



LT Digest

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Court Practice

[Russian Supreme Court summarises tax disputes involving foreign investors](#)

On 12 July 2017, the Russian Supreme Court released a digest of court disputes concerning the protection of foreign investors' rights. The court opinions in cases dealing with the tax treatment of foreign investments account for a major part of the digest, to name but a few:

- A foreign shareholder's exit from a Russian entity by the time of dividend distribution shall not prevent the applicability of a lower tax rate envisaged by an applicable tax treaty
- The right to apply a lower dividend tax rate envisaged by a tax treaty shall not cease in case of a merger of a Russian entity's foreign shareholder into another foreign entity
- A property contribution may be taken into account for valuation of a direct investment envisaged by a tax treaty as a lower dividend tax eligibility criteria
- Tax benefits granted by Russia's international treaties do not apply to cross-border transactions lacking business purpose that are primarily aimed at capturing such benefit

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- A Russian company acting as a withholding agent shall be obliged to assess, withhold, and pay the tax irrespective of where the taxable income was sourced from by a foreign counterparty (including by way of an offset)
- Failure to (timely) provide the documents confirming a foreign entity's permanent residence in another jurisdiction shall not prevent the entity from applying an exemption or a lower tax rate envisaged by an applicable tax treaty
- Absence of apostille on a certificate of residence shall not be deemed a sufficient cause for denying the application of an applicable tax treaty provisions, if the respective states have established a practice of exchanging unapostilled certificates and if the document can be verified by the tax authorities during information exchange
- Legislative amendments that introduce incentives for foreign investment shall have no retroactive effect, if such amendments prejudice the foreign investor's position in a long-term investment project
- Customs tariff preferences granted to a Russian entity in respect of assets imported for making a capital contribution by its foreign shareholder shall not be revised (ceased) in case of changes in the regulatory framework
- Lower rates of customs duties on goods imported by a foreign shareholder for capital contribution purposes shall be granted irrespective of the time of transfer of title to such goods from such foreign shareholder to the Russian entity

The conclusions made by the Russian Supreme Court represent a generally positive trend as they are aimed at protecting the foreign investors' interests.

We hope that the above-mentioned opinions will be taken into account by lower instance courts in similar disputes as well as by the tax authorities in tax audits.

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

Legislative initiatives

Federation Council approves package of draft laws

The Federation Council has approved a package of draft laws:

- 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 (for more details, please refer to LT Digest, [19 – 25 June 2017](#))
- Draft Law No. [66697-7](#), providing for the inclusion of producers of alcohol-containing medical drugs and appliances in the USAIS (for more details, please refer to LT Digest, [17 - 23 July 2017](#))
- Draft Law No. [184222-7](#), regulating online messengers (for more details, please refer to LT Digest, [22 - 28 May 2017](#))
- Draft Law No. [169585-7](#), regulating the pilot launch of tourism levy charged on travellers (for more details, please refer to LT Digest, [2 - 12 May 2017](#) and [10 - 16 July 2017](#))
- Draft Law No. [114141-7](#), entitling the Russian Government to ban the imports of certain categories of goods in Russia (for more details, please refer to LT Digest, [27 February – 5 March 2017](#))
- Draft Law No. [129791-7](#) that proposes prohibiting company liquidation during field customs audits (for more details, please refer to LT Digest, [17 -26 March 2017](#))
- Draft Law No. [195446-7](#) that bans Internet resources allowing to access blocked websites (for more details, please refer to LT Digest, [5 - 18 June 2017](#))
- Draft Law No. [558976-5](#), restricting the minority shareholders' access to corporate information (for more details, please refer to LT Digest, [10 - 16 July 2017](#))

- Draft law No. [67484-7](#) that proposes entitling the municipal authorities to challenge the decreased cadastral value of land plots (for more details, please refer to LT of [9 January 2017](#))
- Draft Law No. [120495-7](#), refining the procedure for introducing amendments to the Russian Labour Code.
- Draft Law No.

[Official Federation Council website](#)

President of Russia signs package of federal laws

The President of the Russian Federation has signed a package of federal laws:

- Federal Law No. [184-FZ](#) of 26 July 2017, proposing adoption of protocol amending Agreement on Trade-Related Aspects of Intellectual Property Rights with respect to compulsory medical drugs production licences (for more details, please refer to LT Digest, [15 - 19 May 2017](#))
- Federal Law No. [183-FZ](#) of July 26, 2017 on the ratification of Council of Europe Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (for more details, please refer to LT Digest, [26 June – 2 July 2017](#))
- Federal Law No. [187-FZ](#) of 26 July 2017 on the safety of critical information infrastructure (for more details, please refer to LT of [7 December 2016](#))
- Federal Law No. [207-FZ](#) of 26 July 2017, proposing broader criteria for medium-sized businesses

- Federal Law No. [190-FZ](#), simplifying the lifting of temporary travel restrictions for debtors and increasing the minimum travel ban threshold to RUB 30,000.

Official Internet Portal for Legal Information

Key rate to remain at nine percent

The CBR's Board of Directors decided to keep the key rate at 9 percent p.a.

The rate was originally reduced from 9.25 percent to 9 percent on 16 June 2017.

The next CBR's BoD meeting to review the key rate is scheduled for 15 September 2017.

[Official Russian Central Bank website](#)

Russia reduces import duties on certain

categories of goods as part of its WTO commitments

By resolution of the Eurasian Economic Commission Council No. 42 of 23 June 2017, import duties on certain juices, plastic goods, tyres, clothing, refrigerators, and motor vehicles will be gradually reduced. The first phase of the reduction is to take place from 1 September 2017 to 31 December 2017, with further decrease to follow.

The resolution will enter into force on 1 January 2017.

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Clarifications from government bodies

Tax authorities to focus on intent

The Russian Investigation Committee and the Russian Federal Tax Service have developed guidelines for establishing intentional tax evasion.

In particular, the guidelines advise on how to collect the evidence of an intentional tax offence and give examples of signs (citing commercial litigation cases) that can be indicative of a taxpayer's wilful conduct.

The document offers recommendations for identifying the affiliates involved in a questionable transaction chain (including the foreign entities), as well as the beneficial owners of foreign offshore companies.

The tax authorities will be required to reflect in their tax audit reports if the discovered offences were intentional or not and "be guided by the style used for indictments in criminal proceedings".

To ensure the quality of collected evidence of intent, the tax authorities are recommended to engage internal affairs officers in their field tax audits.

Attached to the guidelines is the list of issues that **must** be addressed during the tax audits, including the matters relating to vendor selection.

The guidelines were sent out to the regional tax authorities.

As a reminder, Federal Law No. [163-FZ](#) of 18 July 2017, formalising the concept of unjustified tax benefit in the Russian Tax Code, was signed by the President of the Russian Federation (for more details, please refer to LT in Focus of [7 July 2017](#)).

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Russian Ministry of Finance commented on reclassifying loans into investment

The Ministry commented on the increasing incidence of reclassifying loan agreements between Russian borrowers and foreign lenders into investment contracts, followed by disallowance of interest and/or FX difference expense and treatment of interest payable to such foreign lenders as dividends.

For the sake of consistency, the regulator recommended that loans from foreign shareholders and their affiliates be considered with account of the controlled transactions provisions of Article 269 of the Russian Tax Code, i.e. the deductible interest should be calculated according to the capitalisation requirements set by the Code, and the deductibility of interest/FX differences cannot be denied the taxpayer altogether.

However, if the tax authorities prove that a transaction was solely aimed at reducing one's tax liabilities and/or that no actual business operations were performed under the disputed loan or investment agreements, they will be entitled to apply the provisions of the resolution of the Russian Supreme Commercial Court No. [53](#) of 12 October 2006 on unjustified tax benefit.

There is no consistency in the courts' opinions regarding the deductibility of interest/FX differences in case of loan-into-investment reclassification by the tax authorities: thus, cases No. [A27-25828/2016](#), [A27-24263/2016](#), [A71-12768/2016](#) were awarded to the taxpayers, while cases No. [A09-2657/2016](#) and [A16-343/2016](#) were awarded in the tax authorities' favour.

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Russian Federal Tax Service explains how to prove vendor selection due diligence

A taxpayer applied to the Russian Federal Tax Service requesting for an exhaustive list of documents that would confirm that the vendor selection was performed with the due diligence and that would serve as a guarantee against respective tax claims.

The regulator has formulated a basic list of documents, emphasising, however, that companies/individuals engaged in business activities bear all implied business risks themselves and that the tax authorities are not liable for vendor selection by the taxpayer.

The Tax Service recommended paying attention to the following information:

- Availability of documented verification of the powers of the vendor's CEO' (representative) and copies of ID(s)
- Information on the actual location of a vendor, its production and/or sales sites
- Record of vendor's registration in the Unified State Register of Legal Entities
- Availability of evidence proving the vendor's capacity to perform under a contract

The regulator pointed out that the Russian Federal Tax Service maintains lists of "mass registration" addresses and names of legal entities headed by disqualified persons on its website.

The regulator recommended assessing the risks using the available risk assessment criteria set forth in Russian Federal Tax Service Order No. [MM-3-06/333@](#) of 30 May 2017, as well as the data on high-risk companies available at www.nalog.ru.

[Federal draft legislation portal](#)

Russian Federal Tax Service (FTS) releases letter on expedited VAT refund to compliant taxpayers

According to the FTS, the taxpayers that filed their VAT

returns and are assigned a low- or medium risk status by the VAT information system (NDS), may be eligible for expedited (less than three months) desk audits subject to one of the conditions below:

- The reclaimed VAT does not exceed the total of VAT, excise, corporate profit, and mineral extraction taxes paid for the three calendar years preceding the VAT return filing date
- 90 percent of the total refundable VAT were reclaimed by low-risk vendors.

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Russian Ministry of Finance clarifies use of electronic tax residency certificates issued by foreign states, specifically, France

The Ministry has pointed out that, according to Russian Federal Tax Service Letter No. [OA-4-17/5392@](#) of 1 April 2015, the laws of Russia do not contain any content criteria or formal requirements that regulate the use of foreign tax residency certificates by the Russian Tax authorities for tax treaty purposes.

According to the Ministry, a tax residency certificate shall contain the taxpayer's name and tax residency period, a reference to the relevant tax treaty, and be signed by a foreign state's competent authority officer.

The certificate issuing procedure and format (hard or soft copy) are to be regulated by the issuing foreign state.

Therefore, if the laws of a respective foreign state permit the issue of electronic tax residency certificates, the Russian tax authorities shall accept these certificates as adequately verifying the taxpayer's residency.

Furthermore, the regulator recommends attaching the French tax residency certificate template sample when applying to the Russian Federal Tax Service for tax residency confirmation.

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Media review

Experts warn of EU penalties due to Yarovaya Law

The implementation of the Yarovaya Law will breach the EU's new data protection rules - this conclusion was made by the Internet Research Institute experts that had reviewed the EU's new data protection regulation (the "Regulation") entering into force in spring 2018.

The Rules provide for the selective storage of certain users' data to ensure the national safety and the rule of law, the history of users' communications to be stored only subject to the security services' approval.

According to the experts, the Yarovaya Law, which does not restrict or ban the storage of foreigners' traffic, contradicts the EU Regulation.

The disputes may arise if foreigners use the Russian mobile network services while visiting the country or in case of exchange of messages/phone calls between the Russian and foreign users.

Keeping foreign users' data without their consent or disclosure of such data to the Russian law enforcement agencies without a respective court order will constitute a breach of the European regulations and may subject the Russian mobile operators to the penalties of up to EUR 20 million, or four percent of the operator's annual revenue (whichever is bigger).

[Vedomosti](#)

US to regulate ICOs similar to IPOs

The U.S. Securities and Exchange Commission (SEC) has decided to regulate Initial Coin Offerings (ICO) similar to Initial Public Offerings (IPO) of traditional shares.

The SEC cautioned the players that the federal securities laws apply to those who offer and sell securities in the United States, whether or not the issuing entity is a traditional company or a decentralised autonomous organisation, the securities are purchased for U.S. dollars or virtual currencies, and the securities are distributed in a certificated form or through the distributed ledger technology.

From now on, all blockchain-based digital token issuers should be registered with the regulator, and those participating in unregistered offerings may be held liable for violating the securities laws.

The SEC also required that all venues selling digital tokens be registered.

[Vedomosti](#)

EAEU calls for creation of single regional unit of account

The Eurasian Development Bank proposed that central banks of the EAEU member states establish a regional unit of account similar to the ECU that had circulated in Europe in 1979 – 1998, prior to the Euro.

The initiative is mainly lobbied by Kazakhstan which advocates a blockchain-based currency.

All settlements between the EAEU member states and Russia are currently carried out in RUB and in USD between other states.

According to the proposal, the introduction of a single unit of count could improve FX risk management and reduce the settlement transaction costs.

[Izvestiya](#)

International legislation news

OECD releases report on neutralising branch mismatch arrangements, BEPS Action 2

BEPS Action 2 aims to adjust the international taxation rules to neutralise the effects of hybrid mismatch arrangements and prevent hybrids from being a source of 'double non-taxation, double tax deductions or long-term tax deferral.'

The report sets out specific recommendations for the improvement of domestic laws intended to counter such arrangements.

[Official OECD website](#)

Russian Federal Tax Service postpones release of open corporate data

The data was originally scheduled to be released on 25 July 2017 (for more details, please refer to LT Digest, [17 – 23 July 2017](#)).

The regulator advised that the data will be posted once the annual financial statements and tax returns are filed, which means that the data might not be released until after April 2018.

[RBC](#)

Regulators are coming after mobile phones

A commission set up by the Russian Federation Council is discussing the proposal to regulate the distribution of mobile phones by controlling their International Mobile Equipment Identity (IMEI) number. One of the scenarios is launching a special IMEI register synchronised with SIM-card data.

The first step toward the regulation might be banning the sale of mobile phones without IMEI in Russia, followed by respective amendments in the EAEU's customs regulations.

The measures are expected to facilitate the tracking of stolen devices and to restrict illegal imports of mobile phones into Russia.

[Kommersant](#)

Deloitte publications

New FSI TAX WATCH digest

We are happy to announce the fourth [issue](#) of FSI TAX WATCH, the digest of tax news and practice issues for the financial service sector.

Learn about the most important legislative changes, tax law enforcement clarifications from the Russian Ministry of Finance and tax litigations, in particular, about the disputes involving financial institutions and the unconventional disputes over the tax treatment of capital transactions, financial assets and instruments.

Draft law on implementation of CRS and CbC reporting submitted to Russian State Duma

The [draft law](#) "On introducing amendments to the Russian Tax Code (as part of implementation of the international automatic exchange of financial accounts and MNE information)" was submitted to the Russian State Duma on 20 July 2017. The draft regulates the fulfillment of CRS, CbC reporting, and MNE participation notification requirements by the Russian financial institutions.

Read on for more details in Legislative Tracking in Focus of [25 July 2017](#).

Monthly news digest: tax incentives and other forms of government support. June 2017

We are pleased to present a digest of legislative amendments for [June 2017](#), prepared by Deloitte's R&D and Government Incentives Group. The digest offers an overview of adopted and pending federal and regional regulations governing tax incentives, subsidies, and other forms of government support and announces interesting relevant events.

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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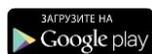


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TaxSmart app



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