



LT Digest

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Legislative initiatives

Russian State Duma to consider draft law refining currency control procedures for individuals

The draft envisages the following changes:

- To make a first transfer, individual residents will no longer have to submit a tax authority's notice of account opening to an authorised bank
- A list of FX operations that can be carried out by Russian citizens abroad will be expanded to include all FX transactions between the citizens that will be staying abroad for more than 183 days during a calendar year
- A list of instances when cash can be credited directly to individual residents' accounts with banks opened in the OECD or FATCA member states and not via an authorised bank will be expanded to include:
 - Crediting proceeds from a sale of a car owned by an individual resident to a non-resident outside Russia
 - Crediting proceeds from a sale of real estate owned by an individual resident to a non-resident, if such real estate is registered in a OECD or FATCA member state that is a party to the Multilateral Agreement on Automatic Exchange of Financial Account Information of 29 October 2014 or has a bilateral financial account

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information exchange treaty with Russia and if the individual resident's account is opened with a bank located in such state

- All Russian citizens will be treated as FX residents
- Russian citizens staying abroad for more than 183 days in the aggregate during a calendar year (regardless of a number of entries in Russia during the calendar year) will not be required to notify the tax authorities on the accounts (deposits) opened with the banks outside Russia, will not be subject to transaction restrictions and will not be obliged to report on foreign accounts cash flows.

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

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

Draft law combating forex violations passes Russian State Duma's second reading

The following amendments have been introduced:

- To set forth that cross-border contracts between residents and non-residents must indicate the final discharge date
- To enable the authorised banks to deny a forex transaction if it breaches the provisions of Articles 9,12,14 of Federal Law "On currency regulations and control" No. 173-FZ of 10 December 2003 and other applicable regulations
- The transaction denial shall be communicated to the relevant persons in writing no later than on a business day following the date, on which the decision was made
- To determine the penalties for unlawful forex transactions and cash repatriation offenses.

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

Russian State Duma to consider draft law on legalisation of online sales of pharmaceuticals

The document proposes entitling the regular and veterinary pharmacies to sell non-prescription drugs online.

The online sales of prescription drugs will remain prohibited.

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

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

Russian Ministry of Industry and Trade develops e-commerce roadmap until 2025

In particular, the Ministry has the following activities on its agenda:

- Harmonising the regulation of duty-free imports and defining the rules for admittance of products from

foreign e-stores products into the EAEU states

- Granting target tax incentives and preferences, including tax exemptions for investment in critical e-commerce infrastructural projects, including logistics, financial and payment solutions
- Developing a tax policy for the B2B or B2C e-commerce of digital products and services
- Legalising online sales of alcohol and medical drugs
- Streamlining the regulations governing cash register equipment and paperless technologies, including the development of a federal law that would regulate cross-border paperless document management
- Facilitating the e-commerce export procedures
- Streamlining the e-commerce consumer rights protection laws and aligning return policies regardless of how products are purchased (online or in a store)
- Improving the efficiency of e-transaction regulation.

[Official website of the Minpromtorg of Russia](#)

Updated concept of governmental anti-tobacco policy for 2017-2022 and beyond released

In particular, the concept envisages the following steps:

- To ensure a gradual and continuous increase of excise tax rates on tobacco and electronic nicotine delivery systems up to the EU average
- To introduce an environmental tax on cigarettes
- To ban all tax-free and duty-free tobacco sales
- To set forth that the ingredients of tobacco products may not constitute a trade secret
- To make tobacco production a licensed business
- To label tobacco products to avoid counterfeiting
- To exercise control over tobacco, raw materials, equipment and spare parts supply chains, including the implementation of tracking and tracing systems
- To ban the use of flavouring agents and colour pigments in tobacco products
- To set the requirements for the length, height, width, and colour of tobacco packages and the information appearing on the package
- To introduce design standards for cigarette storage boxes used by retail points of sale

[Official Russian Health Ministry website](#)

Clarifications from government bodies

Russian Ministry of Finance commented on obtaining confirmation of beneficial income ownership from foreign entities before and after 1 January 2017

A Russian company that pays passive income to a foreign entity inquired if it would be subject to penalties for applying the tax treaty provisions and not withholding an at-source tax without having obtained a confirmation of such foreign entity's beneficial income ownership.

The Ministry issued a generalised statement setting forth that an obligation to obtain a confirmation of beneficial income ownership had been introduced starting from 1 January 2017.

Therefore, effective 1 January 2017, income payable to a foreign entity is subject to a regular taxation (the tax treaty does not apply) unless a confirmation of a beneficial income ownership is obtained.

The letter implies that a failure to obtain a confirmation of beneficial ownership of income paid before 1 January 2017 is not in itself a ground for withholding tax or imposing penalties.

However, if the tax authorities discover that a foreign entity is not a beneficial income owner, a withholding agent can be held accountable for failing to withhold the tax. The approach is attested by the existing judicial practice (e.g., cases No. [A27-16584/2016](#), [A11-6602/2016](#), [A40-442/2015](#), [A64-3695/2016](#)).

[Consultant Plus](#)

Russian Ministry of Finance clarifies interpretation of "investment" for Russia-Netherlands tax treaty purposes

In accordance with Sub-Paragraph "A", Paragraph 2, Article 10 of the Tax Treaty between Russia and the Netherlands, dividends may be taxed at a five-percent of the gross amount of the dividends if the beneficial owner of the dividends is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends and has invested in it at least EUR 75,000 or its national currency equivalent.

In accordance with Paragraph 15 of the Commentaries on Article 10 of the OECD's Model Convention on Income and Capital, the term "capital" should be understood as it is interpreted in the company law.

Sub-Item 4, Item 1, Article 3 of the Russian Tax Code defines a capital contribution as a transfer of property in the form of investment.

Therefore, in the Ministry's opinion, for the purpose of applying a lower tax rate granted by the tax treaty, the investment shall be construed as a capital contribution. However, the Ministry has noted that the approach to defining the investment may differ across jurisdictions; therefore, the procedures envisaged by Article 26 of the Russia-Netherlands tax treaty require consultations with the Dutch competent authorities to ensure consistency in application and interpretation of the provision.

[Consultant Plus](#)

Russian Ministry of Finance clarifies treatment of CFC as active (sub) holding company for profit tax exemption purposes

The Ministry has reminded that the CFC's profits can be tax-exempt if such CFC is an active foreign (sub)holding company.

A CFC will be treated as an active foreign (sub) holding company if it has a direct interest in each active foreign company (active foreign subholding company) whose dividends it excludes from the taxable income specified in Item 4, Article 309.1 of the Russian Tax Code.

Therefore, a CFC with no subsidiaries cannot be treated as an active foreign (sub) holding even if it meets the other criteria.

To be acknowledged an active foreign (sub) holding, a CFC must comply with all necessary prerequisites **as at the date of a respective CFC's financial year-end**.

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Russian Ministry of Finance clarifies FX adjustments for thin capitalisation purposes

The Ministry has advised that in accordance with the amendments to Federal Law No. 32-FZ, the foreign exchange (FX) adjustments will apply to the calculation (based on thin capitalisation rules) of the maximum allowable interest on controlled debt originating prior to 1 October 2014 **provided the debt repayment deadlines remain unaltered**.

In the Ministry's opinion, to apply the FX adjustments in 2017, the condition of inalterability of debt repayment deadlines must apply starting from 2015.

The inalterability condition was introduced when the FX adjustment period was first extended and applied to 2016 only.

In the end of 2016, the FX adjustment period was extended for the second time, but the requirement that it shall be complied with during 2016 was excluded. As the transitional provisions of Federal Law No. 32-FZ envisage that the law applies starting from 1 January 2015, the Ministry has concluded that the deadline inalterability condition shall be complied with as of 1 January 2015.

The Ministry has also 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](#)).

[Consultant Plus](#)

Russian Ministry of Finance reaffirms applicability of property tax benefit to High energy efficiency class assets subject to energy passport availability as at commissioning date

The Ministry has reminded that the owners of newly built properties of the High energy efficiency class (including non-residential buildings and their premises) are entitled to lower tax rates subject to the availability of **energy efficiency passports for the properties as at the time of such property commissioning**.

A similar position was expressed by the Ministry in its Letter No. [03-05-04-01/32877](#) of 29 May 2017.

The courts have not been consistent in their opinions on the applicability of the property tax benefits envisaged by Item 21, Article 381 of the Russian Tax Code to non-multifamily housing, the recent court decisions confirming the latter are ineligible for the benefit.

Media review

Telegram fined for refusing to provide decoding keys to security services

The Judge of Meshchansky District Court of Moscow imposed a RUB 800,000 fine on the Russian messenger Telegram for failure to cooperate and disclose the keys required to decode the messages of certain users.

Telegram founder Pavel Durov is [planning](#) to appeal the RUB 800,000 fine imposed by the court for failing to provide the law enforcement agencies with access to private correspondences.

[Rossiyskaya gazeta](#)

Initiative to reduce duty-free import threshold

The Russian Post has reportedly proposed to the Russian Government to negotiate a new aligned schedule for reducing the duty-free import of goods with the EAEU countries.

The threshold is proposed to be reduced as follows:

- From EUR 1,000 to EUR 200 — starting from 2019
- From EUR 200 to EUR 100 — starting from 2020
- From EUR 100 to EUR 50 — starting from 2021

According to the current draft resolution of the Eurasian Economic Commission, a duty-free import threshold is planned to be reduced from EUR 1,000 to EUR 500 starting from 2018. A duty of 30 percent, but not less than EUR 4 per kilo, will be charged on the excess.

Starting from 2019, the purchases from foreign e-stores worth EUR 200 will be duty-free, a 15-percent duty (but not less than EUR 2 per kilo) to be charged on the excess.

[Kommersant](#)

Special investment contracts signed by two pharmaceutical giants

Thus, in cases No. [A40-51633/2017](#), [A40-51627/2017](#) and [A40-51603/2017](#) a first instance court denied the tax benefit to a taxpayer citing the following circumstances:

- An energy efficiency class was not assigned as at the time of the building commissioning as the energy passports were issued after the commissioning
- The legislation does not provide for the assignment of energy efficiency classes to non-multifamily buildings.

Yet, there are examples of some positive decisions, e.g. cases No. [A60-7484/2017](#), [A41-90181/2016](#) and [A27-13534/2016](#).

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On 16 October 2017 Sanofi and AstraZeneca, two major global pharmaceutical manufacturers, signed special investment contracts (SPICs) with the Russian Ministry of Industry and Trade and Russian regions.

One SPIC provides for upgrading the Sanofi-Aventis Vostok production facility in Orel region and scaling up the production of pharmaceuticals that are second-to-none in Russia.

A SPIC signed with AstraZeneca provides for the manufacturer's investment of additional RUB 1 billion in upgrading its Russian enterprise and ensuring the technology transfer to manufacture the medicinal products for the treatment of socially important diseases. The SPIC covers ten drugs, six of them planned for production up to the stage of finished dosage form by 2020.

[Official website of the Minpromtorg of Russia](#)

Draft law obliging foreign e-stores to pay VAT in Russia developed

The draft proposes treating foreign e-sellers as taxpayers, e-stores and other possible intermediaries - as agents withholding VAT on e-sales of goods to the Russian consumers.

The e-sellers or e-stores with a quarterly turnover of above RUB 2 million will have to register with the tax authorities for VAT purposes.

The non-compliant e-store or seller websites might be blocked by Roskomnadzor upon request of the Russian Federal Tax Service.

The document has not yet been officially published.

[Izvestiya](#)

Ministry of Communications and Media puts forward national cryptocurrency proposals

According to the proposals, the decision-making powers

relating to the issue and regulation of the national cryptocurrency will be delegated to the Central Bank of Russia and the Russian Ministry of Finance.

The Head of the Ministry has stressed the importance of exercising the governmental control of the issue of the national cryptocurrencies.

The plan also calls for defining the essence of a cryptocurrency subject to the profit tax.

[Economica i Zhizn](#)

Russian Federal Tax Service announces operational readiness of medical drug labelling system

Speaking at the XIX All-Russia Conference on Governmental Regulation of Distribution of Medical Drugs and Appliances — 2017, the Russian Tax Service (RTS) officials informed that the system had been updated in accordance with the specifications of the Russian Ministry of Health and Federal Service for Surveillance in Healthcare and had taken into account the feedback from the first labelling pilot participants — top pharmaceutical companies.

The documents required for connecting to the information system — the labelling guidance, information exchange forms (xsd-charts), standard system interfacing scripts, passports of business processes containing reference to the required xsd-charts — are now posted at the FTS website in subsection [Medical drugs](#) of [Product Labelling](#) section.

The drug labelling pilot was launched in February 2017.

The labelling system now registers 45 companies, 19 medical drugs and more than 420,000 labelled packages.

[Official Russian Federal Tax Service website](#)

Court Practice

Federal Tax Service summed up court decisions in tax cases for 3Q 2017

The summary of tax cases covers the court opinions on the following matters:

- Unjustified tax benefits from business spin-off schemes: the Russian Constitutional Court did not identify any constitutional breaches in imposing sanctions for obtaining an unjustified tax benefit from the business spin-off schemes (Russian Constitutional Court Ruling No. [1440-O](#) of 4 July 2017, for more details please refer to LT Digest, [8-13 August 2017](#))
- Acknowledgment of relation between the parties for tax debt recovery purposes: a phrase “otherwise related” used in Item 2 of Article 45 of the Russian Tax Code to describe the relation between the taxpayer and the person against which the tax claims are filed has an independent meaning and should be construed according to the purpose of this norm, that is, combating tax evasion in those exceptional cases when the actions of the taxpayer and other persons are concerted (interdependent) and result in the taxpayer’s inability to pay taxes, even if there is no affiliation as defined by Article 105.1 of the Russian Tax Code (case No. [A08-6711/2015](#))
- The payment of property tax on a share in common property transferred to the buyers as part of sold premises in a building: the court concluded that once a seller had sold and written off non-residential premises and a share in common property, the seller is no longer obliged to pay corporate property tax and file respective tax return with respect to the share in common property (case No. [A40-61604/2016](#))
- Applying 10-percent VAT on children's items: the court concluded that a rate of VAT charged on children's items shall be determined taking into account the fact that the applicable regulations did not rule out the use of a 10-percent VAT rate subject to the review and assessment of actual circumstances (Resolution of the Russian Constitutional Court No. [19-P](#) of 10 July 2017)

Russian Government agrees to postpone electronic veterinary certification

Following the meeting of the Advisory Board on Foreign Investment, Minister of Economic Development Maxim Oreshkin informed that the introduction of electronic veterinary certificates originally scheduled for 1 January 2018 was as a VATable product or a transaction being postponed to ensure smooth implementation and avoid interruptions in supplies.

In accordance with the Law of Russia” No. [4979-I](#) “On Veterinary Procedures” of 14 May 1983, all livestock producers, including producers of dairy and meat products and animal feed, must switch to electronic veterinary certificates issued via the Mercury system starting from 1 January 2018.

[According to food producers](#), the system is not ready for full-scale operation yet; if launched on 1 January 2018, it may cripple agricultural production.

[Vedomosti](#)

Russian Antimonopoly Service to review airline pricing algorithm

In the end of September 2017, the airlines were requested to provide their computer algorithms behind the pricing of economy class airfares to the Russian Antimonopoly Service (FAS).

The regulator is interested in the use of the global distribution system (GDS) and the revenue management, including the internal data.

As noted earlier by Head of FAS Igor Artemyev, the GDS are programmed to raise the ticket price above what is economically justified.

[Kommersant](#)

- Determining the corporate property tax base taking into account such property's cadastral value: the court concluded that the taxable base of disputable properties should not be determined based on the data from the unified state register of real estate, but based on the legally established cadastral value of a building the company had owned the disputable premises in, taking into account the share of such disputable premises in the gross building area (case No. [A40-44828/2016](#))
- Acknowledging a tax liability discharged: the court acknowledged that an issue of a payment order to a bank for tax payment purposes should not serve as a

ground for acknowledging the tax liability discharged as at the time of issuing such payment order the payee had been aware (could not be unaware) of the bank's inability to transfer the tax amount. Yet, it is the tax authorities' responsibility to provide direct evidence or sufficient indirect evidence of the taxpayer's unawareness of the bank's inability to make a transfer (case No. [A41-12803/2016](#)).

[Official Russian Federal Tax Service website](#)

International legislation news

MLI expected to enter into force in 2018

The OECD has informed on the five upcoming ratifications of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("MLI") expected by the end of 2017, which means that the MLI might enter into force in 2018.

Austria was the first country to ratify the MLI.

Russia joined the MLI on 7 June 2017 (for more details, please refer to LT in Focus of [14 June 2017](#)) but has not ratified it yet

[Official OECD website](#)

Inclusive Framework on BEPS Action 5: OECD releases progress report on preferential regimes

The report provides details on the outcome of peer reviews undertaken of 164 preferential tax regimes.

According to the report, the governments have dismantled, or are in the process of amending, the preferential tax regimes as part of the BEPS actions.

Of the 164 regimes reviewed in the last twelve months:

- 99 require action (for 93 of these 99 regimes, the required changes have already been completed or initiated by Inclusive Framework members)

- 56 regimes do not pose a BEPS risk
- 9 regimes are still under review, due to extenuating circumstances such as the impact of the recent hurricanes on certain Caribbean jurisdictions.

[Official OECD website](#)

Malta introduces Notional Interest Deduction (NID) rules

The new regime will be effective as from the 2018 year of assessment.

According to the new rules, Malta companies will be able to claim a deduction for notional interest on their equity capital.

The NID will be calculated based on a notional interest rate and an entity's total equity at its financial year-end. The NID claimed in any year will be limited to 90 percent of chargeable income. Any excess notional interest may be carried forward to future periods.

For details, please refer to Malta Tax Alert of [16 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](#).

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,
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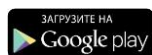


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