



LT Digest

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Tax disputes

Russian Supreme Court acknowledges that purchase of overpriced goods shall not serve as ground for denying recovery of VAT paid on imports

The Russian Supreme Court released the full text of its Ruling of 3 October 2017 in Case No. A40-189344/2014 over the rightfulness of reclamation of VAT paid on imports of overpriced goods.

The tax inspectorate found that the taxpayer purchased goods from related companies (Seychelles- and Cyprus-based), which were not producers of such goods, but acted as resellers, charging more than a 100-percent markup on the original price.

The tax inspectorate denied the deductibility of expenses to the extent that they exceeded the cost of imported goods and rejected a VAT refund.

The tax authorities' position was supported by three court instances.

The taxpayer disagreed with the courts' opinion regarding VAT recovery and appealed it at the Russian Supreme Court. According to the taxpayer, an excessive mark-up on imported goods cannot be the reason for denying a VAT refund as it is the VAT **actually paid at the time of import** that is being recovered.

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The Russian Supreme Court ruled in favour of the taxpayer on the following grounds:

- Recovered VAT on goods purchased by the taxpayer must not exceed the tax charged by its counterparty
- In case of imports of goods, the source for VAT refund is created by the person paying the imports tax, while the Russian Tax Code explicitly provides that only the tax amount actually paid for imported goods can be reclaimed
- The taxpayer purchased goods from foreign suppliers and paid VAT on the import of such goods based on their contractual price, while the VAT

amount reclaimed by the taxpayer is consistent with the amount paid on the import of goods into Russia.

Based on the foregoing, the court concluded that all VAT reclamation requirements were complied with.

Furthermore, the Supreme Court pointed out that the fact of purchase of overpriced goods by the taxpayer did not in itself hamper the budget revenues or created an unjustified tax benefit and might not be the reason for denying a VAT refund.

[Electronic Justice: commercial courts files](#)

Legislative initiatives

Draft law offering profit tax deduction on investments submitted to State Duma

The draft entitles the regions to grant investment deductions by way of reducing the profit tax (advance tax payments) by capital expenditure that includes the completion, modernisation, reconstruction, upgrade, and refitting of fixed assets.

The investment deduction will be applied to the tax calculated for the tax (reporting) period, in which a fixed asset was commissioned or revaluated, as well as for the subsequent tax (reporting) periods, unless the regional laws set any restrictions on the unused deduction carryforwards.

The maximum deduction that may reach up to 100 percent of the total expenditure will be formed as follows:

- For the regional profit tax component: up to 90 percent of the above-mentioned expenses, provided that the total profit tax payable to the regional budget is not less than the amount assessed based on a 5-percent rate (unless a regional law sets a lower maximum deduction for the regional profit tax component)

For the federal profit tax component: 10 percent of the above-mentioned expenses, whereas the tax can potentially be reduced to zero.

The investment deduction will only apply to the assets from Depreciation Categories 3 to 7.

Apart from the authority to grant investment deductions, the regions may also set additional taxpayer and asset eligibility requirements for deduction purposes.

A taxpayer's consent or refusal to apply the deduction will have to be set forth in its accounting policy for tax purposes. If the taxpayer opts for applying the deduction, it will no longer be able to charge depreciation on the historical cost of respective assets. The taxpayer will have to reverse the investment deduction in case of asset disposal (other than due to its liquidation) before the expiration of the asset's useful life, which may hamper the effective use of the mechanism.

The deduction will be inapplicable to certain categories of taxpayers (e.g. regional investment project

participants, residents of special economic zones and The Free Port of Vladivostok).

The draft proposes a number of other important changes:

- To postpone the delegation of powers to grant property tax benefits for movable properties to the regions until 1 January 2019
- To reconsider the imposition of an excise tax on the operations with medium distillates and refine the definition of such medium distillates
- To raise the excise rates on motor gasoline and diesel fuel by RUB 0.50 starting from 1 January and 1 July 2018 respectively
- To revise the social contributions liability for the taxpayers that do not pay remuneration to individuals

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

Russian Ministry of Finance announces budgetary, tax, and customs priorities for 2018-2020

The draft sets forth the priority areas of the Russian customs and tax policy for 2018 and the fiscal planning period of 2018-2019, which include:

- Introducing investment profit tax deductions for investors (a respective draft has been developed)
- Improving the CFC taxation principles (public discussions of the [draft law](#) were completed by 29 September 2017)
- Establishing a mechanism for collecting the information subject to automatic exchange, including the MNE data and information reported by financial institutions on clients, beneficiaries, and direct/indirect owners (a respective [draft](#) was adopted in the first reading, see LT in Focus of [25 July 2017](#))
- Aligning the taxation terms for Russian and foreign e-commerce operators by adjusting the customs charges on goods imported by individuals

- Launching an added income tax pilot for oil and gas companies
- Imposing a moratorium on new benefits related to the taxes payable to the regional and municipal budgets
- Granting corporate profit, MET, and regional tax benefits to investors in the Far East
- Streamlining the assessment of excise tax to strengthen control over the turnover of ethanol and ethanol-containing products
- Combating the abuse of VAT exemptions on the sale of ferrous and non-ferrous metals scrap and waste
- Recognising the buyers of certain categories of goods (non-ferrous and ferrous metals scrap and waste, secondary aluminium alloys, and raw skins) as withholding agents, obliged to pay VAT to prevent illegal reclamations and VAT avoidance
- Implementating the unified rules for setting and imposing non-tax charges
- Ensuring the use of cash register equipment across all retail PoS, which would enable the online transmission of fiscal data to the Russian Federal Tax Service
- Piloting the implementation of a mechanism to track the “end-to-end” identification of goods imported into the EAEU by assigning unique identifiers, starting from 1 February 2018
- Aligning the taxation system with the national economy development objectives, using the customs duty escalation principle
- Gradually decreasing the import duties on certain goods up to their full cancellation
- Expanding the cooperation with the EAEU partners in oil and oil products trade
- Streamlining the rules of identifying the origin of goods
- Charging social contributions on royalties payable under intellectual property assignment and licensing agreements, concluded with individuals.

[Official Ministry of Finance website](#)

Russian Ministry of Finance to ratify tax treaty with Ecuador

A notice of the development of a respective federal law was posted on the Federal Draft Legislation Portal. The Double Tax Convention between Russia and Ecuador was signed on 14 November 2016.

[Federal draft legislation portal](#)

Russian Federal Tax Service updates list of states and territories that fail to exchange tax information with Russia for CFC regulation purposes

A respective order has already been signed and is now pending registration with the Russian Ministry of Justice.

The British Virgin Islands and South Korea have been excluded from the “black list”.

The draft is expected to enter into force on 1 January 2018.

[RBC daily](#)

Draft Law on ratification of Double Tax Convention between Russia and Japan developed

The new Double Tax Convention and the Protocol there to were signed by the governments of Russia and Japan on 7 September 2017.

To learn more about the Convention, please refer to LT in Focus of [4 September 2017](#).

[Federal draft legislation portal](#)

Russian Government updates list of equipment and physical media subject to copyright levy

In particular, the list will include electronic wrist and pocket watches, but will exclude digital photo- and video cameras.

The copyright levy is charged by the Russian Union of Right Holders on the media that can support copying of music and video.

The tax on non-professional equipment amounts to one percent of its customs value.

The amendments will be put into force as of 3 April 2017.

[Official Internet Portal for Legal Information](#)

Russian Ministry of Finance to develop draft law reducing VAT on import of foreign-made civil aircraft to Russia

The regulator plans to set a zero VAT rate for the imports of foreign civil aircraft and domestically produced civil aircraft, as well as spare parts and aircraft engines used for repairs.

[Federal draft legislation portal](#)

Clarifications from government bodies

Russian Ministry of Finance issues repeated clarifications on recognition of foreign entity's active income from Russian sources in tax returns on income paid to foreign entities and taxes withheld

According to the Ministry, the revenue received by a foreign entity from the sale of goods, assets or property rights, performance of works and services, not leading to the creation of a permanent establishment in accordance with Article 306 of the Russian Tax Code, shall not be taxed at source but is still recognised as Russian-sourced income.

Therefore, such revenue shall be reported by a withholding agent in its tax return, indicating the income paid to foreign entities and the taxes withheld.

The Ministry has previously expressed its position on the matter in several clarifications (see Letters No. [03-08-05/43967](#) of 11 July 2017, No. [03-08-05/58776](#) of 10 October 2016, No. [03-08-13/56982](#) of 30 September 2016, and Letter of the Russian Federal Tax Service No. [SD-4-3/13048@](#) of 5 July 2017).

However, we are aware of a [case](#), where the court ruled in a taxpayer's favour, citing that active income of a foreign entity should not be included in the tax return as not being subject to withholding tax in accordance with the Russian Tax Code.

[Consultant Plus](#)

Russian Federal Tax Service (FTS) comments on payment of tax on behalf of taxpayer

The regulator has reminded that, pursuant to Item 1, Article 45 of the Russian Tax Code, taxes can be paid on taxpayer's behalf, starting from 1 January 2017. This provision also applies to duties, penalties, and

social contributions and authorises duty payers, withholding agents, and responsible members of consolidated group of taxpayers to make such payments.

According to the FTS, the legal grounds on which the tax is paid on behalf of a taxpayer are irrelevant for accounting of tax payments.

To ensure the taxes paid are properly accounted for, a payment order shall be correctly filled out by the payer to enable the tax authorities to see whose tax liabilities are discharged.

For these purposes, the Russian Ministry of Finance amended the [Guidelines](#) on filling in tax payment orders by Order No.107n of 12 November 2013.

[Consultant Plus](#)

Russian Ministry of Finance: lower ceiling for tax-free online purchases from abroad is not done deal yet

The Russian Ministry of Finance denied the recent media reports on the alleged reduction of the tax-free ceiling for items imported in travellers' personal luggage.

The Ministry underlined that the discussed change of the tax-free ceiling concerns only the online purchases in foreign stores, delivered by post, and that no final decision has been made yet.

There are a number of proposals that are currently pending approval.

[Official Ministry of Finance website](#)

Media review

2018 federal budget blueprint provides for certain tax-related activities

A [blueprint](#) of the Federal Budget for 2018 and the planning period of 2019 and 2020 was submitted to the Russian State Duma.

The blueprint provides for a number of tax-related steps:

- An increase of the excise tax rate for motor gasoline and diesel fuel
- A 15-percent increase of the recycling duty rate on construction, road, and agricultural machinery
- An increase of excise tax rates from RUB 897 to RUB 1,084 per hp for passenger cars with engine horsepower of 200 and higher
- A 50-fold reduction of the limit on duty-free imports for personal use, from EUR 1,000 to EUR 20.

[RBC daily](#)

Russian Ministry of Industry and Trade proposes raising recycling rates for certain categories of goods

In particular, the Ministry proposes introducing a 100-percent recycling requirement for household non-electrical appliances and lighting equipment, starting from 2018; for paper, cardboard, tyres, and plastics, starting from 2019; and for computers, household electrical appliances, batteries, refrigerators, and ventilation equipment, starting from 2021.

The list of products subject to mandatory recycling will be expanded to include aviation tyres and battery cells.

Non-compliant importers and producers will be obliged to pay the environmental duty.

[Kommersant](#)

Roskomnadzor to oblige messengers to register with Russian mobile network operators

In November 2017, Roskomnadzor plans to send out legally binding letters (official requirements) to Russia's top messenger services.

The regulator will request the messenger services to register with the Russian mobile network operators to comply with the provisions of the law on online messengers.

Failure to comply with entail the blocking of a service in Russia.

The law obliging online messenger administrators to identify users by their phone numbers and, if necessary, restrict message transmission, will enter into force on 1 January 2018.

[*Izvestiya*](#)

Russia's first initial placement of blockchain-based bonds

PAO Megafon becomes the first Russian bond issuer to use blockchain settlement in its recent RUB 0.5 billion bond issue.

The issue was wholly purchased by AO Raiffeisenbank; the de-centralised settlement platform was developed by the National Settlement Depository.

The zero-coupon bonds were sold at RUB 982 each against the face value of RUB 1,000, which corresponds to an annual yield of 7.77 percent.

[*Vedomosti*](#)

Russian Government abandons idea of enforcing deoffshorisation of systemically important companies (SIC)

The Russian Ministry of Economic Development and the Russian Ministry of Finance drafted a [resolution](#), setting forth the criteria for the Russian SIC and their subsidiaries that must be based in the Russian jurisdiction; however, the draft received a negative expert feedback.

Following the discussions with the business community, the regulators concluded that a large-scale repatriation of the SIC into the Russian jurisdiction might entail material economic risks for the country in general.

The risks are expected to arise out of a weaker competitive position in the global markets and failure to perform under foreign contracts.

According to the Russian Government, the incentives adopted in 2014-2016 will suffice for now to improve Russia's appeal to the SIC.

[*Economica i Zhizn*](#)

OECD develops guidelines on corporate governance of state-owned enterprises

On 27 September 2017, the officials of the OECD Secretariat, Russian Ministry of Internal Affairs, Central

Bank of Russia, Federal Agency for State Property Management, Russian Federal Statistics Service, Moscow Exchange, and the Moscow State University gathered to discuss the project aimed at supporting the reform of the Russian corporate governance regulations.

The agenda included the possible use of a corporate governance code by state-owned companies and further joint measures of aligning the Russian regulations and guidelines with the OECD's principles.

Based on the review of joint-stock companies' 2016 annual reports, 90 percent of the companies implement the provisions of the OECD's corporate governance code vs. 77 percent last year, with Gazprom, Aeroflot, Sovkomflot, and Rosneft prominent on the list of adopters.

The OECD officials provided an update on the latest changes in the OECD guidelines on corporate governance of state-owned enterprises that are to be applied by the Russian state-owned companies with the help of the Russian Ministry of Economic Development.

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

CBR advises refraining from crypto settlements

The Central Bank of Russia has urged to refrain from settlements involving digital assets, specifically, cryptocurrencies.

The regulator has pointed out that the cryptocurrency transactions are not regulated and may imply criminal activities, such as money laundering and terrorism financing.

The CBR recommended that the Clearing Centre of the Moscow Stock Exchange revise the clearing rules and exclude the provisions permitting settlements other than under the MSE's electronic contracts, i.e. digital asset transactions.

At the end of September, several players (LavkaLavka and Diamundi) announced upcoming their ICOs on the Voskhod investment platform, which might not take place now.

[*Kommersant*](#)

Russia to develop draft law legalising fund raising through ICO

The Russian Association of Cryptocurrencies and Blockchain has started collecting proposals from its members and external experts to put together a draft law, legalising the ICOs in Russia.

The document is expected to describe the available financing mechanisms for the Russian real economy, i.e., the companies not directly engaged in blockchain and other new financial technologies

The draft is scheduled to be finalised by the end of October 2017.

[*RBC daily*](#)

Russian Ministry of Culture votes against introduction of film distribution duty

Russian Minister of Culture Vladimir Medinsky proposes charging a percentage of box office results instead of raising the distribution levies for foreign films.

For more details on the draft proposing the introduction of a film distribution levy, please refer to LT Digest, [28 August – 3 September 2017](#).

[Kommersant](#)

Initiative to extend government support to boost domestic car sales

The Russian Ministry of Industry and Trade proposes

extending the government programmes promoting the sales of haulage trucks, agricultural machinery and light commercial vehicles, and issue of loans for first-time and family car buyers until 2018.

Including the cars equipped with an ERA-GLONASS navigation system into the programme has also been discussed.

[Economica i Zhizn](#)

International legislation news

Swiss Parliament approves information exchange with Russia

On September 2017, the Swiss Parliament [voted](#) for including Russia in the first batch of countries to exchange information with in 2019 (with 100 votes “for” and 90 “against”)

The information exchange will require creating the legal base and signing a treaty with Switzerland.

[Swissinfo](#)

EU releases communication on Fair and Efficient Tax System in the European Union for the Digital Single Market

According to the Communication, the corporate tax payable by tech companies is insufficient as the current tax rules no longer fit the modern context.

The Commission estimates the effective tax burden for digital companies at 10 percent, compared with 23 percent for bricks-and-mortar companies.

The regulator urges for a comprehensive revision of the global tax rules to address the new reality, including:

- Reforming the international tax rules on permanent establishment to determine the activity thresholds for a business to be taxable in an EU country
- Reconsidering the transfer pricing rules, revising the role of intangible assets as value drivers within multinational groups
- Finalising the Common Consolidated Corporate Tax Base, taking into account the digital companies’ specifics.

The documents also proposes the following short-term measures:

- Equalisation tax on turnover of digitalised companies
- Withholding tax on digital transactions: a standalone gross-basis final withholding tax on certain payments made to non-resident providers of goods and services ordered online
- Levy on revenues generated from the provision of digital services or advertising activity.

The new rules are expected to be set out by the spring of 2018.

[Official website of the European Council](#)

Deloitte publications

A federal law, refining the tax exemption for property contributions and reconsidering certain tax benefits, has been adopted

On 30 September 2017, the President of the Russian Federation signed a [law](#) that reconsiders the tax treatment of property contributions and refines the terms of certain tax benefits (the "Law").

The key amendments will be effective starting from 1 January 2018.

For details, please refer to Legislative Tracking in Focus of [3 October 2017](#).

The allocation of advertising expenses between related functional entities imply significant tax risks

On August 21, 2017, the first instance Commercial Court of Lipetsk Region delivered a [judgment](#) in a rather unusual tax dispute over allocation of marketing expenses between a producer and a distributor.

The court has ruled in the tax authority's favour acknowledging that the producer's strategic marketing expenses had been actually incurred for the benefit of the related distributor that had also acted as the sole executive body.

The court held that the producer had rendered free-of-charge marketing services to the distributor, denied the deductibility of respective expenses and assessed VAT on those services.

Read on for a detailed review of the dispute and the analysis of an unconventional approach applied by the tax authorities in the Legislative Tracking in Focus of [28 September 2017](#).

Overview of ICO regulations: changes in key jurisdictions

Regulators around the world have been increasingly active in expressing their positions about tokens and ICOs, warning investors of potential risks related to cryptocurrencies. Read on for an overview of recent regulatory changes in key jurisdictions.

For details, please refer to Legislative Tracking in Focus of [12 September 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,
Deloitte CIS Partners

Contacts

Tax & Legal



Grigory Pavlotsky
Managing Partner
Tax&Legal, Deloitte CIS
gpavlotsky@deloitte.ru



Gennady Kamyshnikov
Managing Partner
Government Relations
gkamyshnikov@deloitte.ru



Oleg Berezin
Partner
Pharmaceuticals
oberezin@deloitte.ru



Andrey Panin
Partner
Oil & Gas, Energy & Resources, Mining
apanin@deloitte.ru



Yulia Orlova
Partner
Metals and Processing
yorlova@deloitte.ru



Oxana Zhupina
Partner,
Consumer Products
ozhupina@deloitte.ru



Artem Vasyutin
Partner
Retail, Wholesale and Distribution
Tourism and Hospitality
avasyutin@deloitte.ru



Alexander Sinitsyn
Director
Global FSI
asinitsyn@deloitte.ru



Tatiana Kofanova
Director
Automotive
tkofanova@deloitte.ru



Andrey Goncharov
Director
Legal Services
agoncharov@deloitte.ru

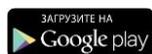


Yulia Krylova
Director
Real Estate
ykrylova@deloitte.ru



Vasily Markov
Director
Technology, Media, Entertainment &
Telecommunications
vmarkov@deloitte.ru

TaxSmart app



deloitte.ru

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