



LT Digest

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FATCA news

IRS announces FATCA Registration System upgrade

The U.S. Internal Revenue Service ('IRS') announced that the FATCA Registration System will be upgraded in the coming weeks, with the following features being added:

- Existing FATCA classification choices updated
- Certification of Pre-existing accounts (COPA)
- Periodic Certification.

All FATCA registered entities are advised to login and update their FATCA classification once the update occurs.

The entities' email accounts must be up-to-date in the system to receive the notification.

[Official IRS website](#)

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Legislative initiatives

President of Russian Federation signs package of federal laws

- Federal Law No. [231-FZ](#), enabling the tax authorities to **access information and documents that constitute audit secrecy** (for more details, please refer to LT in Focus of [19 July 2018](#))
- Federal Law No. [232-FZ](#), enabling individuals to discharge their tax liabilities **with a single payment**
- Federal Law No. [246-FZ](#), **streamlining the currency control rules** for transactions, in which Russian exporters secure performance of non-residents' contractual obligations
- Federal Law No. [272-FZ](#), introducing the **mandatory labelling of tobacco products** starting from 1 March 2019
- Federal Law No. [223-FZ](#) of 29 July 2018 on the ratification of the **agreement on product labelling in the EAEU**
- Federal Law No. [257-FZ](#), expanding the list of grounds for terminating the immigration registration of foreign citizens (stateless persons)
- Federal Law No. [247-FZ](#) of 29 July 2018, expanding the list of permitted currency transactions between residents
- Federal Law No. [238-FZ](#) of 29 July 2018 that aligns the provision of the Russian Administrative Offences Code regulating the sanctions for non-repatriation of earnings with the existing laws
- Federal Law No. [230-FZ](#) of 29 July 2018 that clarifies the tax registration/deregistration issues for MNEs and foreign non-profit government organisations.

Official Internet Portal for Legal Information

Federation Council approves package of bills

The Federation Council has approved a package of bills:

- Bill No. [493989-7](#) on completion of the **'tax maneuver'**
- Bill No. [493997-7](#) on **reduction of crude oil export duties**
- Bill No. [489169-7](#), **raising VAT rates** (for more details, please refer to LT in Focus of [4 July 2018](#) and LT Digest of [16-22 July 2018](#))
- Bill No. [466070-7](#) on property tax assessment based on cadastral value
- Bill No. [475778-7](#) on ratification of the Double Tax Convention between Russia and Japan (for more details, please refer to LT in Focus of [4 September 2017](#))
- Bill No. [481357-7](#) on **ratification of the Convention between the Kingdom of Belgium and the Russian Federation for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital** (for more details, please refer to LT in Focus of [28 May 2015](#) and LT Digest of [7-11 May 2018](#))
- Bill No. [488838-7](#) that regulates the creation of special administrative districts in Kaliningrad Region and Primorskiy Territory (for more details, please refer to LT Digest of [18-24 June 2018](#) and [23-29 July](#)

[2018](#))

- Bill No. [488862-7](#), Bill No. [488869-7](#), and Bill No. [488870-7](#) that establish the legal and tax framework for **multinational companies** (for more details, please refer to LT Digest of [18-24 June 2018](#) and of [23-29 July 2018](#))
- Bill No. [405568-7](#), **offering social contributions benefits for residents of the Free Port of Vladivostok and advanced development territories of the Far Eastern Federal District with respect to employees hired for newly created jobs**
- Bill No. [455221-7](#) on **customs regulation**

Official Federation Council website

Bill refining tax treatment of replacements of defective aircraft parts developed

In particular, the bill proposes setting forth that the replacement of defective aircraft parts, including the operations required to maintain an aircraft's airworthiness, cannot be classified as the sale of goods (works, services).

The document also calls for expanding the list of non-taxable income types to include income from property and property rights that were received from the replacement of defective aircraft parts with serviceable ones, including when maintaining the aircraft's airworthiness.

The changes are expected to enter into force in July 2019.

[Federal draft legislation portal](#)

Russian Federal Tax Service (FTS) lifts veil on tax secrecy

The first tranche of de-classified taxpayer data was released on the FTS website and included:

- [Average headcount](#)
- [Special tax regimes applied](#)
- Participation in [consolidated taxpayer groups](#).

As a reminder, the tax secrecy regime for certain corporate taxpayer data was lifted by Federal Law No. [134-FZ](#) of 1 May 2016.

The disclosed data are presented in line with Order of Head of FTS No. [MMB-7-14/729@](#) of 29 December 2016.

[Official Russian Federal Tax Service website](#)

Russian Federal Tax Service (FTS) wants to regulate participation of foreign tax authorities in tax audits

If a foreign tax administration is allowed to participate in a field or desk tax audits, its officers will be included into the team of auditors assigned to a particular audit.

The FTS proposes limiting the involvement of foreign tax officers to:

- Observer status during the tax control activities

- Access to the documents and information, including for copying/making certified copies
- Observer status during the review of tax audit materials.

The document also defines the conditions of granting a foreign tax authority access to a tax audit.

To remind, the foreign tax authorities are allowed to participate in the tax audits by virtue of Item 6, Article 82 of the Russian Tax Code and the Convention on Mutual Administrative Assistance in Tax Matters.

[Federal draft legislation portal](#)

Russian Ministry of Economic Development prepares templates for contracts entitling to operate in special administrative districts

The standard contract will set forth:

- The subject matter (resident's business, performance of contractual obligations by the special administrative district's operator)
- The term
- The rights and obligations of the parties
- The terms and conditions, including the termination
- The liability of the parties and dispute settlement.

Bill No. [488838-7](#) that regulates the creation of special administrative districts in Kaliningrad Region and Primorskiy Territory was approved by the Federation Council on 28 July 2018 (for more details, please refer to LT Digest of [18-24 June 2018](#) and [23-29 July 2018](#)).

[Federal draft legislation portal](#)

Clarifications from government bodies

Russian Ministry of Finance comments on treatment of groups of foreign (unincorporated) entities as MNEs

According to the Ministry, a multinational enterprise (MNE) group is a group of entities and/or unincorporated entities, related through a shareholding and/or control subject to the terms envisaged by Item 1, Article 105.16-1 of the Russian Tax Code.

Pursuant to Item 7, Article 25.13 of the Russian Tax Code, 'exercising control' over an entity means influencing or having the capacity to influence its strategic decision-making processes, including the distribution of profit after tax, by virtue of holding a direct/indirect interest, being a party to a management agreement, or other special aspects of the relationship with the entity and/or other persons.

In the Ministry's opinion, 'other special aspects' may include the influence a controlling owner may exercise by virtue of existing contracts.

Such influence, therefore, may be taken into account to determine the controlling relationship within the group of entities and/or unincorporated entities to classify such group as an MNE.

A member of such group of entities classified as an MNE group will be deemed a constituent entity of an MNE group for taxation purposes.

[Consultant Plus](#)

Russian Ministry of Finance clarifies provision of MNE documentation

The Ministry underlined that the preparation of consolidated financial statements is a mandatory criteria for treating a group of companies and/or unincorporated foreign entities a multinational enterprise (MNE) group for tax purposes.

The foreign laws, however, may establish broader criteria than those set forth by Sub-Item 1, Item 1, Article 105.16-1 of the Russian Tax Code. The Ministry refers to a situation when consolidated financial statements were not prepared under the Russian accounting regulations or stock exchange requirements, but would have been prepared under such regulations,

if any company of a group of companies and/or foreign unincorporated entities had been listed on a stock exchange.

Therefore, theoretically, a group of companies and/or unincorporated foreign entities that does not qualify as an MNE group according to the Russian Tax Code, may be treated as such under the laws of a foreign state (territory), in which a company of such group is taxed.

In this case, the latter might be required to file country-by-country reports for the MNE in accordance with the laws of the relevant foreign state.

In the Ministry's opinion, in such instances, MNE notifications and CbC reports can be filed voluntarily in the manner envisaged by Article 105.15 and Chapter 14.1-1 of the Russian Tax Code.

The CbC report will be further forwarded to the foreign competent authorities as part of Russia's automatic exchange relationships.

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Russian Ministry of Finance says clinical trial services can be treated as R&D for VAT purposes

With reference to the position of the Russian Ministry of Education, the Ministry of Finance advised that the clinical trial services could be classified as R&D activities and thus be exempt from VAT by virtue of Sub-Item 16.1, Item 3, Article 149 of the Russian Tax Code.

At the same time, the R&D (including clinical trial) management services are out of scope of Sub-Item 16.1, Item 3, Article 149 and, hence, are VATable at a standard rate.

[Consultant Plus](#)

Court practice

Court on intellectual property rights releases adjudication in case between VKontakte and Double Data on big data ownership

On 24 July 2018, the court on intellectual property rights released its adjudication on the lawsuit filed by VKontakte against Double Data over the misuse of VKontakte's user data.

The social media company sought the acknowledgement of user data extraction by the defendant being a breach of its exclusive rights.

Double Data was accused of using the profiles of VKontakte's users for its own business purposes (e.g. selling to banks for credit scoring purposes).

A first-instance court awarded the claim to Double Data, while the court of appeal resolved in favour of VKontakte.

The court on intellectual property rights overruled the decision of the court of appeal and sent the case for re-trial, having made the following important conclusions that actually agree with the position of the court of appeal:

- The exclusive rights to the database are evidenced by the objective necessity of bearing costs to create it, not just VKontakte's subjective intent to create it
- The fact that the database is made up of user profiles is irrelevant for the purpose of recognition of exclusive database rights
- The following circumstances were not established by the courts: the intended use and functionality of Double Data's software; the fact of using such software to extract and further use the database's content or a material part of it, as well as the persons that had actually used the software.

[Electronic Justice: commercial courts files](#)

Media review

Russian Ministry of Industry and Trade assesses first tobacco labelling results

The Ministry released a summary of the first results of the tobacco labelling pilot.

The first stage addressed technical and organisational issues relating to the application of DataMatrix labels at the stages of production, wholesale and retail distribution, and sales to end customers.

The first pilot stage ran from 15 January to 31 June 2018 and was joined by

JTI, PMI, BAT Russia, Imperial Tobacco, Donskoy Tabak, KT&G, Megapolis and SNS (distributors), X5 Retail Group, Metro, Lenta, Magnit (retailers), etc.

The total volume of tobacco products to be labelled during the second stage of the pilot, which will run until 31 December 2018, is expected to reach 100 million packs.

Mandatory tobacco labelling was introduced by Federal Law No. [272-FZ](#) of 29 July 2018 starting from 1 March 2019.

[Kommersant](#)

FTS upholds mandatory confirmation of eligibility for foreign treaty benefits

FTS Resolution No. CA-4-9/25949@ of 20 December 2017 refers to a taxpayer's appeal of the desk tax audit findings.

A company filed a tax return reflecting the income paid to foreign entities in Q1 2017 and the relevant taxes withheld.

The tax inspectorate requested for a documentary confirmation of the foreign entities' beneficial income owner status.

The company appealed the requirement to the FTS, citing that the provisions of Article 88 and Chapter 25 of the Russian Tax Code do not obligate the taxpayer to file any additional documents on the treatment of interest as dividends and do not authorise the tax authorities to request for such documents.

According to the appellant, the tax inspectorate did not cite any errors and/or discrepancies with the information that they already had on file or received during their tax control activities.

The FTS upheld the tax inspectorate's position, citing that a request for confirmation of the applicability of the beneficial tax rates in accordance with Article 312 of the Russian Tax Code does not contradict Article 88 of the Russian Tax Code.

[Official Russian Federal Tax Service website](#)

Russian Ministry of Natural Resources and Environment to improve environmental fee collectability

In 2019, the Ministry plans to double the environmental fee collection rate; the fee revenues will be spent to develop the regional waste management infrastructure.

The target is to create 200 modern facilities for the sorting, treatment, and recycling of waste by 2024 and develop the online maps of waste management infrastructure by the end of 2018.

[Vedomosti](#)

Russian Ministry of Finance sees binary options as gambling

The Ministry proposes treating the short-term derivative transactions by individuals that were not carried out through forex dealers or exchange and have an expiry time of up to three days as gambling.

In the Ministry's opinion, such transactions should be offered at casinos/slot-machine venues, located in gaming zones.

Binary options are currently not regulated in Russia.

[Vedomosti](#)

Initiative to change regulation of tax residency in Russia

The Skolkovo centre for the regulation of digital economy calls for granting the Russian tax residency to everyone interested.

If the proposal is adopted, it will only take to file a tax residency request to the FTS and spend 90 days a year in the country.

[Vedomosti](#)

USA to toughen anti-Russian sanctions

A group of U.S. senators introduced a bill to the Senate, aimed to impose more sanctions on Russia.

The bill includes restrictions on the energy and oil projects, Russian financial sector, businessmen and state-owned entities, as well as 'any person in the Russian Federation that has the capacity or ability to support or facilitate malicious cyber-activities.'

The bill also provides banning the United States persons from holding licences for and engaging in activities related to certain oil projects in the Russian Federation and contains a requirement for the domestic title insurance companies to report information on the beneficial owners of entities that purchase residential real estate in high-value transactions.

Furthermore, the document proposes the creation of a National Fusion Center to Respond to Hybrid Threats.

The aim of this centre is to better prepare and respond to the 'Russian disinformation campaign' and other emerging threats emanating from the Russian Federation.

[Kommersant](#)

Deloitte publications

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](#).

VAT increase approved in the first reading

On 3 July 2018, Bill No. [489169-7](#) (the Bill) passed its first reading in the State Duma. It introduces a number of amendments to the Russian Tax Code, most importantly, raises 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 [4 July 2018](#).

Bill on added income tax passes Russian State Duma's second reading

Bill No. 325651-7 introducing a tax on added income from hydrocarbon extraction of ("the AIT") adopted by the State Duma today is expected to dramatically reshape the tax treatment of oil and gas companies.

Starting 1 January 2019, the Russian Tax Code will get a new chapter - Chapter 254. "Tax on added income from hydrocarbon extraction".

The bill proposes redistributing the tax burden towards a later stage of a deposit life cycle and requiring the tax payment once the deposit development project have started to generate returns.

Furthermore, the bill was aligned with the transfer pricing rules for taxpayers that generate income (expense) included in the AIT base. The document also expands the list of expenses that are attributed to the development of natural resources to include the expenses incurred by a taxpayer that provided financing for a foreign exploration project under a loan agreement that meets certain requirements as well as such expense deductibility criteria.

For details, please refer to Legislative Tracking in Focus of [3 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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