



LT Digest

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Legislative initiatives

President of Russia signs package of federal laws

The President of Russia has signed a package of federal laws:

- Federal Law No. [156-FZ](#) of 1 July 2017 aimed at combating illegal online distribution of audiovisual works;
- Federal Law No. [155-FZ](#) of 1 July 2017 banning the purchase of federal and municipal property by offshore companies;
- Federal Law No. [147-FZ](#) refining the procedure for out-of-court settlement of intellectual property disputes;
- Federal Law No. [153-FZ](#) of 1 July 2017 entitling the Central Bank of Russia to cooperate with credit institutions by granting them access to individual accounts on the CBR's website.

Official Internet Portal for Legal Information

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Draft law on unjustified tax benefit has passed three readings

The amended draft modifies the definition of the unjustified tax benefit that now reads as an understatement of a tax base/tax payable as a result of misrepresentation of business operations/taxable assets by the taxpayer.

If no such misrepresentation occur, the taxpayer shall be entitled to reduce its taxable base/tax subject to the following conditions:

The transaction is not primarily aimed at avoiding payment (partial payment) and/or obtaining refund of a tax

The transaction was discharged by performance.

The draft expressly states that the signing of source documents by an unidentified/unauthorised person, a breach of tax legislation by a counterparty, and possibility to use of other available options to achieve the same economic result shall not in itself be deemed evidencing the wrongfulness of the taxable base/tax reduction.

The updated draft is generally consistent with the trend of gradually giving up the formal unjustified tax benefit test in favour of assessing whether the taxpayer had intended to misrepresent the tax data.

Read on for more details in Legislative Tracking in Focus of [7 July 2017](#).

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

Draft law on recreation and tourism in Far East has passed three readings

The draft proposes a new term for applying the reduced profit tax rates: from 1 January 2018 to 31 December 2022.

According to the document, the foreign exchange gains shall not be included in the share of revenue from touristic and recreational activities (which shall exceed 90 percent) in the total income.

Similar rules are proposed for regional investment project (RIP) participants as regards the share of income from RIP implementation.

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

Russian State Duma considers package of draft laws

The Russian State Duma has considered the following draft laws:

- Draft Law No. [34564-7](#), refining the tax treatment of intangibles and R&D, passed the third reading;
- Draft Law No. [169380-7](#), granting a VAT exemption for leasing of medical equipment, passed the third

reading;

- Draft Law No. [120718-7](#), allowing the companies to set consolidated reporting periods straddling two calendar years, passed the third reading (for more details, please refer to LT Digest of [6 - 16 March 2017](#));
- Draft Law No. [156933-7](#) on ratification of the protocol, extending the fur labelling pilot until the end of 2018, passed all three readings;
- Draft Law No. [33144-7](#), specifying the list of employee training expenses, passed the second reading;
- Draft Law No. [47538-6/10](#), amending the Russian Civil Code's financial transactions provisions, passed the second reading;
- Draft Law No. [47571-7](#) on safety of critical information infrastructure passed the second reading (for more details, please refer to LT of [7 December 2016](#));
- Draft Law No. [47579-7](#), introducing administrative sanctions for non-compliance with online messenger regulations, passed the second reading;
- Draft Law No. [3171-7](#), simplifying the lifting of temporary travel restrictions for debtors and increasing the minimum travel ban thresholds to RUB 30,000, passed the second reading;
- Draft Law No. [206576-7](#), proposing the indexation of excise tax, banning the retrospective excising of imported PDO/PGI wines, and amending the MET calculation procedure passed the first reading (for more details, please refer to LT Digest of [19 - 25 June 2017](#));
- Draft Law No. [50224-7](#), introducing a regulatory framework for the natural monopolies' investment activities, passed the first reading.

Official website of the Russian State Duma

Moscow City Duma to consider draft law expanding tax benefits for residents of Moscow's R&D hubs

The draft proposes the following amendments:

- To extend the exemption from land and transportation tax for residents of Moscow's R&D hubs from five to ten years
- To grant a transportation tax exemption to all Moscow's R&D hubs (not only "Zelenograd")
- To grant a 10-year transportation tax exemption to all management companies of Moscow's R&D hubs
- To expand the list of taxpayers entitled to apply lower rates of the corporate profit tax payable to Moscow's budget by including the residents and management companies of Moscow's R&D hubs

- To set lower rates of the corporate profit tax payable to Moscow's budget to R&D hubs' management companies at 12.5 percent as of 1 January 2017 and 13.5 percent as of 1 January 2021
- To set lower rates of the corporate profit tax payable to Moscow's budget for residents of Moscow's R&D hubs (zero as of 1 January 2018; 5 percent as of 1 January 2028, and 12.5 percent as of 1 January 2033).

The document will apply retrospectively starting from 1 January 2017.

[Official Moscow Duma website](#)

Draft Law on tax treatment of regional investment projects implemented in Moscow submitted to Moscow City Duma

In particular, the draft proposes setting lower rates of the corporate profit tax payable to Moscow's budget at:

- 10 percent for participants of registered RIPs
- zero for SPIC investors

Furthermore, additional RIP criteria are introduced, setting the minimum capital investments requirements to be included in the investment policy statements:

- RUB 300 million for investments of max. three years of the date of registration
- RUB 500 million for investments of max. five years of the date of registration
- An investment project will be granted a priority investment project status in Moscow if it is implemented as part of a SPIC or is classified as an industrial complex, technological cluster or industrial park after the SPIC completion.

If adopted, the law will enter into force on 1 January 2018 and will continue until 31 December 2027, except certain provisions.

[Official Moscow Duma website](#)

Russian Federal Tax Service plans to update list of states and territories that do not exchange tax information with Russia for CFC regulation purposes

In particular, the regulator proposes excluding the British Virgin Islands and South Korea from the list.

Please note that the list of states and territories that do not exchange tax information with Russia for CFC regulation purposes shall be updated annually by 1 October.

If approved, the order will enter into force on 1 January 2018.

[Federal draft legislation portal](#)

Central Bank of Russia approves guidelines for identification of corporate clients' beneficial owners by banks and non-bank financial institutions (NBFI)

The CBR recommends taking the following measures:

- Use beneficial owners' data received by the clients from the implementation of provisions of Article 6.1 of Federal Law No. 115-FZ of 7 August 2001 along with the data legitimately obtained from available sources
- If a corporate client fails to disclose its beneficial owner, the banks and the NBFI shall not automatically deem such client's CEO a beneficial owner without performing the required document and data checks. However, if such corporate client's CEO meets the criteria set by Article 3 of Federal Law No. 115-FZ, it may be rightfully acknowledged the beneficial owner
- To implement the full-scope AML/ATF measures aimed at identifying the clients' beneficial owners in the instances when a bank or a NBFI has grounds to believe that the beneficial owner is not an individual indicated by the client or if the client fails to disclose its beneficial owner
- To document the measures taken to identify the individual beneficial owner and their results in the client's file
- To record in the client's file both the beneficial owner data provided by the corporate client and the data discovered by the bank or the NBFI

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Russian Government to extend ban on import of agricultural produce, raw materials, and food products from 1 January to 31 December 2018

The extended ban covers the import of certain agricultural produce, raw materials, and food products originating from the USA, the EU countries, Canada, Australia, Norway, Ukraine, Albania, Montenegro, Iceland, and Lichtenstein.

Please note that, to protect Russia's national interests, the President of Russia extended the reciprocal anti-EU sanctions until 31 December 2018 by its Order No. 293 of 30 June 2017.

[Official website of the Russian Government](#)

Updated amendments to Russian Civil Code regulating financial transactions released

In particular, the draft law proposes the following material amendments:

- Clients will be able to open bank accounts subject to terms and conditions applicable to electronic payment instruments. Unless otherwise provided for by the law on the national payment system, such accounts will be governed by the provisions of Article 25 of the Russian Civil Code on bank accounts
- Cash held in escrow will be temporarily blocked from creditors in case of bankruptcy of either party to the arrangement: the deponent, escrow agent, or beneficiary; once the condition the payment is contingent upon arises, the cash will be handed over to the beneficiary
- As a form of settlement under a factoring agreement, a financial agent can issue a loan or render services
- The lender may demand an early loan repayment in the instances provided for by the agreement
- Under the loan agreements, the banks will be entitled not only to interest, but to other payments envisaged therein, including the origination fees

The draft passed the first reading in 2012 and was a part of a major presidential draft law aimed at refining and updating the Russian Civil Code.

If adopted, the law will enter into force on 1 June 2018.

The draft has passed the second reading on 7 July 2017.

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

Russian State Duma to consider draft law on regulation of online taxi aggregators

The draft introduces a concept of an online taxi aggregator, a legal entity or an individual entrepreneur that accepts and places taxi orders under a dispatch services agreement with a taxi service operator licensed to carry passengers and luggage in the respective Russian region.

The draft sets the criteria for carriers eligible to work with the online aggregators.

According to the draft, the online aggregators will be liable to clients for the misrepresentation of the placed order data.

Please note that the draft law on regulation of online taxi aggregators is already pending approval of the Russian State Duma (for more details, please refer to LT of [3 July 2017](#)).

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

Draft Law extending use of 10-percent VAT rate for domestic flights until 31 December 2020 developed

According to the existing Russian Tax Code provisions, an 18-percent rate must apply as of 1 January 2018.

If adopted, the law will enter into force on 1 January 2018.

[Federal draft legislation portal](#)

Clarifications from government bodies

Russian Ministry of Finance clarifies calculation of controlled debt

The Ministry has advised that for thin capitalisation purposes the controlled debt amount shall be calculated by aggregating all debts due from the taxpayer to the persons specified in Item 2, Article 269 of the Russian Tax Code.

Even though the clarifications refer to the wording of Article 269 of the Russian Tax Code effective only as of 1 January 2017, the tax authorities already started applying the new approach.

This is evidenced by recent court resolutions confirming that the controlled debt shall be calculated by aggregation (see cases No. [A40-238134/2016](#), [A12-7382/2017](#), [A56-63031/2016](#), [A05-12258/2014](#)).

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Russian Ministry of Finance clarifies concept of permanent establishment for Russian-British DTT purposes

The Ministry has advised that a permanent establishment is not an organisational structure, but an activity carried out by a business that generates taxable revenue in a respective jurisdiction.

According to the Ministry, the term "place of business" covers the premises, facilities or installations used for carrying on the business of an enterprise, whether or not they are used exclusively for that purpose. A place of business may also exist where no premises are available or required for carrying on the business of an enterprise and it simply has a certain amount of space at its disposal.

The regulator specifies that a permanent establishment is a fixed place of business, through which the business of an enterprise is wholly or partly carried on. A particular establishment does not need to have a 'productive character'. A place of business will constitute a permanent establishment even though it exists only for a short period of time because the nature of the business is such that it will only be carried on for that short period of time, but in that case the activities are to be of recurring nature.

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Russian Ministry of Finance clarifies treatment of dividends

According to the Ministry, if a CFC's profit is reported inclusive of dividends payable by the Russian entities, such dividends will not reduce the CFC's taxable profit for the purpose of applying the thresholds set by Item 7, Article 25.15 of the Russian Tax Code.

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Russian Ministry of Finance clarifies accounting treatment of proceeds from subsidiary liquidation

The Ministry has reiterated that if the value of assets received in liquidation exceeds the shareholders' equity interest in the liquidated company, such excess will be treated as dividends.

The Ministry previously expressed a similar position (e.g. in its Letters No. [03-03-06/1/8913](#) of 16 February 2017, [03-03-06/1/55225](#) of 21 September 2016, and No. [03-03-06/2/21409](#) of 14 April 2016).

According to the Ministry, such excess qualified as dividends will not be subject to the so-called participation exemption envisaged by Item 1, Article 284 of the Russian Tax Code, as the distribution of the liquidated company's property is not based on a decision to pay dividends.

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Russian Ministry of Finance clarifies VAT treatment of goods exported under retail sales agreements

The Ministry has advised that the zero VAT rate does not apply to the export of goods under retail sales agreements and that such export transactions are subject to a regular rate of 18 percent (10 percent).

The courts, however, take a contrary position (see case No. [A76-15329/2015](#)).

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International legislation news

OECD releases Secretary-General's Report to G20 Leaders

The report provides an update on the following matters:

- The status of the OECD/G20 Inclusive Framework on BEPS
- Tax transparency, including the implementation of the Automatic Exchange of Information
- The results of the Global Forum on Transparency and Exchange of Information for Tax Purposes

[Official OECD website](#)

Rosprirodnadzor clarifies waste management control issues

Specifically, the regulator has clarified that:

- Waste recycling targets are set for each category of products as a percentage of the total products manufactured in, or imported into Russia in the past calendar year with account of weight or number of finished products or weight of packaging
- If a company chooses to comply with its recycling targets using its own resources, the controlling authorities shall check whether the company is licensed to collect, transport, process, recycle, decontaminate, and dump the I-IV hazard class waste (i.e. to perform all of these activities at the same time)
- If the disposed waste is placed with the companies that are not licensed to handle the I-IV hazard class waste, such companies engaged in waste processing, decontamination, and dumping unlicensed will be deemed acting in breach of applicable laws subject to sanctions as per Article 8.2 of the Russian Administrative Offences Code
- The controlling authorities shall also check whether the companies own or are otherwise entitled to use the buildings, premises, and special equipment that meet the applicable standards and are required to perform respective works
- The fact of waste recycling shall be verified by the documents set forth by the Russian Civil Code, including the work acceptance reports, handover reports, etc.
- Should the controlling authorities discover that a company fails to comply with the recycling targets or pay the environmental duty, such non-complying entity may be subject to civil and administrative penalties, including those envisaged by Part 1, Article 29 of Federal Law No. 89-FZ.

[Consultant Plus](#)

Hong Kong's Inland Revenue Department launches Portal for Automatic Exchange of Information for Financial Institutions

The AEOI portal is set up to enable the financial institutions to submit notifications and financial account information on tax residents of Hong Kong's partner jurisdictions.

As Russia is one of such partner jurisdictions, in 2018 Hong Kong's financial institutions will be obliged to report to the Inland Revenue Department all Russia tax residents identified over the period from 1 July 2017 to 31 December 2017.

All Hong Kong's financial institutions will have to register on the AEOI portal.

[Hong Kong's AEOI portal](#)

Media review

OECD holds tax information exchange workshop

On 4-6 July 2017, the OECD held a tax information exchange workshop, bringing together foreign experts and Russian tax officials to discuss the global best practices of tax information exchange, both upon request and automatically.

Special attention was given to the practical issues of preparing requests for information from the foreign tax authorities. The OECD experts underlined that the filing and processing of requests depend on the focus of tax audits (transfer pricing, beneficial income ownership, intragroup borrowings etc.) and shared hands-on tips on sending collective requests.

The event featured focused discussions of global court practice in tax information exchange cases. The workshop participants also discussed the opportunities granted by the Convention on Administrative Assistance in Tax Matters that established a legal framework for exchanging the tax information with offshore jurisdictions of Bermuda, British Virgin Islands, Cayman Islands, and Aruba.

[Official Russian Federal Tax Service website](#)

Digital Economy programme updated

The programme envisages the creation of at least 10 globally competitive high-tech companies specialising in big data, neurotechnology, quantum technology, industrial Internet, robotics, virtual and augmented reality, shared computing, etc., as well as 10 "sectoral digital platforms for key industries", including the digital healthcare, digital education and "smart cities", by 2024.

The programme also stresses the priority of domestically produced software and computer equipment over the imported products. When the programme is fully implemented, the share of imported computers, services and telecom equipment procured by public authorities must decrease to 50 percent, and the share of imported software to 10 percent.

The government-controlled information system aimed at ensuring integrity, sustainability, and security of the Russian national segment of the Internet must be launched in 3Q 2018; 2Q 2019 is to see a test run of the centralised national communication network management system that will also enable traffic analysis and filtering.

The funding details are not covered in the document.

The draft has not yet been officially published.

[RBC daily](#)

Amendments to draft law on online aggregators developed

The scope of online aggregators' responsibilities have been revised.

Thus, an aggregator that returns a customer's prepayment shall not be liable to indemnify the customer for the losses. At the same time the provision obliging the aggregators to return the prepayment in case of a misrepresentation was excluded.

The aggregators will not be liable for customers' losses resulting from a misrepresentation of product/service information submitted by the seller and incorporated in the product/service offer, if the aggregator did not change such product/service information.

Draft Law No. [126869-7](#) that regulates online aggregators has passed the State Duma's first reading on 14 June 2017 (for more details on the draft, please refer to LT Digest of [17 - 26 March 2017](#)).

The amendments have not yet been officially published.

[Kommersant](#)

Russian Ministry of Finance considers replacing tax benefits with direct subsidies

The Ministry's proposal may lead to an overhaul of the entire system of tax benefits worth ca. RUB 2.5 trillion this year, in the Ministry's estimate: some benefits can be replaced with direct subsidies and some can be abolished.

In particular, the Ministry proposes allocating the benefits to the government programmes and evaluate their size and efficiency on a regular basis, defining the objectives and scope of such programme funding with account of granted benefits.

[Vedomosti](#)

Draft law on open-top coal transshipment developed

The draft proposes banning storage, processing, and transshipment of coal using cargo warehouses, conveying systems, transshipment, and other open-top equipment in offshore terminals within residential areas.

The ban will cover 23 terminals that transship up to a half of the total coal mined in Russia.

The legislators are willing to discuss the possibility of introducing a transition period with the market players.

The draft amendments have not yet been officially published.

[Kommersant](#)

Deloitte publications

Kazakhstan becomes the second government to embrace the cryptocurrency market system

Astana International Financial Center has announced the creation of a working group together with Deloitte, Waves, Juscutum, and Kesarev Consulting to develop an ecosystem to enable blockchain solutions for the CIS region.

The AIFC's working group is aimed at development of legislation regulating cryptocurrency transactions; establishing the ecosystem for the use of Blockchain technology, cryptoassets and blockchain based projects; formation of a favorable environment for innovative development of Kazakhstan and elaborating the dialogue among business, citizens, and government and improving the investment climate in Kazakhstan for development and support of innovative technologies.

Read more in our [press release](#).

Real Estate Highlights The News Kit, May-June 2017

We are pleased to present our regular [digest](#) of real estate news. The News Kit contains an overview of recent developments, most important legislative initiatives, clarifications from regulatory authorities, and court decisions on real estate disputes for May-June 2017.

The Russian State Duma approved a draft law formalising the concept of unjustified tax benefit in the Russian Tax Code

The [respective draft law \(the "Draft"\)](#) passed the third reading on 7 July 2017. These amendments are a much welcomed and long-awaited implementation of one of the most broadly discussed recent initiatives.

Until now, the application of the concept has been governed solely by Resolution of the Russian Supreme Commercial Court Plenum No.53 of 12 October 2006 (the "Plenum Resolution"), the most cited ruling in tax disputes.

As the disputes over the applicability of this concept constitute the bulk of all tax litigations in Russia and their share keeps growing, the importance of giving a formal definition to unjustified tax benefit is hard to overestimate.

Read on for more details in Legislative Tracking in Focus of [7 July 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

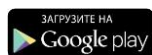


Yulia Krylova
Director
Real Estate
ykrylova@deloitte.ru



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

TaxSmart app



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