



## LT Digest

### Be in the know

#### Tax disputes

##### **Russian Constitutional Court acknowledges legitimacy of recovering PIT debt originating from undue deduction as unjust enrichment**

The Russian Constitutional Court in its Ruling No. 9-P of 24 March 2017 acknowledged the legitimacy of recovering personal income tax debts as unjust enrichment as per the Civil Code of Russia.

Several individuals claimed tax deductions from the cost of apartments they purchased with budgetary funds.

Citing the fact that the taxpayers did not use their own money to purchase the apartments, the tax authorities challenged the tax deductions and applied to the court, seeking recovery of personal income tax on the grounds of unjust enrichment as per Article 1102 of the Russian Civil Code.

The taxpayers, in their turn, claimed that the tax authorities had breached the tax recovery procedure envisaged by the Russian Tax Code. The Constitutional Court confirmed the legitimacy of recovering the unduly granted deductions as unjust enrichment.

[Russian Constitutional Court acknowledges legitimacy of recovering PIT debt originating from undue deduction as unjust enrichment](#)

[Tax authorities admit deductibility of loss from FX swap transaction with related party](#)

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The Court also noted that the fact that the taxpayer may have genuinely misapprehended the nature of the PIT deduction and that the tax authorities had failed to immediately deny the deduction claimed shall not prevent the recovery of tax debt.

[Official website of the Russian Constitutional Court](#)

### **Tax authorities admit deductibility of loss from FX swap transaction with related party**

In an out-of-court settlement, the tax authorities have surrendered their claims against a well-known bank asserted in relation to the FX swap transactions it made with a foreign affiliate in 2013-2014.

The bank purchased foreign currency in the Russian market to later sell it to its London-based affiliate.

While the transactions were profitable (the purchase price in the Russian market was lower than the selling price paid by the foreign entity), the second leg of the swap was closed at an exchange rate lower than the CBR's, generating a FX loss, further deducted for profit tax purposes.

As the second leg of the swap was closed in the afternoon, when the next day's CBR exchange rate was known, the tax authorities claimed that the bank's actions were aimed at reducing its profit tax base, that the transaction with the foreign affiliate made no economic sense and was solely aimed at generating tax savings.

The taxpayer countered the claim, stating that the transactions were consistent with the arm's length prices, the Russian and global banking practices, and were necessary to comply with the CBR's net open forex position limit.

After a number of professional discussions, involving the experts of the Russian Ministry of Finance, the tax authorities admitted that the transactions had been made in good faith and withdrew their claims.

[RBCdaily](#)

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## **Clarifications from government bodies**

### **Ministry of Finance clarifies applicability of Protocol to Double Tax Treaty (DTT) between Russia and Cyprus to income from indirect sale of property**

The Russian Ministry of Finance has reminded that, in accordance with the amended Article 13 of the [DTT](#) between Russia and Cyprus, a Cypriot resident's income from sale of shares and equivalent rights in a company, whose assets are more than by 50 percent in terms of value formed by property located in Russia, can be taxed in Russia as of 1 January 2017.

The respective amendments were introduced to Article 13 of the DTT by the Protocol of 7 October 2010.

On 29 December 2016, the Cypriot Ministry of Finance officially announced that enactment of amendments to Article 13 of the DTT with Russia was deferred until the similar provisions of DTT between Russia and the European countries enter into force.

No official comments were issued by the Russian side.

Given the foregoing, it can be assumed that until the

### **Supreme Court supports tax authorities in dispute over PIT avoidance**

The Russian Supreme Court has released its Ruling of 27 February 2017 issued on Case No. A58-547/2016. The case concerned the unjustified tax benefits from signing service agreements rather than employment contracts with individual entrepreneurs, applying the simplified taxation system.

A company with no FTEs contracted individual entrepreneurs (IE) for rendering services as part of its principal activity.

According to the tax authorities, the nature of contractual relationships with IEs was similar to that of employment, and the company's actual objective was to avoid the withholding of personal income tax.

The tax authorities' position was supported by three court instances. The case was denied a hearing at the Supreme Court's Judicial Panel for Economic Disputes.

The courts noted that the name of the contract is not in itself a sufficient criterion for qualifying the contract as a service or an employment agreement.

Reviewing the circumstances of the case (the absence of FTEs, engagement of IEs on a regular basis, IEs working within established working hours and having fully equipped workplaces, the requirement to register as an IE to be able to sign the agreements), the courts categorised the disputed relationship as employment.

The courts also noted that the absence of labour disputes between the company and the contracted individuals, the waiver of rights and guarantees offered by the labour laws are immaterial for determining the withholding agent's obligations on the basis of the actual economic essence of the relationship.

[Electronic Justice: commercial courts files](#)

amendments to the Protocol of 7 October 2017 are officially approved, the new wording of Article 13 of the DTT will apply.

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### **Federal Tax Services clarifies VAT assessment for foreign provider of online classified ads**

In its letter, the Russian Federal Tax Service clarifies the imposition of VAT on e-services relating to the placement of private ads on a popular classifieds website.

The regulator has stated that in accordance with Para 5, Item 1, Article 174.2 of the Russian Tax Code, the electronically supplied services also include the online provision of technological, organisational, informational, and other solutions for on-line shopping and sales (including by offering an online marketplace).

Thus, if an individual buyer of electronic services operates in Russia and purchases services from a foreign classifieds website to sell his personal items, such services will be deemed supplied in Russia,

requiring such foreign supplier to register with the Russian tax authorities and pay VAT.

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### **Russian Ministry of Finance clarifies procedure for withholding tax on interest on uncontrolled debt re-qualified as dividends**

The regulator has clarified that if at the time of closing of a reporting (tax) period the company's debt met the controlled debt criteria, but no interest had been paid during such period, the company must withhold the at-source tax on interest treated as dividends when actually making the payment.

However, the letter does not address the payment of tax on the debt no longer treated as controlled due to its assignment to the party, interest thereon is subsequently paid to. Therefore, the question whether the tax must be withheld remains open.

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### **Ministry of Finance issues guidance on adjustment of corporate profit tax base for loss carryforward**

According to the Ministry of Finance, failure to deduct for tax purposes the expenses incurred in the previous years, but discovered in the current periods after the source documents are received, is regarded as a misrepresentation of the past period's tax base and will be subject to provisions of Article 54 of the Russian Tax Code.

For the purposes of the above, the tax base is defined as the assessed value of the taxable income (Item 1 of Article 274 of the Russian Tax Code).

If the taxpayer generates loss in the respective reporting (tax) period, he shall be deemed to have a zero tax base with no adjustment possibilities.

Therefore, an organisation may carry forward its losses for the current period supported by past years' source documents, only if it reports profit for the current period. If it reports a loss, it shall adjust its tax base for the period in which the error has occurred.

The regulator has previously issued similar clarifications (see Letters No. [03/-03/-06/1/27793](#) of 16 May 2016 and No. [03/-03/-06/2/21034](#) of 13 April 2016).

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### **Ministry of Finance clarifies applicability of provisions regulating securities valuation effective as of 1 January 2016**

The regulator has pointed out that Item 29 of Article 280 of the Russian Tax Code entered into force as of 1

January 2016. The Item sets forth that the provisions of Article 280 of the Russian Tax Code regulating the valuation of securities (investment shares) shall only apply to controlled transactions as defined by Section V.1 of the Russian Tax Code, while the actual value applies to uncontrolled transactions.

The Ministry noted that the new provisions apply to transactions in securities sold (purchased) starting from 1 January 2016, regardless of the dates of the respective contracts.

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### **Russian Ministry of Finance clarifies calculation of VAT on monetary loan origination fees**

According to the Ministry, loan origination or commitment fees shall be treated as consideration payable for loan services, which are VAT-exempt.

Therefore, the above-mentioned fees are non VAT-able.

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### **Ministry of Finance clarifies taxation of real property received by credit institutions as settlement**

The Ministry has advised that properties recognised by credit institutions on balance sheet accounts 619, 620 and 621, including the properties that are temporarily not used as intended, or received as a loan settlement, or non-current assets shall be exempt of corporate property tax as per Article 374 of the Russian Tax Code.

However, the regulator noted that if the regional laws contain any specific provisions for tax base calculation and tax assessment for certain types of real estate, the tax base for residential buildings and premises recognised by credit institutions on balance sheet accounts 619, 620 and 621 shall be defined on the basis of such properties' cadastral value.

The Ministry's previous clarifications requiring credit institutions to pay corporate property tax on real estate recognised on balance sheet accounts 619, 620 and 621 have been cancelled (see Letters No. [03/-05/-04/-01/5884](#) of 5 February 2016 and No. [03/-05/-05/-01/38445](#) of 1 July 2016).

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## **Legislative initiatives**

### **Belarus signs EAEU Customs Code**

President of Belarus Alexander Lukashenko has [signed](#) the Customs Code of the Eurasian Economic Union.

Presidents of Russia, Kyrgyzstan, Kazakhstan, and Armenia signed the Code on 26 December 2016 at the meeting of the Supreme Eurasian Economic Council in St. Petersburg, Belarus's approval being the last needed to commence the Code's ratification.

The key changes introduced by the Code:

- Simplified customs procedures;
- The transition to electronic document management. The Code prioritises e-filing of customs declarations, hard copy submissions to be permitted in exceptional cases;
- A new approach towards regulation of authorised economic operators (AEO), a special category of

suppliers enjoying customs benefits. Based on the criteria envisaged by the Code, the AEOs will be divided into three categories with varying benefits.

The Code is unlikely to enter into force before 1 July 2017, a more probable date being 1 January 2018.

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### **Russian State Duma to consider draft law changing assessment of social contributions**

The draft law calls for replacing the regressive rates of contributions to the Pension and Social Security Funds with the flat ones, irrespective of income bracket.

According to the existing laws, any income above the statutory income threshold is exempt from contributions to the Social Security Fund, while contributions to the Pension Fund are charged at the rate of 10 percent (instead of 22 percent).

In the draft sponsors' estimate, the new model will increase the Pension and the Social Security Funds' revenues by RUB 600 bln and 90 bln respectively.

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

### **Draft law refining procedure and timeline for installing automatic recorders of air and water emissions developed**

The draft sets up a new term for installing automatic recorders on stationary pollution sources of Category I facilities: no later than four years upon receiving a comprehensive environmental permit.

The existing version of the draft requires that such recorders be installed by 1 January 2018.

Furthermore, the draft proposes the following initiatives:

- To install automatic recorders in accordance with the automatic controls programme regulated by the Russian Ministry of Natural Resources;
- The types of emission sources subject to automatic control, as well as the requirements for measurement, recording, and information transmission equipment will be developed by the Russian Government.

[Federal draft legislation portal](#)

### **Russian Ministry of Finance releases draft performance report for 2016 and objectives for 2017**

The draft outlines the Ministry's strategy and performance in 2016 and its objectives in different areas, such as taxation, FX regulation, banking, insurance, etc. for 2017.

In particular, the Ministry plans the following tax initiatives for 2017:

- To [add](#) a chapter on added income tax to the Russian Tax Code, introducing a fair taxation mechanism for oil exploration operations (the text of the draft law has not yet been published);
- To expand the list of excisable goods to include perfumes, cosmetics, and household chemistry (for details see LT Digest of [9 March 2017](#));
- To enable the taxpayers engaged in export operations to voluntarily stop applying the zero VAT rate;
- To offer lower federal and regional tax rates to

taxpayers investing in external infrastructure in the Far East (for more details, please refer to LT of [19 October 2016](#));

- To set a zero profit tax rate for taxpayers engaged in touristic and recreational business in the Far East;
- To approve the list of tax and non-tax incentives and develop a legal framework for embedding the forecast of tax incentives and assessment of their efficiency in the regular budgeting process.

[Official Ministry of Finance website](#)

### **Russian State Duma to consider social media restrictions**

The draft law calls for the following measures:

- To define the terms "social media", "user", "social media owner" etc;
- To prohibit children under 14 years of age from creating accounts in social networks;
- To prohibit users from setting up multiple accounts with one social network;
- To oblige users to open social media accounts under their real names and provide passport data upon registration (the service operator will be obliged to check the passport details of Russian and foreign citizens);
- To ban creation of multiple user accounts;
- To approve the list of restrictions for social media users and the rights and responsibilities of social media sites;
- To ban certain types of social media advertising (including e-cigarettes liquids and dietary supplements ads);
- To prohibit online sales to minors (under 18 years of age) via social networks;
- To introduce penalties for breaching the restrictions by users (from RUB 1,000 to 3,000) or by social media websites (from RUB 100,000 to 300,000).

The draft law imposes material restrictions on social networks and has already received negative feedback from [the business community](#).

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

## Media review

### Russian Federal Tax Service publishes list of foreign companies registered for VAT purposes

The regulator lists more than 100 foreign e-service providers that have registered with the Russian tax authorities for VAT purposes. The list includes such major players as Apple, Google, Microsoft, Netflix, Samsung, Bloomberg, Wargaming Group, Amazon, eBay, Nintendo, Formula One, Sony, Financial Times, Uber, Eurosport, Booking, Alibaba, and Facebook (the full list is available [here](#)).

Almost half of the companies are software and computer games developers, a third are content sellers (music, movies, and books), and ca. 15 percent are e-commerce and online booking platforms.

The additional guidelines for filling out VAT payment orders will soon be available in [e-service providers' VAT office](#) on the Federal Tax Service's website. These taxpayers will have to file their first VAT return for 1Q 2017 and pay the tax due by 25 April 2017.

For more details on payment of VAT by foreign e-service providers, please refer to LT in Focus of [16 June 2016](#)).

[Official Russian Federal Tax Service website](#)

### Russian Government to consider legalising bitcoin and other alternative and digital currencies

The Central Bank of Russia and the Russian Ministry of Finance are expected to develop their cryptocurrency regulation proposals by mid-2017.

The Government has stressed the importance of ensuring the transparency of cryptocurrency operations, especially as regards the identification of the parties.

[Economica I Zhizn](#)

### Car manufactures request later introduction of electronic vehicle passports

The market players propose postponing the transition to electronic vehicle passports from 1 July 2017 to 2018 on the account that the system is not yet finalised in many aspects, such as, for instance, title transfer, registration of imported vehicles, digital signature as a prerequisite for owning a car, and the absence of relevant legal framework (respective [Resolution](#) of the Russian Government has been posted at the Federal draft legislation portal and is currently undergoing public discussion).

[Kommersant](#)

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## International legislation news

### Hong Kong amends automatic information exchange process

The Hong Kong Inland Revenue Department has released amendments to Inland Revenue Ordinance concerning automatic document exchange (Inland Revenue (Amendment) (No. 3) Bill 2017).

The proposed amendments expand the list of reportable jurisdictions for the more effective implementation of the automatic exchange of financial account information.

Russia is among the jurisdictions on the list.

[Official website of Hong Kong Legislative Council](#)

### OECD releases its Taxing Wages 2016 report

The OECD releases its annual [Taxing Wages report](#) that provides insight into labour income taxes in the OECD member states.

[Official OECD website](#)

# Deloitte publications

## Real Estate Highlights The News Kit, March 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 March 2017.

Learn about the public declaration of goals and objectives for 2017 released by the Russian Federal Tax Service, the changes in the list of Moscow's real estate to be taxed on the basis of its cadastral value, and about a draft law aimed at limiting the tax benefits for property contributions to capital.

## OECD releases additional CbC guidance

On 6 April 2017, the Inclusive Framework on BEPS released [additional guidance](#) on implementation of Country-by-Country (CbC) reporting.

The guidance clarifies what data should be included in the CbC report. For details, please refer to Legislative Tracking in Focus of [7 April 2017](#).

## Overview of key changes in customs regulation

Over the past few years, the Russian customs regulations have been increasingly turning towards global practices. The developments of 2016 and early 2017 were mostly aimed at simplifying the existing customs procedures, improving the business climate, and establishing an attractive investment environment in Russia. Read about the most significant developments in the Russian customs regulation that will have impact on the business in 2017 in this [issue](#) of LT Digest.

## Bridging the digital gap: how tax fits into cryptocurrencies and blockchain

Today, the world is on the brink of a major tax revolution: as cryptocurrencies and distributed ledger technologies such as blockchain evolve, they push the traditional financial systems from the physical world to online.

Kseniya Osipova, Consultant from the Legal Services for Tech Projects Team, comments on an interesting [article](#) from The International Tax Review, highlighting the key tax implications of the emerging technology.

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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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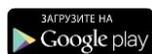


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## TaxSmart app



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

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