self-employment tax payees will be exempt from personal income tax (on professional income), and individual entrepreneurs – from VAT and social contributions as well.

The application of the new regime will be subject to certain restrictions in terms of occupation (e.g. the tax will be unavailable for re-sellers) and annual income (max. RUB 2.4 million).

Taxable professional income will include income from the sale of goods/works/services/property rights (except for particular assets, like real estate, securities, etc.) and will be assessed on a monthly basis.

The bill suggests setting the following tax rates:

- Four percent on income from the sale of goods/works/services/property rights to individuals;
- Six percent on income from the sale of goods/works/services/property rights to individual entrepreneurs and legal entities.

The bill enables a maximum tax deduction of RUB 10,000.

All communications with the tax authorities, including registration as a payer of professional income tax, will be done via the My Tax app.

The app's functionality enables the issuing of a tax invoice with data automatically transmitted to the tax authority.

No tax returns will need to be filed – all assessments and tax notifications will also be done via the mobile app.

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

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

Russian State Duma to take up bill on tax tests

The bill enables the testing of taxes, duties or special tax regimes in the Russian regions and municipalities.

The government will report the test results and submit proposals on the implementation of new taxes, duties or regimes, renewal or termination of the tests.

The bill also regulates the specific aspects of the new tax, in particular:

- Enables the payers of professional income tax to engage in entrepreneurial activities without registering as an individual entrepreneurs;
- The payers of professional income tax will not have to use cash register equipment (since tax receipts will be issued via the mobile app);
- Breaches relating to the generation and issue of tax invoices will be penalised (20 percent of a transaction's value);
- The payers of professional income tax will be able to voluntarily pay social contributions (in a manner set forth in the bill).

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

Time restrictions on adoption of new tax laws might be suspended

The bill submitted to the Russian State Duma proposes suspending the provision of the Russian Budgetary Code that sets time restrictions for the amendment of the tax legislation.

The proposals were driven by the commencement of a number of national projects in 2019 and the need to take account of respective financial resources and expenses in the budget acts for 2019, 2020 and the planning period of 2020 and 2021.

Currently according to the Russian Budgetary Code, amendments to the tax legislation that enter into force in a respective fiscal year and planning period must be adopted no later than one day prior to the submission of the budget acts for another fiscal year and planning period.

Similar provisions are envisaged for regional and municipal tax laws (which must be adopted prior to the submission of the regional budget act).

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

Reworked pension reform bill released

The bill envisages the following changes:

- To increase the pension age for women from the current 55 to 60 years;
- To provide early retirement to mothers of large (multi-child) families;
- The early retirement eligibility requirements should be decreased to 37 years for women and to 42 years for men;

- Five years prior to retirement will be treated as the pre-retirement age;
- To set forth that unemployment benefits to pre-retirees can be paid for one year.

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

Ministry of Economic Development approves new cadastral value calculation rules

The new rules approved by Ministry's Order No. 514 of 24 September 2018 apply both to the buildings and land subject to the cadastral registration. The document has not yet been officially published.

The new rules aim to tackle a number of issues faced by the stakeholders (real estate owners, regional and municipal authorities).

The former procedures did not provide for cadastral value calculation mechanisms for real estate complexes, car spaces, or construction-in-progress, thus creating regulatory disparity.

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

Tax authorities update foreign account reporting rules

In particular, new forms have been introduced for the following reports:

- Notifications on opening (closing) foreign bank accounts
- Notifications on changing details of foreign bank accounts (deposits)
- Notifications on foreign bank accounts opened on the basis of an expired permit.

The first two reports can be filed with a territorial tax authority either personally or by an agent, sent by registered or electronic mail, or filed via a taxpayer's personal account.

The changes will apply effective 5 October 2018.

[Garant: legislative tracking](#)

Russian State Duma to consider UEFA Euro 2020-related tax benefits

The bill to be considered by Russian legislators proposes granting allowances for VAT, PIT, profit tax, stamp duties, transportation and corporate property

taxes and social contributions.

Tax exemptions will be offered to Russian organisations (in particular, the Russian Football Union and a specially established local vehicle) on operations relating to the preparations and holding of the UEFA Euro 2020.

PIT and social contribution allowances will be granted to foreigners and stateless persons engaged in the pre-UEFA Euro 2020 activities and will apply until 31 December 2020.

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

CBR's new macroprudential regulation mechanism comes into effect

The Central Bank of Russia (CBR) amended the existing regulatory framework to pursue a more effective macroprudential policy – a framework for attaining financial stability.

Under the new approach, the CBR Board of Directors will be setting risk-based capital buffers to calculate the capital adequacy of credit institutions, which previously required amending applicable prudential regulations.

This approach will apply to certain types of assets stipulated in CBR Ordinance [No. 4892-U](#) of 31 August 2018 "On types and characteristics of assets, for which risk-based capital buffers are set and on the methodology for applying these buffers for capital adequacy ratio calculation purposes."

The required [amendments](#) have been made to CBR Instruction No. 180-I of 28 June 2017 "On Prudential Ratios" aiming to bring the risk weights of these assets in line with their standard Basel III values.

The documents have been registered by the Russian Ministry of Justice and will become effective 10 days after their official publication.

The calculation of a debt burden ratio (DBR) is another important element of the rethought regulation approach.

Credit institutions will be required to calculate their DBRs starting from 1 October 2019. In 2019, the CBR will calibrate risk dependence on DBR and will use it for setting macroprudential buffer values. The standard will apply to credit institutions except non-banks authorised to transfer cash without opening bank accounts and performing other related banking transactions. The CBR also intends to make the DBR calculation mandatory for microfinance organisations and use it for regulatory purposes.

[Official Russian Central Bank website](#)

Clarifications from government bodies

Federal Tax Service clarifies certain provisions of Russian Government Resolution No. 693 of 16 June 2018 "On implementation of automatic exchange of financial account information with foreign competent authorities"

In particular, the following clarifications were offered:

- Russian Government Resolution No. [693](#) of 16 June 2018 "On the implementation of the automatic exchange of financial account information with foreign competent authorities" entered into force as of 20 July 2018;
- A reporting period means a calendar year beginning

from 2017 (from 1 January to 31 December 2017);

- Reportable financial results are determined as at the last calendar day of a reporting period;
- Contract classification by established thresholds is made as at the close of the banking day of 20 July 2018;
- Financial institutions that do not use the term "banking day" (or its equivalent) will assess the contract value based on the activities of the day, on which Resolution No. 693 entered into force.

[Garant: Prime](#)

Ministry of Finance issues guidance on completion and filing of CbC reports and MNE group notifications

In particular, the following clarifications were offered:

- A CbC report must set forth capital stock as at the date of the expiry of a reporting period and the total revenue for the reporting period split into transactions with the MNE Group entities and the transactions with other counterparties, including associated enterprises.

The data shall be based on consolidated financial statements prepared by an MNE group parent entity under IFRS or other internationally recognised financial reporting standards or financial and/or tax accounting reports prepared under the MNE group entity's domestic law, or on the basis of any other information guaranteeing the CbC's completeness and accuracy.

The Ministry has underlined that the taxpayers must consistently use the same information sources each year or substantiate the changes;

- Information included into the MNE notification under Article 105.16-2 (5) of the Russian Tax Code must cover all MNE group entities (corporations or unincorporated entities);
- The data on assets and financials of the entities that joined the MNE group during a reporting period shall be included in the CbC report to the extent that they are included in the MNE group's consolidated financial statements;
- The entities of the MNE group are determined on the basis of the MNE participatory interest in such entities, which is sufficient for including the financial statements of such entities into the MNE group's consolidated financial statements;
- A reporting period for CbC filing purposes is determined with account of financial statements prepared in accordance with Russian law, IFRS or other internationally recognised financial reporting standards and accepted by stock exchanges, including foreign, for company listing purposes, in which the assets, liabilities, equity, income, expense and cash flows of a parent and constituent entities of the MNE group are presented as those of a single economic entity.

[Consultant Plus](#)

Ministry of Finance clarifies MNE group criteria

According to the Ministry, an MNE group must have at least one "foreign element" – a corporation (foreign unincorporated entity) that is not a Russian tax resident

Media review

Russian Ministry of Finance calls for raising MET for oil companies

The initiative was driven by the need to partially compensate the increase of subsidies aiming to limit gasoline prices.

The increase of government subsidies was approved last week by Deputy Prime Minister Dmitry Kozak.

The proposal followed the government's decision to raise subsidies for oil companies to enable the lowering of domestic gasoline prices vs. export (the so-called

or an entity paying tax on foreign operations run via a permanent establishment.

Permanent establishments are treated as MNE group entities and are to be reported on the MNE notifications and CbC reports.

In the Ministry's opinion, a detailed analysis of a taxpayer's foreign operations is required to identify whether they qualify as a permanent establishment.

[Garant: Prime](#)

Ministry of Finance clarifies applicability of regional SPIC benefits

The Ministry has advised that SPIC participants shall be defined as investors who enter into a SPIC signed on behalf of the Russian Federation by a federal industrial policy authority or any other executive body authorised by the Russian government to sign SPICs in specific industry sectors in accordance with Federal Law No. [488-FZ](#) of 31 December 2014.

Therefore, federal profit tax benefits are only offered for SPICs signed with the Russian Federation, not with the regions.

For more details on planned changes to SPIC regulation, please refer to LT Digest of [6 - 12 August 2018](#); [27 August – 2 September 2018](#) and [17 - 23 September 2018](#).

The foregoing bills expressly differentiate between federal and regional SPICs, providing profit tax incentives to the former only.

Given the Ministry's position as well as the amendments to the Russian Tax Code banning the regions from establishing tax privileges other than those set by the Russian Tax Code, the regions are likely to cancel benefits for regional SPIC investors soon.

[Consultant Plus](#)

Ministry of Finance clarifies assessment of VAT on remote software access licensing

The Ministry has reminded that, pursuant to Article 149 (2 (26)) of the Russian Tax Code, software licensing on the basis of a (sub) license agreement is exempt from VAT irrespective of how the rights are transferred.

Therefore, VAT will not be charged on the provision of remote access to software on the basis of the license agreement.

[Consultant Plus](#)

"damping allowance").

[RBCdaily](#)

Tax maneuver law may face changes

The proposal calls for adding logistic surcharges to the size of an excise refund for oil refineries of the Far East, Khanty-Mansi Autonomous District – Yugra and Kemerovo Region.

The Far Eastern Federal District was not originally on the list of regions to be subsidized, the cost of oil which, after being processed into Euro-5 gasoline or diesel, will be supplied to the Russian market.

[Vedomosti](#)

Federal Antimonopoly Service proposes alternative support measures to sanctioned companies

The proposed measures include price preferences in government and corporate procurement projects.

[Vedomosti](#)

Russia to establish biomedical data operator

The Russian Artificial Intelligence Association joined efforts with the medical community to establish a national biomedical database.

The database will be a public-private partnership project, the government being in charge of the data safety and private investors handling analytics, diagnostics and treatment recommendations.

A risk office developed by the insurers will render analytical support to the operator, thus facilitating product pricing.

Depersonalized biomedical data will be handled by one operator and can be accessed by the developers of AI in healthcare.

[Kommersant](#)

Raiffeisen Bank issues its first digital mortgage powered by blockchain

The bank has issued an electronic mortgage with the use of Masterchain, a local blockchain platform, thus becoming a pioneer on the Russian market.

[Vedomosti](#)

Ministry of Economic Development plans to ease visa requirements

The Ministry intends to ease the visa regime to foster the export of travel services as part of a federal project.

Visa procedures might be simplified for the citizens of "target" countries coming to Russia for touristic, business and humanitarian purposes, e.g. cultural and sports cooperation.

The concrete mechanism will be disclosed after detailed discussions.

[RBCdaily](#)

Ministry of Industry and Trade: foreigners bought tax-free goods worth RUB 4.7 billion.

Forty-seven thousand tax refund receipts worth RUB 4.7 billion were issued since the tax-free launch on 10 April 2018.

VAT on purchases was reclaimed by citizens of 174 countries, half of the buyers coming from China.

The tax refund is now offered by nearly 300 retailers.

[Kommersant](#)

Ministry of Finance establishes anti-sanction department

The new department will handle the development and the implementation of financial sanction-mitigating measures to ensure a centralised and prompt response to any future restrictive actions.

[RBC](#)

Russian telecom producers turn to government for support

Russian telecom equipment producers applied to the Ministry of Industry and Trade seeking government support.

They call for setting the Russian equipment procurement quotas both for public authorities and business entities and preventing foreign businesses to bid if there are at least two bids from national vendors.

Owing to the measures, the domestic telecom equipment industry is expected to grow from six to eight percent to 30 percent in two to three years.

[Kommersant](#)

Gas stations might be subject to turnover-based fines for underfilling

The imposition of fines may start in 2019: the proposal was approved by the Anti-counterfeiting Government Committee.

The sales of poor quality gasoline discovered during the audits decreased from 40 to 14 percent; however, another problem emerged – underfilling.

Rosstandard proposed charging fines in the amount of one percent of the annual turnover for first-time offences and three percent for recurring breaches.

Once the profile committee approvals are obtained, the bill will be submitted to the government and further to the Russian State Duma, which is expected to hear it during its autumn or spring session.

[Vedomosti](#)

Ukraine sanctions Russian transportation companies

The Ukrainian National Security and Defence Council jointly with the Ministry of Economic Development imposed sanctions on Russian transportation companies "RZHD Logistika", "Promkomplekplast" and "Gazgolder", which worked with the Donetsk and Lugansk Republics.

[Vedomosti](#)

International law news

EU, China, and Russia to bypass US sanctions on Iran with new payment channels

The parties to the Iran nuclear deal — Britain, China, France, Germany and Russia — announced their commitment to assisting Iran's exports and continuing trade despite US sanctions.

The participants welcomed practical proposals to maintain and develop payment channels, notably the initiative to establish a Special Purpose Vehicle (SPV) to facilitate payments related to Iran's exports, including oil.

[Vedomosti](#)

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,
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