



## LT Digest

### Be in the know

#### Clarifications from government bodies

##### **Russian Federal Tax Service (FTS) releases new guidance for collection of evidence of unjustified tax benefits**

According to the regulator, Article 54.1 of the Russian Tax Code does not contain any provisions that can be construed to expand the tax authorities' powers to collect evidence; therefore, the article shall be applied by the tax authorities in compliance within the existing legislative procedures for the collection, recording, and assessment of evidence.

It means that the fiscal and overall regulatory environment is based on the presumption of the taxpayer's good faith, granted by the Constitution. Auditing individual transactions, the tax authorities must establish whether they were genuine and whether tax evasion was intended.

A taxpayer's intent can be evidenced by its legal, economic or other control of the parties engaged in a tax scheme, while the fact of control does not necessitate the existence of intent.

The Russian Tax Code does not prevent the taxpayers from legitimately optimising their tax burden; however, the structure of a transaction may not be artificial or lack economic substance. Furthermore, the tax authorities may not insist that the taxpayer choose any particular

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structure for its transactions.

According to the FTS, for the purpose of applying Item 1, Article 54.1 of the Russian Tax Code, the tax authorities shall prove all of the following:

- A fact of misstatement
- A cause-and-effect relation between the taxpayer's actions and the misstatements made
- Intended misrepresentation of business activities, accountable items or tax returns by the taxpayer, aimed at reducing the taxable base and/or taxes payable
- Underpayment of taxes

The FTS requires that the tax authorities prove that a transaction lacked business purpose and was solely aimed at achieving tax savings.

Please note that Federal Law No. 163-FZ of 18 July 2017 amended the unjustified tax benefit provisions of the Russian Tax Code. For more details, please refer to LT in Focus of [7 July 2017](#).

[Garant:Prime](#)

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## Legislative initiatives

### President of Russia signs package of federal laws

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

- Federal Law No. [305-FZ](#), defining the list of VAT-exempt aircraft maintenance services
- Federal Law No. [312-FZ](#) of 30 October 2017, streamlining the registration of legal entities and individual entrepreneurs (for more details about the law, please refer to LT Digest, of [27 March – 6 April 2017](#));
- Federal Law No. [308-FZ](#), refining the procedures of government control of compliance with labour laws.

[Official Internet Portal for Legal Information](#)

### Draft Law refining tax treatment of CFCs' profits submitted to Russian State Duma

For more details on the draft, please refer to LT of [4 September 2017](#).

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

### Draft law to simplify filing of financial statements with government authorities

The draft envisages the following changes:

- To permit the preparation of financial statements in electronic format
- To oblige the companies to ensure that hard copies of electronic financial statements can be made

- To set forth that a mandatory copy of financial statements shall only be submitted to a company's local tax authority
- To refine the procedure for the mandatory filing of electronic financial statements
- To permit the mandatory filing of financial statements in electronic format, starting from the 2018 reporting year.

The procedure for the mandatory filing of electronic financial statements will be approved by the Russian Federal Tax Service.

If adopted, the law will enter into force on 1 January 2019.

[Federal draft legislation portal](#)

### Telemedical regulations developed

The permitted use of the telemedical technologies will include first aid, specialised (high-tech) medical care, emergency and palliative care, as well as case discussions between practitioners, consultations, and distant health monitoring.

To use the telemedical technologies, the medical providers will have to register with the federal register of medical providers of the government healthcare database and the medical practitioners – with the federal register of medical practitioners.

The specialised software used for diagnostics and treatment must be registered as medical supplies. The document is expected to enter into force on 1 January 2018.

[Federal draft legislation portal](#)

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## Media review

### US Department of State releases new list of sanctioned Russian companies and agencies

The [new list](#) includes 39 Russian defence enterprises, intelligence agencies and organisations. The sanctioned Rosoboronexport, Izhmash, Kalashnikov, Rostech, MiG, Sukhoy, Tupolev, Admiralty Shipyards, Almaz-Antey, Dolgoprudny Research and Production Enterprise,

Titan-Barrykady Research and Production Centre, Helicopters of Russia, Concern "Sozvezdiye", United Aircraft Corporation, United Engine Corporation, United Instrument Manufacturing Corporation, United Shipbuilding Corporation, Uralvagonzavod, etc.

[RBC daily](#)

## **Release of Public Guidance for Countering America's Adversaries Through Sanctions Act**

On 31 October 2017, the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) released public [guidance](#) concerning sanctions towards foreign individuals and companies who facilitate transactions to the benefit of the already sanctioned Russian individuals.

The restrictive measures apply to the Russian defence companies and their foreign partners.

Previously, an obligation to comply with the bans was borne only by US-based individuals and companies.

According to the Countering America's Adversaries Through Sanctions Act (CAATSA), the President shall impose the specified sanctions with respect to foreign financial institutions (banks, brokers, investment companies, clearing houses, etc.) that the US Secretary of the Treasury determines to be facilitating material financial transactions that would benefit the sanctioned Russian entities.

The facilitation will be construed broadly and will cover any type of financing or transfer of assets or the provision of personnel, software or technology. The materiality of transfer will be assessed on a case-by-case basis.

[RBCdaily](#)

## **Tobacco producers protest against anti-tobacco policy**

The association of tobacco producers and the Council for Tobacco Products have sent a letter to Prime Minister Dmitry Medvedev requesting for additional discussions of the Concept of the Governmental Anti-tobacco Policy for 2017-2022 and Beyond. The key policy objective is to reduce the percentage of smokers to 25 percent (for more details, please refer to LT Digest, [16 - 22 October 2017](#)).

The tobacco producers disagree with the ban to use food flavourings and disclose the tobacco blend formula citing commercial secrecy.

The tobacco blend formula is protected by the domestic, EU's, and international laws.

[Kommersant](#)

## **Russian Government returns anti-tobacco policy for revision**

Government experts found that the draft concept of the state anti-tobacco policy lacks certain key parts: a mechanism to assess the expected efficiency and the results of the previous concept implementation in 2010-2015. The concept does not provide for stricter controls over enforcing the ban on sales of tobacco to minors, either.

It will be reworked by the Russian Ministry of Health, other stakeholders, and the Russian Government's expert council.

For more details about the content of the draft, please refer to LT Digest, [16 - 22 October 2017](#).

[RBCdaily](#)

## **Roskomnadzor blocks 13 websites on cryptocurrencies**

According to the regulator, the websites trading cryptocurrencies or distributing cryptocurrency information were blocked based on valid court orders, which are a mandatory prerequisite for such blocking.

[Rambler News Service](#)

## **Work on draft laws regulating legal status of robots and AI systems commenced**

A number of expert groups are now working on creating a mechanism that would regulate the status of robots and artificial intelligence systems.

The draft laws are soon to be submitted for review to the Russian Ministry of Justice.

[Rossiyskaya gazeta](#)

## **Russian Antimonopoly Service (RAS) to expand its authority to combat anti-competitive agreements**

The RAS has [informed](#) on the development of a draft law that would entitle it to seize documents and items, demand explanations from company officials, obtain investigation and trade secret materials.

The regulator proposes combating anti-competitive agreements by easing the liability (decreasing or exempting from fines) for cartel participants willing to cooperate with the RAS.

The law is expected to enter into force in March 2018.

[RBC daily](#)

## **Russian Ministry of Health rejects draft law legalising online sales of alcohol starting from 1 January 2017**

The Ministry has rejected [the Draft](#), citing the sellers' inability to check the buyers' IDs online. According to the Ministry, the document does not envisage any special mechanism that would prevent minors from buying alcohol online.

The Ministry also stated that the draft contradicts the government efforts towards reducing the consumption of alcohol, including by means of restricting the time and venues of retail sales.

The above-mentioned comments are likely to require the draft to be re-worked by the Russian Ministry of Finance, which may postpone its entering into force.

[Izvestiya](#)

## **Russian Post disallowed to demand passport details from foreign e-store buyers**

Roskomnadzor has banned the Russian Post from demanding passport details from the recipients of foreign e-store deliveries.

The decision was made by the regulator following an audit of the postal service.

[\*Izvestiya\*](#)

## **Alcohol producers to face unscheduled audits**

The Russian Government has tasked the Federal Service for Alcohol Market Regulation, Ministry of Interior, Rospotrebnadzor, and Roskachestvo jointly with the Russian Prosecutor's Office with conducting extraordinary audits of producers and sellers of sparkling wines, champagne, cognac, and brandy due to the increasing volumes of counterfeit products in the segment.

[\*Izvestiya\*](#)

## **Russian Federal Service for Accreditation (Rusaccreditation) joined Mutual Recognition Arrangement of International Laboratory Accreditation Cooperation (ILAC)**

The Arrangement attests to the compliance of national laboratories and testing facilities with the international standards. It sets forth the common rules and testing standards to be followed by the national laboratories that would verify the adherence of goods to the

mandatory requirements. The national accreditation authorities agree on the mutual recognition of testing and calibration results, subject to the compliance with the common requirements.

However, since the product and testing requirements may differ strongly between the states, the countries will need to sign bilateral treaties until the certificates are fully recognised in foreign trade.

Russia has been an associate member of the ILAC since 2013 and secured a full membership in 2017.

[\*Kommersant\*](#)

## **Rosselkhoznadzor lets Turkish tomatoes in**

The Federal Service for Veterinary and Phytosanitary Surveillance (Rosselkhoznadzor) has refined the list of banned agricultural produce, raw materials, and food products from Turkey. After the appropriate checks, Ozaltin, Agrobay and Sural, which are both full-cycle producers and exporters, were allowed to resume the supplies of tomatoes.

The Russian Government previously permitted the imports of Turkish tomatoes based on quotas set by the Russian Ministry of Agriculture (please refer to LT Digest, [23 - 29 October 2017](#))

[\*Kommersant\*](#)

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## **Tax disputes**

### **Constitutional Court to review collection of corporate debts from individuals charged with tax offences**

The Russian Constitutional Court will consider appeals filed by several individuals charged with tax offences.

The appellants are challenging the provisions of the Russian Civil, Criminal, Criminal Procedure, and Tax Codes that entitle the tax authorities to claim damages from individuals employed by the companies charged with tax offences.

They contest the legitimacy of the statutory provisions that enable treating the taxes unpaid by an organisation as damage inflicted by an individual, citing the ambiguous definition of the term "damage" in the law.

The Constitutional Court's open hearing of the matter will be held on November 7, 2017.

[\*Vedomosti\*](#)

# Deloitte publications

## **The Russian Ministry of Justice releases draft concept of professional legal services market**

The introduction of the 'monopoly' of advocates has been discussed in Russia for the past few years. The Ministry of Justice set to prepare a reform of the professional legal services market in 2015. The key idea behind the reform was to restrict the right of non-advocates to render paid legal services and act as court representatives.

On 24 October 2017, the Ministry released an updated version of the professional legal services market concept (the "Concept"). The concept envisages a three-stage reform of the market to be completed by 2023.

Read on for an overview of the Concept's key provisions and the changes facing the legal services market participants.

For details, please refer to Legislative Tracking in Focus of [10 November 2017](#).

## **Court of appeals decides in favor of Federal Tax Service in Uralkali's case**

In 2012, Uralkali (the "Company") exported potash fertilisers through a related Swiss trader (the "Trader"). The Company prepared transfer pricing ("TP") documentation to substantiate the pricing in those controlled transactions, using the transactional net margin method (TNMM). However, when auditing the transaction, the Russian Federal Tax Service (the "FTS") applied the comparable uncontrolled price (CUP) method, sourcing price information from the Argus Media agency and, having discovered a price underestimation, recalculated the Company's revenues and assessed an additional profit tax liability of RUB

980 million and imposed penalties. The Company challenged the regulator's decision in court, seeking its invalidation; the appeal was sustained by a [resolution](#) of the Moscow Commercial Court of 16 June 2017.

The FTS disagreed with the resolution and challenged it with a court of appeals. The court of appeals [reversed](#) the judgement of the lower court and denied the Company's claim.

For details, please refer to Legislative Tracking in Focus of [24 October 2017](#).

## **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](#).

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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,  
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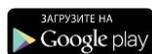


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## TaxSmart app



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