



## LT Digest

### Be in the know

#### Legislative initiatives

##### **[Draft regulation governing execution of bilateral \(multilateral\) pricing agreements developed](#)**

Plans call for the authority to sign bilateral (multilateral) pricing agreements to be vested in the Federal Tax Service.

The following agreement execution procedure has been proposed:

- An agreement is discussed by the Federal Tax Service and the taxpayer (an optional, non-binding stage);
- The taxpayer applies for the execution of the agreement (the draft contains a recommended application form and a list of documents to be attached thereto);
- The Federal Tax Service reviews the application and decides on whether to hold negotiations with the foreign state, request that the application be adjusted or deny the execution of the agreement;
- The Federal Tax Service holds negotiations with the foreign state, which result in the signing of a memorandum of intent by the competent authorities, the taxpayer being advised only on the outcome of the negotiations and not on the content of the memorandum;
- The competent authorities sign the pricing agreement (subject to the taxpayer's consent) or have the necessary amendments introduced to it.

[Draft regulation governing execution of bilateral \(multilateral\) pricing agreements developed](#)

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The draft regulation also sets forth the specifics of pricing agreement execution by the competent authorities of several foreign states.

The adoption of the above-mentioned regulation will be beneficial for taxpayers, who will be able to realise their right to enter into bilateral (multilateral) pricing agreements as envisaged by item 2 of Article 105.20 of the Russian Tax Code.

[Federal draft legislation portal](#)

### **Updated draft law on automatic exchange of financial account information (CRS) published**

The following changes are proposed with respect to the automatic exchange of financial account information (CRS):

- The draft specifies the definition of a controlling person by excluding the beneficiaries of the controlling persons from the scope;
- The document introduces the term “financial assets”, which includes cash, securities, derivatives, equity interest in legal entities or structures without legal personality, insurance claims and any other financial instrument, related the financial assets indicated above. Real property and precious metals do not qualify as financial assets;
- The draft includes a reference to the civil law provisions governing contract termination following clients’ failure to provide the information within the required deadlines. Additionally, the draft law specifies that a contract for provision of financial services shall be deemed terminated after 60 days following the date of provision by the financial institution to its client a termination notice;
- The draft stipulates the possibility to reverse the decision on the termination of the contract if the client provides the requested information upon the expiration of the respective deadlines, but prior to the contract’s termination;
- If adopted, the law will enter into force starting from the date of the official publication of the law (previously the effective date was set at January 1, 2017).

The adoption of the draft law should eliminate uncertainties related to compliance with the CRS requirements by Russian financial institutions. Retroactive application of the law, which requires among others the collection of data on clients that opened their bank accounts prior to the effective date of the law (according to the current provisions of the draft law), could regulate the client identification process in the absence of Russian CRS legislation.

See our previous issues for an [overview](#) of the key provisions of the previous version of the draft law and for information on CRS application in Russia.

[Federal draft legislation portal](#)

### **Updated draft law on country-by-country reporting and automatic exchange of financial account information released**

The update introduces the following amendments to the original draft:

- The new wording refines the definition of a multinational enterprise (MNE) group and of international reporting;
- The deadline for submitting individual notifications of participation in a MNE has been changed from three to eight months from the end date of the ultimate

parent company’s previous fiscal year;

- The consolidated revenue threshold used to determine whether an MNE group is obliged to submit a CbC report has been reconsidered: a threshold of RUB 50 billion will apply only if the ultimate parent company is a tax resident of Russia. Foreign tax residents will be governed by the rules in the respective foreign jurisdiction;
- The exchange rate for translating the revenue amounts has been specified: the relevant threshold values are to be determined using the yearly average exchange rate for the fiscal year immediately preceding that for which the CbC report is to be submitted;
- According to the draft, the master file is to be filed by a taxpaying entity of an MNE group (in the previous version, by the ultimate parent company of an MNE group or an authorised constituent entity of an MNE group, which is a Russian company or which has voluntarily assumed Russian tax residency);
- The draft clarifies that the CbC reports shall be prepared in Russian and shall be denominated in the Russian currency, except for the master files values (which can be denominated in the currency used in international reporting) and the values of a controlled transaction with respect to which the local files are prepared (such values can be denominated in the transaction currency);
- The local files will have to be submitted only with respect to the controlled transactions where one of the beneficiaries and/or the parties is another constituent entity of a respective MNE without tax residency in Russia (according to the previous version, with respect to all transactions where one of the parties is a foreign entity);
- The draft specifies the information to be disclosed in the master file: thus, it must contain a brief functional analysis (instead of a full-scale functional analysis). The norm in general has become more consistent with the OECD’s Guidelines;
- The CbC reports will have to be filed on the basis of the consolidated financial statements and other relevant information sources that shall be used consistently for all filings;
- The draft introduces special requirements towards the exchange of CbC reports in relation to the MNEs’ constituent entities, which are included in the list of strategic enterprises and strategic joint-stock companies, and the subsidiaries thereof;
- No penalties will be imposed for the non-filing of the master or local files.

In addition to the above, the update proposes the following changes:

- To exclude the provisions obliging the Russian tax authorities to provide confirmation of an entity’s Russian residency;
- To entitle the foreign competent authorities to participate in tax monitoring as well as in field/desk audits in instances envisaged under international treaties.

[Federal draft legislation portal](#)

### **Russian Ministry of Communications and Mass Media to trial remote customer identification in banking**

The project is planned to be piloted between 1 June 2017 and 1 June 2018 via the Common Identification

and Authentication System (the System).

The System is currently used as a digital platform for the federal and municipal services.

According to the project, after completing a one-off, personal identification with one of the authorised banks, an individual will get a login and password to access the System.

The System account might further be used to open bank accounts, take out loans and perform banking transactions in any credit institution without the client's physical presence.

To enhance the security and reliability of the remote electronic identification, the project proposes adding biometric authentication (e.g., voice and/or face) in line with the international best practices.

[Federal draft legislation portal](#)

### **Russian Ministry of Communications and Mass Media sets up procedures to control compliance with personal data laws**

The ministry developed a document defining the procedures for checking regulatory compliance of the legal entities and individual entrepreneurs that operate personal data and for controlling personal data processing by other operators.

The proposed controls include scheduled and extraordinary audits and ongoing monitoring activities.

[Federal draft legislation portal](#)

### **Consolidated reporting periods straddling two calendar years may be allowed**

According to the draft law submitted to the Russian State Duma, the consolidated financial statements are filed for a calendar year lasting from 1 January through 31 December; however, companies may envisage in their constitutional documents different start/end dates, provided the reporting period remains calendar year-long.

The proposed amendment is aimed at aligning the preparation of the consolidated statements with the companies' day-to-day operations.

The consolidated financial statements must be filed by the companies with securities traded on a regulated market as well as by credit institutions.

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

### **Procedure and form of confirmation of Russian tax residency developed**

A respective draft order has been released by the Russian Federal Tax Service.

According to the draft, the Russian tax residency will be confirmed by the Federal Tax Service or authorised territorial tax inspectorates by way of attestation of an official certificate issued by a foreign jurisdiction or issue of a special document (in the format established by the draft).

The request for tax residency confirmation will be filed via a taxpayer's personal online account or submitted in hard copy.

The draft order sets forth the request requirements and the list of documents to be attached thereto, attesting to the possibility/fact of income receipt or property ownership or other facts and circumstances that require the confirmation of the Russian tax residency in a foreign state.

The individuals will have to additionally submit the paperwork confirming the taxpayer's presence in Russia during the period of time, for which the tax residency

confirmation is sought.

The request will be considered during 30 calendar days after a full set of documents is submitted.

The confirmation will be issued for one calendar year with respect to each counterparty/source of income/asset.

The document authenticity will be verified via an interactive service on the fiscal regulator's website using a special ID number indicated in the document.

[Federal draft legislation portal](#)

### **Sanctioned individuals may be permitted to abandon Russian tax residency**

Respective amendments have been introduced to Draft Law No. 46024-7.

The individuals listed under foreign sanctions may be entitled to surrender their tax residency in Russia regardless of how long they have stayed in the country, provided that in the respective tax period they were tax residents of another state.

To abandon the Russian tax residency, a taxpayer will have to file an application with the tax authorities, attaching a confirmation of his (her) foreign tax residency.

The application can be filed within the deadlines set for filing the personal income tax returns.

The list of foreign states whose sanctions are deemed a reasonable cause to surrender the Russian tax residency will be approved by the Russian Government.

It is noteworthy that the tax residency can be given up retroactively, as the amendments will apply as of 1 January 2014. In that case, the application will have to be filed by 1 July 2017.

The second reading of the draft by the Russian State Duma is scheduled for 17 March 2017.

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

### **Russian Government prepares amendments to draft law on national payment systems protection**

The amendments have been published on the Russian State Duma's official website and call for the following changes:

- To reverse the ban on cross-border non-bank wire transfers made other than through an established payment system envisaged in the previous wording;
- To envisage that, should a foreign state impose restrictions on using the Russian payment systems, the cross-border wire transfers from Russia to such foreign state made through payment systems shall be allowed only if the transfer service or payment infrastructure operators are directly or indirectly controlled by the Russian companies;
- To stipulate that should the above-mentioned ban be imposed, the cross-border wire transfers made based on contracts with foreign non-banking organisations may only be carried out, if such foreign organisations are directly or indirectly controlled by the Russian companies;
- The controlling interest shall be determined in accordance with the IFRS applicable in Russia.
- The above-mentioned restrictions shall apply as of the day the Central Bank of Russia releases the information about the imposed ban on its official website.

The draft law was adopted in the first reading, and the second reading is scheduled for 17 March 2017.

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

## Clarifications from government bodies

### Liquidating payments in excess of capital contributions treated as dividends by Ministry of Finance

The Russian Ministry of Finance has clarified that since the liquidated company's assets may be distributed among its shareholders only once all creditors' claims are fully settled, i.e. after all liabilities, including tax, are discharged, such payments are actually aimed at distributing the Company's net income, thus falling under the definition of dividends as per Item 1 of Article 43 of the Russian Tax Code.

Therefore, if the value of the liquidated company's assets received by the shareholders exceeds their

respective capital contributions, such excess will be treated as dividends.

The Ministry has previously expressed the similar position (e.g. in its Letters No. [03-03-10/32629](#) of 5 June 2015 and [03-03-06/1/41682](#) of 21 July 2015).

However, the regulator's opinion is not always shared by the courts (e.g. see [the decision](#) of Commercial Court of Novgorod Region of 17 February 2017 in case No. A44-7157/2016).

[ConsultantPlus](#)

## Media review

### Russian Federal Tax Service reviews its 2016 performance

Head of Federal Tax Service Mikhail Mishustin has outlined the following results:

- Tax revenue increased by 5 percent;
- The implementation of the risk-based approach has resulted in a 15-percent decline in the number of field audits, while enabling a 21-percent increase in the taxes collected vs. 2015;
- The number of tax disputes decreased threefold, with 82 percent of claims awarded to the tax authorities;
- The implementation of the ASK NDS-2 system has allowed to reduce eightfold the number of VAT refund requests from high-risk companies;
- The number of fly-by-night companies has reduced by 2.5 times;
- More than 650,000 sham businesses were excluded from the Commercial Register, a 3.5-fold increase from 2015;
- The initiative to label furs with RFID tags has led to a 57-percent increase in the legitimate turnover of furs;
- 67 foreign e-sellers were registered with the Russian tax authorities for VAT purposes;
- A law was adopted, providing for a gradual transition towards using the cash registers that convey fiscal information online to the tax authorities: as of 1 February 2017, over 220 million settlements worth more than RUB 110 billion were registered in the system.

The achievement of the revenue targets at all budget levels, improvement of controls, reduction of tax debt and further digitalisation were named among the fiscal regulator's priorities for 2017.

[Official Russian Federal Tax Service website](#)

### Rospotrebnadzor to regulate e-commerce aggregators

A draft law developed by the Russian Federal Service for Surveillance on Consumer Rights Protection and Human Wellbeing (Rospotrebnadzor) introduces the concept of a product (service) aggregator, an electronic platform that does not sell goods or services to consumers directly, but allows selecting and prepaying for a product or a service for a fee.

The aggregators are obliged to disclose the relevant product (service) information to consumers.

The breach of the statutory requirements will subject the aggregators to the general third-party liability, but not to the administrative sanctions.

[Kommersant](#)

### LinkedIn not ready to localise personal data processing in Russia

In its letter to Roskomnadzor of 27 February 2017, LinkedIn Corporation acknowledged it was not ready to comply with the Russian personal data localisation requirements.

Roskomnadzor is willing to continue discussing LinkedIn's legalisation in Russia, however, it will not unblock the website until the company is fully compliant with the personal data laws.

LinkedIn was the first website blocked over failure to localise its personal data processing.

[Kommersant](#)

### Individual pension capital concept developed

The Russian Ministry of Finance and the Central Bank of Russia have developed an individual pension capital plan that is meant to replace the existing pension savings system.

The proposed pension plan will be formed by contributions made by the employees, not by the employers.

Once the system is launched (tentatively, in 2019), all citizens will be offered by their employers to choose a private pension fund and a contribution rate varying from 0 to 6 percent of one's earnings.

The employees will be able to change the rate and suspend the contributions for up to five years.

For those failing to make a choice, the rate will amount to 0 percent with a subsequent annual increase to 6 percent.

The current pension savings can be either transferred to a private pension fund as an individual pension capital contribution or annulled and transformed into the insurance pension credits.

The contributions paid into one's pension plan (up to 6 percent of earnings) will qualify for a personal income tax relief.

The employers will also be incentivised, being able to deduct the amounts of the employees' pension contributions for corporate profit tax purposes.

The Russian Ministry of Economic Development [proposes](#) fostering the participation in the individual pension capital by setting the differentiated personal income tax rates:

- 15 percent for non-participants;
- 10 percent for participants contributing 10 percent;
- 13 percent for participants contributing 4 percent.

The proposal is currently being discussed internally and has not been officially presented to the Russian Government.

The individual pension capital plan has not yet been officially released.

[Vedomosti](#)

### **Federal Antimonopoly Service proposes lifting restrictions for foreign vendor participation in government procurement of medical drugs and products**

The Russian Federal Antimonopoly Service calls for repealing the mechanism that limits the foreign vendors' rights to bid for the government contracts. According to the existing procedures, a foreign vendor is automatically excluded from bidding, if at least two Customs Union companies submit their proposals. Instead, the antimonopoly regulator suggests introducing price preferences for the Russian vendors, which will attract the low-bid foreign vendors, thus generating considerable budget savings.

[Vedomosti](#)

### **Russian Ministry of Finance outlines tax reform priorities**

Speaking at the Russian Business Week sponsored by the Russian Union of Industrialists and Entrepreneurs, Minister of Finance Anton Siluanov has set out the tax reform priorities:

- To bring down the social contribution rates from 30 to 22 percent subject to a simultaneous increase of the VAT rate from 18 to 22 percent;

- To introduce a flat scale of social security contribution rates;
- To continue with product labeling and tracking;
- To strengthen control over tobacco products distribution, including through inclusion of tobacco in the Unified State Automated Information System (USAIS) that is currently being discussed;
- To cancel export duties for oil and oil products for 2022-2025;
- To optimise the tax regime for oil industry through a gradual transition from the mineral extraction tax to the added income tax;
- To further refine the deoffshorisation laws;
- To introduce personal income tax benefits to incentivise individuals to invest in their private pension capital and set preferential tax rates for employers co-financing the funded pensions.

[RBCdaily](#)

### **Russian Federal Tax Services considers reducing timeline for VAT refund claims review to one month**

The fast-track procedure may be launched for risk-free companies, including major exporters and businesses investing in big-ticket construction projects.

The reduced review timeline may be formalised by the regulator's internal documents or amendments to the Russian Tax Code.

According to the existing regulations, VAT desk audits may last for three months.

[Vedomosti](#)

# Deloitte publications

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

Learn about the updates to the draft law on country-by-country reporting and automatic exchange of financial account information, the draft procedure for signing bilateral (multilateral) pricing agreements, and the applicability of corporate tax benefits to properties of high energy efficiency.

## Deloitte introduces KIMOgraph

A team of Deloitte CIS specialists has developed KIMOgraph, an out-of-the-box software solution designed to automate the CFC compliance processes and MNE reports preparation. Please visit our [website](#) for more details about the product.

## Russian Ministry of Finance releases clarifications on disputable CFC rules

In Letter No. [03-12-11/2/7395](#) of 10 February 2017 the Russian Ministry of Finance provided long-awaited clarifications on the controversies arising out of the application of the controlled foreign corporation (CFC) rules. The letter was released on the Ministry's website on 21 February 2017.

The document takes into account the opinion of the Russian Federal Tax Service, thus consolidating the positions of both regulators.

LT in Focus of [22 February 2017](#) provides a summary of the key clarifications on the matters that have not been previously covered by the Ministry of Finance or were deemed disputable by taxpayers.

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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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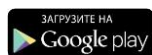


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## TaxSmart app



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

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