



## LT Digest

### Be in the know

#### Tax disputes

##### [Uralkali loses landmark tax case on transfer pricing in appeals court](#)

On 10 October 2017, the court of appeals awarded the claim to the Russian Federal Tax Service. The court reversed the first instance court's judgement and acknowledged the rightfulness of assessing additional tax liability, following the audit of prices applied by the company in controlled transactions.

Having applied the comparable uncontrolled price (CUP) method, the regulator decided that PAO Uralkali used artificially lowered prices in transactions with a related trading company.

The taxpayer insisted on using the transactional net margin method, citing the inapplicability of the CUP method.

The total tax claims against the company exceeded RUB 900 million.

For more details about the case, please refer to LT in Focus of [19 July 2017](#).

The statement of reasons for the resolution will be available later.

[Electronic Justice: commercial courts files](#)

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## Legislative initiatives

### Russian Government develops draft CRS and CbCR resolutions

The following drafts resolutions were posted on the Federal Draft Legislation Portal on 10 October 2017:

- On the implementation of international automatic exchange of financial account information for tax purposes (the draft can be accessed [here](#))
- On the procedure for exchanging financial account information and country-by-country reports between the Federal Tax Service and foreign tax administrations and on the data protection requirements (the draft can be accessed [here](#)).

For more details, please refer to the [LT in Focus](#) offering a detailed overview of the drafts.

Please note that the CRS and CbCR [draft](#) was adopted by the Russian State Duma in the first reading.

*Federal draft legislation portal*

### Russian Ministry of Justice rejects update to list of countries exchanging tax information with Russia

The Ministry rejected the draft order, updating the list of states and territories that fail to exchange tax information with Russia for CFC regulation purposes, finding inconsistencies in the names of the countries in the annex.

As a reminder, the draft order excluded the British Virgin Islands and South Korea from the “black list”.

The Russian Federal Tax Service plans to re-submit the order once the necessary adjustments have been made.

[Vedomosti](#)

### Draft law to protect tax preferences of existing residents of ADTs and Free Port of Vladivostok developed

According to the draft, the provisions of tax legislation that raise tax and social contributions rates, affecting the tax benefits and aggravating the total tax burden for the residents of Advanced Development Territories and the Free Port of Vladivostok, will not apply to such residents for ten years after obtaining a residency status.

[Federal draft legislation portal](#)

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## Clarifications from government bodies

### Russian Ministry of Finance comments on applicability of Russia-Luxembourg tax treaty to dividends

The Ministry has informed that mutual agreement procedures have resulted in the alignment of positions towards the interpretation of Item 2, Article 10 of the tax treaty between Russia and Luxembourg, offering a lower tax rate for dividends.

According to the tax treaty, a five-percent tax rate can

### Draft law to ratify WHO’s Protocol to Eliminate Illicit Trade in Tobacco developed

The Protocol to Eliminate Illicit Trade in Tobacco (a part of WHO’s Framework Convention on Tobacco Control) introduces such tools as licensing of production, import and export of tobacco and tobacco production equipment, client identification and due diligence framework, and the international tracking and tracing system.

The document requires the establishment of a global regime to allow tracking and tracing of tobacco products from the manufacturer to end customer within five years of the Protocol’s enactment.

If ratified, the Protocol will enter into force on 1 July 2018.

[Federal draft legislation portal](#)

### National telemedicine standard approved in Russia

The Federal Agency for Technical Regulation and Metrology (Rosstandart) approved a new national [standard](#) (GOST R 57757-2017, the “Standard”) for the remote monitoring of vital signs, Russia’s first official telemedicine regulations.

The Standard is aimed at unifying the technology and procedure requirements for the remote collection and processing of vital signs data, their transmission, and assessment by health care professionals.

The regulations, developed by the Russian Society for Pharmacoeconomics and Outcomes Research, set out the user, equipment, and technology criteria for the “doctor-patient” communication.

The Standard will enter into force starting from 1 September 2018.

[Official Rosstandard website](#)

be applied, if the recipient of the dividends is the beneficial owner of this income and invested at least EUR 80,000 or its rouble equivalent in the dividend payer and holds a direct interest of at least ten percent in it.

The Ministry’s letter sets forth an agreed approach to the interpretation of the above-mentioned provisions:

- Owning a direct interest shall mean that the owner has a legal and economic title to a company’s stock

or similar rights, regardless of where such stock or rights were sourced from - an IPO, previous holders directly or through an exchange or another organised marketplace, as a result of a merger, spin off, liquidation, or otherwise

- An investment can be made through a purchase of shares at an IPO, from previous holders directly or through an exchange or other organised marketplace, as a result of a merger, spin off, liquidation, or otherwise
- The investment value is equal to the purchase price of shares or other rights and may not be revaluated or otherwise adjusted
- A purchase price of shares is the amount paid as at the date of the purchase, but may not be less than EURO 80,000 or its rouble equivalent provided the purchase was an arm's length transaction.

[Consultant Plus](#)

### **Russian Ministry of Finance clarifies tax treatment of sale of Russian company shares held by foreign shareholder with self-acknowledged Russian tax residence**

The Ministry has reminded that in accordance with Article 284.2 of the Russian Tax Code, a zero profit tax

rate is charged on the proceeds from the disposal of shares of Russian issuers, provided that as of the date of such disposal the shares have been continuously owned by a taxpayer for more than five years.

At the same time, the foregoing tax rate is subject to at least one of the conditions set by Item 2, Article 284.2 of the Russian Tax Code, specifically, such shares cannot have been traded on an organised securities market during the whole period of the taxpayer's ownership.

Furthermore, pursuant to Item 7, Article 5 of Federal Law No. 395-FZ of 28 December 2010, Item 4.1, Articles 284 and 284.2 of the Russian Tax Code will apply to the securities (equity shares) purchased by the taxpayer starting from 1 January 2011.

According to the Ministry, a fact that a foreign entity is acknowledged a Russian tax resident does not affect its ownership rights to the earlier purchased shares, therefore, the ownership period shall be calculated as of the time of share purchase by such foreign entity regardless of the date its Russian tax residency is established.

[Consultant Plus](#)

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## **Media review**

### **Eurasian Economic Commission (EEC) Board approves draft agreement on product labelling for EAEU countries**

The EEC Board will decide whether a product can be labelled, reviewing respective requests from member countries.

The requests will have to be supported by feasibility reports, setting forth "main product consumers/categories of consumers", describing the impact labelling might have on business operations (including the potential costs and their share in the total price) and an expected result. The existing capacities and controls for such products will also be taken into account.

The draft also provides for the creation of a common register of labels.

A decision to label a product becomes effective 90 days following its official release by the Board, followed by the ban to sell unlabelled products.

The imported products will be labelled prior to customs clearance. Producers will label items prior to their transportation and sales.

[Kommersant](#)

### **CBR to develop online platform for sales of financial products to individuals**

The Central Bank of Russia plans to initiate the

development of an online marketplace to sell financial products offered by different market players to individuals, subject to recording of all transactions in a single repository.

Banks, non-credit financial institutions, stock exchanges, and other potential members will be able to launch their own "financial supermarkets" on this platform.

The marketplace will enable remote user identification through the existing common identification and authentication system, thus raising the platform's appeal for financial institutions.

[Kommersant](#)

### **Russian Ministry of Finance to develop framework draft law on cryptocurrency issue and circulation in Russia by end of 2017**

Cryptocurrency transactions are expected to be limited to qualified investors and stock exchanges only.

Mining will be permitted only to licensed legal entities and individual entrepreneurs.

The draft will envisage a mandatory regulation of cryptocurrency exchanges and the identification of participants.

[Kommersant](#)

## Blockchain consortium in finance established

M.Video, Alfa-Bank, and Sberbank Factoring have established a consortium to use the blockchain technology for factoring transactions.

The platform allows connecting an indefinite number of vendors and banks and guarantees the confidentiality of transactions.

The platform will be accessible only to the professional factoring market players and their clients.

[Kommersant](#)

## Russian Ministry of Transport to cramp down on airlines and tour operators

Thus, the Federal Air Transport Agency (Rosaviatsiya) may receive additional powers to suspend operations of airlines over poor financial performance.

Airlines will be categorised in three risk groups based on their financial situation and a set of measures will be developed for each group.

The roadmap also provides for an increase of flight delay penalties from RUB 25 to 300 per hour. Airport operators will be obliged to provide meals and hotel accommodation for the passengers of delayed flights, if an airline is financially incapable of doing it.

The companies will be required to create a special reserve fund to ensure uninterrupted passenger service.

To enhance control over tour operators and strengthen their accountability, the regulator suggests switching to electronic travel vouchers and treating them as accountable forms. The Federal Agency for Tourism will be authorised to exclude non-compliant players from the register of tour operators and impose penalties.

[Izvestiya](#)

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## International legislation news

### EU proposes large-scale VAT reform

On 4 October 2017, the European Commission announced plans for the biggest reform of EU VAT rules ever.

According to the press release, over €150 billion of VAT are lost every year in the EU countries, of which nearly € 50 billion (or €100 per EU citizen) is said to be due to cross-border VAT fraud.

The Commission wants to build a VAT system that would help European companies to reap all the benefits of the Single Market and to compete in the global markets.

Businesses engaged in cross-border trade currently incur extra costs to align the differences between national VAT systems. Simplifying and modernising VAT should reduce these costs by an estimated €1 billion. The reform envisages the following fundamental changes:

- Establishing a “one-stop shop” - a single online tax filing portal
- Ensuring consistency of VAT rules for cross-border transactions and the rules applied domestically
- Simplifying the invoicing rules, allowing cross-border sellers to prepare invoices according to the rules of their own country
- Enabling payment of VAT in the final consumer’s EU Member State at the rates of that Member State.

[Official website of the European Commission](#)

### OECD releases comments to several BEPS discussion drafts

Public comments were received on the following discussion drafts:

- Updated additional guidance on the attribution of

profits to permanent establishment (including the examples, illustrating the occurrence of PEs from commissionaire arrangements for sales and procurement activities and from business fragmentation)

- Revised guidance on profit splits

For more details about the content of the drafts, please refer to the OECD Alert of [23 June 2017](#).

Public discussion on these two drafts will be held on 6-7 November 2017.

[Official OECD website](#)

### OECD updates list of bilateral exchange relationships

The OECD has updated the [list](#) of jurisdictions that will exchange country-by-country reports to comply with the Multilateral Competent Authority Agreement on the Exchange of CbC Reports.

There are now over 1,000 bilateral exchange relationships activated with respect to more than 40 jurisdictions committed to exchanging the CbC Reports.

The Russian [draft law](#) on country-by-country reports passed the State Duma’s first reading on 20 September 2017, followed by the development of the Russian Government’s draft [resolution](#) setting forth the CbC Reports requirements.

[Official OECD website](#)

### Netherlands releases new government policy goals

The Dutch government coalition parties presented their long-awaited agreement on 10 October 2017, which sets out the priorities for the coming years.

The coalition agreement outlines broad policy objectives that would affect both individuals and companies, such as combating tax evasion, improving the business climate for companies with substantial economic activities in the Netherlands, reduction of the corporate

income tax rate, abolishment of the dividend withholding tax, etc. (for more details, please refer to The Netherlands Tax Alert of [13 October 2017](#)).

# Deloitte publications

## **Russian Government releases draft resolution on CRS (Common Reporting Standard)**

The [Draft](#) Resolution of the Russian Government On the Implementation of International Automatic Exchange of Financial Account Information for Tax Purposes (the "Draft Resolution"), aimed at complying with Russia's international obligations regarding CRS requirements implementation and designed in compliance with the [Draft Federal Law](#) On amending the Russian Tax Code as Part of Implementation of the International Automatic Exchange of Financial Accounts and MNE Information (the "Draft Law") was published on the Federal Draft Legislation Portal on 10 October 2017. Public discussion of the Draft Resolution will continue until 7 November 2017.

For details, please refer to Legislative Tracking in Focus of [16 October 2017](#).

## **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](#).

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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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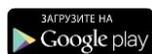


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## TaxSmart app



## [deloitte.ru](http://deloitte.ru)

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