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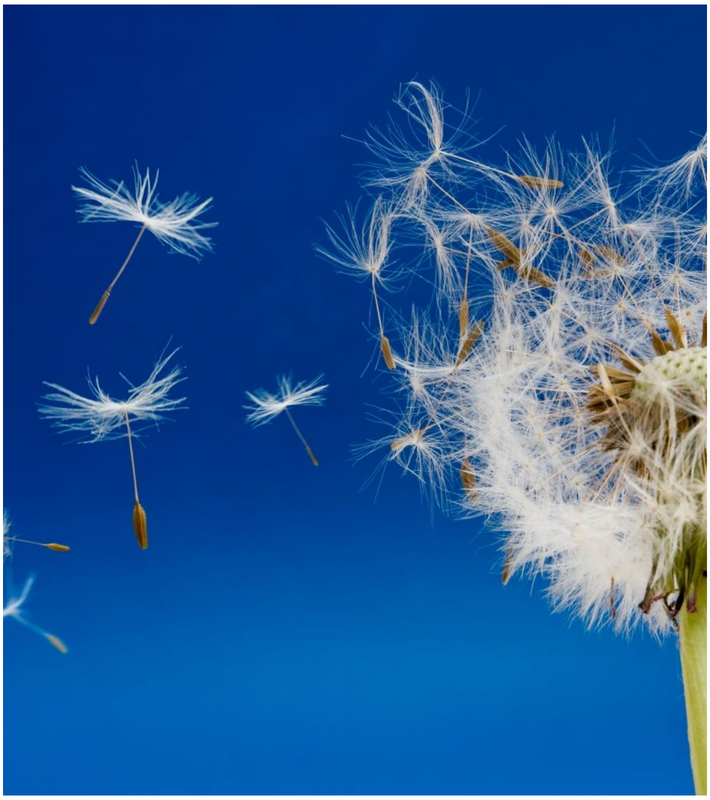

LT Digest
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Legislative initiatives

President of Russian Federation signs package of federal laws

- Federal Law No. 302-FZ of 3 August 2018 that **repeals transfer pricing control over transactions between related Russian entities and exempts movable property from tax** (for more details, please refer to LT Digest of 9-15 July 2018)
- Federal Law No. 301-FZ **on completion of the tax maneuver**
- Federal Law No. 305-FZ of 3 August 2018 **on reduction of crude oil export duty rates**
- Federal Law No. 303-FZ of 3 August 2018, **raising VAT rates** (for more details, please refer to LT in Focus of 4 July 2018 and LT Digest of 16-22 July 2018)
- Federal Law No. 334-FZ of 3 August 2018 on **assessment of property tax based on cadastral value**
- Federal Law No. 475778-7 of 3 August 2018 on **ratification of the Double Tax Convention between Russia and Japan** (for more details, please refer to LT in Focus of 4 September 2017)

- Federal Law No. 282-FZ of 3 August 2018 **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)
- Federal Law No. 291-FZ 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)
- Federal Laws No. 290-FZ, 294-FZ, 293-FZ, 292-FZ, 295-FZ, and 296-FZ that establish the **legal and tax framework for multinational companies** (for more details, please refer to LT Digest of 18-24 June 2018 and 23-29 July 2018)
- Federal Law No. 289-FZ of 3 August 2018 on **customs regulation**
- Federal Law No. 223-FZ of 3 July 2018 **on ratification of the agreement on product labelling in the EAEU**
- Federal Law No. 372830-7, regulating the **organic production**
- Federal Law No. 323-FZ, regulating the **distribution of biomedical stem cell products**

Official Internet Portal for Legal Information

MinFin calls to ratify BEPS convention

On 7 June 2017, Russia joined The Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting of 24 November (the BEPS Convention).

Russia will ratify the Convention with several reservations.

Here are the main changes for the taxpayers that will come into force once the Convention is ratified:

Double Tax Treaties (DTTs) will be amended to limit the benefits on top of the PPT (Principal Purpose Test)-driven restrictions.

Russia elected the so-called simplified variant, whereby DTT benefits are granted only to the qualifying parties that are expressly listed in the Convention. Other parties may face difficulties in applying the DTT benefits, to name but a few: holding companies, companies engaged in intragroup administration, investments and/or financing (except for banks, insurance companies, and professional securities traders).

To apply a reduced WHT rate to dividends, the ownership criteria, including the minimum length of holding requirement, must be met during 365 days preceding the dividend payment date.

Proceeds from disposal of interest in a property-rich company must be taxed in the country where such property is located, if the value of such interest has been represented predominantly by such property at any time within the 365 days preceding the disposal.

The definition of permanent establishment is amended, including the anti-fragmentation provisions and the use of agency schemes.

For more details on the Convention, please see the LT in Focus of 14 June 2017.

Federal draft legislation portal

Federal Tax Service to update list of countries failing to exchange information for CFC purposes

Canada goes in, while Brazil, Lichtenstein, Panama, the Seychelles, Saint Kitts and Nevis, and Uganda go out. If issued, the order updating the list will come into effect on 1 January 2019

Federal draft legislation portal

Bill to fine-tune taxation of SPIC participants

The key changes envisaged by the bill are:

- The provision guaranteeing SPIC participants against changes in the Tax Code will not apply to VAT and excises
- Only the companies that implement investment projects envisaged by a federal SPIC will be eligible for the status of SPIC participant
- Such status will be assigned on the date a SPIC is recorded in the register of federal SPICs
- Taxation of profit for SPIC and RIP participants will be differentiated
- **Availability period of tax benefits will change significantly**: reduced tax rates will apply starting from the tax period when the SPIC participant status is granted and until the period when such status is lost or when the cumulative support of the investment project (tax and non-tax federal and local public expenditure) exceeds 50 percent of the capital investment into it (reduced rates will not be available in the periods when a taxpayer did not meet the obligations under the SPIC).

Another bill aimed at improving the legal framework for SPICs has been announced, too.

This bill has not been officially released yet.

Federal draft legislation portal

Bill updating late payment sanctions for tax agents for late introduced in State Duma

No late payment penalty will apply, if a tax agent:

- Duly filed an accurate tax calculation
- Remitted the tax and paid the late payment interest before it became aware of the tax authorities' discovering the fact of late payment or assigning a field tax audit

Official website of the Russian State Duma

Tax expenditure framework drafted

Tax benefits will be divided into:

- Social tax benefits, aimed at supporting the disadvantaged social groups, socially oriented non-profits, and other organisations supporting the disadvantaged groups

- Financial tax benefits, aimed at decreasing/eliminating the tax expenses of the taxpayers that are fully/partially financed with public expenditure
- Stimulating tax benefits, aimed at stimulating the economy to increase the fiscal revenue

The Ministry of Finance will be compiling an annual register of tax expenditure items and record their utilisation.

The responsible state bodies will assess the efficiency of tax benefits and the Ministry of Finance will summarise such assessments.

Tax benefits will be assessed by their feasibility (how they match the objectives stated and whether there is demand for them) and results achieved. Based on the assessment, the benefits may be preserved, modified, or cancelled.

As a reminder, earlier this year, draft guidelines for the assessment of regional and municipal tax expenditure were released.

Federal draft legislation portal

Government amends rules for declaring recyclable goods and packaging

The following changes are introduced:

- Exported goods and packaging are not declared
- Reusable packaging is declared as goods
- Consignment documents must be used along with the source accounting documents and customs documents to prepare reporting
- Copies of such documents must be provided to Rosprirodnadzor within 10 days
- Packaging must be reported now with the accuracy of one kilogram for each item
- If a company/entrepreneur is both a manufacturer and an importer, the declaration is filed with Rosprirodnadzor
- A new template of the declaration has been developed
- The respective Government Resolution came into force on 4 August 2018.

Consultant Plus

Court practice

Non-residential properties not eligible for energy-efficiency tax benefit, Supreme Court confirms

The court reviewed the case of OOO KIT Yekaterinburg, the only precedent so far where the courts supported the application of the tax benefit for energy efficient buildings to non-residential properties.

The Supreme court rules in support of the tax authorities, making several important conclusions and resolutions:

- The current legislation does not provide for a procedure to determine the energy efficiency class of buildings and structures other than multi-unit residential building; no relevant regulations are available, either
- The fact that certain regulations mention the possibility of determining the energy efficiency class of such buildings and structures at the developer's/owner's request does not in itself mean that they are eligible for the tax benefit
- The tax benefit envisaged by Item 21 Article 381 of the Tax Code of the Russian Federation is aimed at promoting the use of the modern energy-efficient equipment and increasing the energy efficiency of residential properties, not commercial real estate
- The use of energy efficiency passports prepared by the taxpayer in a situation where the criteria for determining the energy efficiency of non-residential real estate are not defined would equal the application of individual tax benefits, which is inadmissible in accordance with Item 1 Article 56 of the Tax Code.

Thus, the Supreme Court put an end to the dispute over the application of the tax benefit in question to non-residential real estate, and its position will have to be taken into account when estimating the chances of success for similar cases.

Electronic Justice: commercial courts files

Supreme Court overturns Telegram's appeal over FSB's encryption keys request

The previous decision of the Supreme Court dated 20 March 2018 remains in force.

Read more about this case in the LT Digest of 4-31 December 2017, 19-25 March 2018.

Kommersant

Clarifications from government bodies

Russian Ministry of Finance clarifies definition of interest on debt securities for tax treaty purposes

According to the Ministry, interest definitions in the majority of double tax treaties include income from government securities, bonds or debentures as well as premiums and prizes attaching to such securities, bonds or debentures.

The Ministry recommends interpreting the tax treaties with account of the OECD commentary to the Model Tax Convention on Income and on Capital that the Russian treaties are based on provided the provisions of such treaties are compliant with the Model Tax Convention.

Thus, Clause 20 of the OECD Commentary to Article 11 of the Model Tax Convention treats premiums and prizes attaching to government securities, and bonds and debentures as interest. Generally speaking, what constitutes interest yielded by a loan security, and may be rightfully taxed as such in the State of source, is all that the institution issuing the loan pays over and above the amount paid by the subscriber, that is to say, the interest accruing plus any premium paid at redemption or at issue.

The Ministry has noted that any profit or loss which a holder of such a security realises by the sale thereof to another person does not enter into the concept of interest.

Consultant Plus

MinFin comments on accounting treatment of bond sale proceeds by foreign entities

According to the Ministry, if the difference between the buy price and sell price, net of the accumulated coupon income, does not arise from the pre-determined terms of sale, including the provided discount, the proceeds received by a foreign entity from the sale of bonds are exempt from the corporate income tax, representing income from the sale of property (Item 2 Article 309 of the Tax Code).

Consultant Plus

Media review

Federal Tax Service continues accepting reports on foreign customers from financial institutions

The FTS continues accepting reports on foreign customers, although the formal deadline was on 31 July 2018, a spokesman for the tax service said.

Over 580 financial institutions reported on 15,000 customers that are foreign tax residents, 116 mistakenly indicating 2018 as the reporting period.

Foreign tax residents are reported according to Resolution of the Government No. 693 of 16 June 2018 (see the LT in Focus of 20 June 2018).

Official Russian Federal Tax Service website

Self-driving cars may be allowed to public access roads

Russia initiated amending the Vienna Convention on Road Traffic to formalise the status of driverless cars and treat the automated driving system on a par with driver. If the amendments are passed, driverless cars will be able to enter the public access roads globally (only those equipped with special sensors and tags for cars to navigate by).

National legislations will be subsequently harmonised with the convention, including in Russia.

The amendments will be reviewed at the Global Forum for Road Traffic Safety in September 2018.

Rossiiskaya gazeta

International law news

US finalises bill with new anti-Russia sanctions

The new bill on anti-Russia sanctions provides for a ban on operations with new issues of Russian sovereign debt with a maturity of longer than two weeks.

Seven Russian banks, including Sberbank, VTB, VEB, and Promsvyazbank mey be banned from operating in the United States.

The bill also proposes consolidating all previously introduced anti-Russia sanctions in a single instrument.

Kommersant

US plans to issue new sanctions against Russia by end of August

The sanctions will be implemented in two stages:

- The first stage will see restrictions on exports and financial transactions; the restrictions will target the national security-sensitive products (electronics, testing and calibration equipment)
- At stage two, the level of diplomatic exchange will be lowered, Aeroflot may be banned from flying to the US, and almost all exports and imports between the countries may be frozen; this package can be introduced three months after the first, if Russia fails to prove that it no longer uses chemical weapons and does not agree to field inspections of the relevant sites by UN experts.

Vedomosti

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.

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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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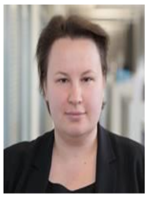

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