



LT Digest

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Tax disputes

Federal Tax Service summed up court decisions in tax cases for 2Q 2017

The Federal Tax Service has released a digest of decisions made by the Russian Constitutional and Supreme Courts in tax cases in 2Q 2017.

The digest covers court opinions on the following matters:

- VAT reclamation in case of reducing the volume of goods in the invoice: the court concluded that the use of different approaches to the assessing, for VAT purposes, of the volume of goods purchased and further resold contradicts the underlying substance of the value-added tax (Case No. [A50-25923/2015](#))
- Application of thin capitalisation rules to assess withholding tax on interest reclassified into dividends payable to a Russian affiliate of a foreign shareholder: the court ruled that the concerted actions of the company and its affiliates were aimed at disguising the distribution of dividends to the foreign parent company (Case No. [A40-81712/2015](#))

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[Russian Ministry of Finance clarifies assessment of profit tax on interest-free loans between related parties](#)

[Russian Ministry of Finance clarifies tax treatment of non-negotiable securities transactions](#)

- Obtaining unjustified tax benefit from purchasing non-negotiable shares from a foreign parent company: the court resolved that the primary purpose of all transactions was to generate a negative financial result by acquiring the securities at an overstated (non-arm's length) price and their further resale to a related party at an arm's length price (Case No. [A40-42527/2016](#))
- Charging personal income tax on severance package paid to an employee upon termination: the court acknowledged that employment termination benefits shall be exempt from the personal income tax (Case No. [A42-7562/2015](#), for more details, please refer to LT Digest, [26 June – 2 July 2017](#))
- Tax sanctions for failure to report on structural subdivisions: the court acknowledged that the sanctions envisaged by Article 116 of the Russian Tax Code imply deprivation of certain income, however, the tax authorities will still be unable to identify the taxpayer during its tax control activities and define its tax liability, therefore, the taxpayer's failure to report on a branch does not constitute an offence envisaged by Article 116 of the Russian Tax Code (Case No. [A04-12175/2015](#); for more details, please refer to LT Digest, [26 June – 2 July 2017](#))
- Other matters.

[Consultant Plus](#)

President of Russia signs package of federal laws

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

- Federal Law No. [254-FZ](#) of 29 July 2017, proposing an indexation of the 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](#))
- Federal Law No. [242-FZ](#) of 29 July 2017 on telemedicine (for more details, please refer to LT Digest, [15 - 19 May 2017](#) and [17 - 23 July 2017](#))
- Federal Law No. [241-FZ](#) of 29 July 2017 on the safety of critical information infrastructure (for more details, please refer to LT of [7 December 2017](#))
- Federal Law No. [276-FZ](#), banning the Internet resources allowing to access blocked websites (for more details, please refer to LT Digest, [5 - 18 June 2017](#))
- Federal Law No. [214-FZ](#) of 29 July 2017, regulating the pilot launch of the tourism levy (for more details, please refer to LT Digest, [2 - 12 May 2017](#) and [10 - 16 July 2017](#))
- Federal Law No. [278-FZ](#), 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](#))
- Federal Law No. [232-FZ](#) of 29 July 2017, 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](#))
- Federal Law No. [218-FZ](#) of 29 July 2017 on protecting the rights of home buyers in 214-FZ construction projects (for more details, please refer to LT Digest, [3 - 9 April 2017](#))

[Russian Ministry of Finance clarifies calculation of withholding tax on payment of copyright royalties to UK partnership](#)

[Russian Ministry of Finance clarifies assessment of corporate profit tax on income payable to foreign entity that does not have permanent establishment in Russia](#)

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- Federal Law No. [233-FZ](#) of 29 July 2017, restricting minority shareholders' access to corporate information (for more details, please refer to LT Digest, [10 - 16 July 2017](#))
- Federal Law No. [226-FZ](#), prohibiting company liquidation during field customs audits (for more details, please refer to LT Digest, [17 - 26 March 2017](#))
- Federal Law No. [271-FZ](#) of 29 July 2017, entitling the municipal authorities to challenge the decreased cadastral value of land plots (for more details, please refer to LT of [9 January 2017](#))
- Federal Law No. [255-FZ](#) of 29 July 2017, refining the procedure for introducing amendments to the Russian Labour Code
- Federal Law No. [266-FZ](#) of 29 July 2017 aimed at streamlining the concept of subsidiary liability in the bankruptcy proceedings
- Federal Law No. [250-FZ](#) of 29 July 2017 introducing criminal charges for avoidance of payment of social contributions
- Federal Law No. [281-FZ](#) of 29 July 2017 that refines the requirements for financial institutes' shareholders, management bodies and officers.

Official Internet Portal for Legal Information

Draft law aimed to permit online retail sales of alcohol developed

The Russian Ministry of Finance has released for public discussion the amendments to Federal Law No. 171-FZ "On public regulation of production and distribution of ethanol, alcohol and alcohol-containing products and restriction of alcohol consumption" of 22 November 1995. The following changes are proposed:

- The draft introduces a concept of "online retail sales of alcohol"
- The draft specifies the online alcohol sales licensing procedure and types of licenses in addition to the existing alcohol production and distribution licenses
- The online retail sales of alcohol will be permitted only via websites with special .egais.ru domain
- Online sellers of alcohol must own, operate or lease permanent sales points and warehouses
- The licensing and the assignment of domain names as well as the cancellation of licenses and domain name rights is to be vested with the Federal Service for Alcohol Market Regulation.

If adopted, the law will enter into force on 1 January 2018 with respect to the online sales of PGI/PDO wines, beers, cider, perry and and mead, and after 1 January 2019 for all other types of alcohol.

[Federal draft legislation portal](#)

Draft order regulating offset and refund of pollution charges overpayment developed

According to the draft, pollution charges overpayment can be offset or refunded on the basis of a payee's request during three months of the date of receipt of a respective request by a Rosprirodnadzor's regional branch.

The offset amounts shall be reflected in the pollution charges audit report. If the report records an underestimation of pollution charges assessed or paid, the payee will be required to pay the outstanding amount.

The draft sets out the documents to be attached to the request for overpayment refund if no pollution charges audit report has been issued.

The payee will be entitled to request for a reconciliation of payments by filing a respective request electronically or physically.

Rosprirodnadzor will decide on refunding (offsetting) the overpayment on the basis of the reconciliation report.

Outstanding pollution charges shall be paid no later than two months of the receipt of the reconciliation report.

The draft sets out the procedures for approval of refund (offset) requests, Rosprirodnadzor's decisions to make a refund (offset) and reconciliation reports.

[Federal draft legislation portal](#)

Russian State Duma to consider draft law regulating exchange of client identification data between banking group companies for AML/TF purposes

The draft proposes the following amendments:

- To enable the exchange and use of client, beneficiary, and beneficial owner identification data within banking groups
- To entitle banking group companies to request the data and documents held by other group members, including from common databases
- To create a common platform for exchanging the data on clients, clients' representatives, beneficiaries and beneficial owners
- To authorise the holding companies of banking groups that perform cash and property transactions to develop and approve the groups' AML/TF internal controls guidelines that would also regulate the exchange of information
- To set forth that if the simplified client identification procedures are applied, no identification of client's representatives, beneficiaries or beneficial owners is required.

If adopted, the law will come into force 180 days of its official publication.

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

Draft resolution on export monitoring in Russia and abroad developed

The monitoring will be conducted by the Russian Ministry of Economic Development jointly with the Russian Exports Center and will cover non-energy non-military exports.

The monitoring is required to assess the exports structure and outlook, its economic impact, export licensing procedures, drivers, export facilitation instruments, customs administration, tax and currency controls, identification and elimination of administrative barriers hampering the exported products marketing abroad.

The list of non-energy products is annexed to the draft.

[Federal draft legislation portal](#)

Russian State Duma to consider draft law regulating mechanism of debt restructuring in corporate bankruptcy proceedings

In particular, the draft proposes the following changes:

- To introduce debt restructuring as a new resolution procedure for legal entities
- To set out the debt restructuring procedure
- To enable the filing of debt restructuring petitions with a commercial court by the debtor or lender. If granted, the petition will prevent the initiation of bankruptcy proceedings
- To set forth that based on the results of the consideration of a bankruptcy petition by a commercial court, a debtor may be acknowledged bankrupt followed by respective bankruptcy proceedings that will not include administration
- Within four months of the date of approval of debt restructuring, the debtor must develop a debt restructuring plan. Such plan can also be proposed by the creditors or a crisis manager, a debtor's shareholder, representative of the debtor's employees and third parties
- To envisage special rules for creditors that are not covered by the restructuring plan

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

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

Russian State Duma to consider draft law refining

term of tax profit benefits for residents of Free Port of Vladivostok

The draft suggests extending the term after which the taxpayers registered as the residents of the territories of advanced social and economic growth or the Free Port of Vladivostok that have failed to generate profits shall be entitled to apply profit tax benefits:

- Projects with accumulated investment exceeding RUB 500 million: starting from the sixth profit tax period (five years)
- Projects with accumulated investment exceeding RUB 1 billion: starting from the seventh profit tax period (six years)
- Projects with accumulated investment exceeding RUB 100 billion: starting from the tenth profit tax period (nine years).

According to the existing rules, the companies that failed to generate profit from an investment project during three years of residency registration may apply corporate profit tax benefits starting from the fourth corporate profit tax period.

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

Russian Federal Tax Service (FTS) updated timeline for posting open corporate data

The first portion of open data will be posted on 1 June 2018 and will cover tax offences penalised from 2 June 2016 to 30 June 2017 and sanctions for non-payment of penalties by 1 May 2018. The data will remain open for at least a year following its release at the FTS website.

The FTS also specified that only the general tax offence data and the size of imposed penalties will be disclosed.

The first portion of open data was originally scheduled for release on 25 July 2017, while the data on social contributions paid were to be disclosed in February 2018 (for more details, please refer to LT of 17 July 2017).

[Official Internet Portal for Legal Information](#)

Roskomandzor finalises criteria of information resources with user-uploaded audiovisual content

Roskomnadzor has approved the criteria of information resources with user-uploaded audiovisual content.

The document was driven by the need to differentiate the audiovisual services from other resources posting audiovisual content.

In particular, such criteria set forth that:

- An information resource shall feature a functionality enabling the user to upload, delete, and/or edit the posted audiovisual content on the basis of user agreement

content on the basis of user agreement

- The resources must enable the right holders to demand that copyrighted content be deleted if posted without their consent
- The number of audiovisual works posted by non-owners of the respective information resource within a month shall not exceed the number of audiovisual works placed by the service owner and/or third parties on the basis of a licence agreement
- The posting and distribution of audiovisual works under licence agreements with right holders is not the primary purpose of the respective information resource

In accordance with the order, the operator of an information resource with user-uploaded content and daily audience across Russia exceeding 100,000 users must provide the confirmation of compliance with the above-mentioned criteria upon Roskomnadzor's request or at its own initiative.

[Official Internet Portal for Legal Information](#)

List of materials banned from landfills developed

The ban will cover 67 items as of 1 January 2018, 109 items as of 1 January 2019, 182 items as of 2021.

In particular, the list includes ferrous and non-ferrous metals scrap, tyres, polyethylene and polyethylene packaging, used books, magazines, circuit boards, batteries and household appliances, and electronic appliances.

Please note that Federal Law No. [89-FZ](#) of 24 June 1998 "On Production and Consumption Waste" prohibits landfilling of waste with recyclable components.

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Roskomnadzor releases personal data processing policy guidelines

On 31 July 2017, Roskomnadzor released the personal data processing policy guidelines "to ensure the consistency in the structure and the form of a document that contains an operator's personal data processing policy".

The issue of the document was driven by the legislative changes effective as of 1 July 2017 that set forth seven new elements of personal data processing offences, one of them being an operator's failure to publish its data processing policy.

The Federal Law "On Personal Data" obliges the operators to publish or otherwise ensure free access to its personal data processing policy. Furthermore, if the data is collected via an Internet resource, the policy must be posted on this respective resource.

In accordance with the guidelines, the policy shall set forth the purpose of personal data collection, legal grounds for personal data processing, the scope and category of processed personal data, categories of personal data subjects, data processing procedure and terms, personal data updates, correction, removal or destruction.

[Official Roskomnadzor website](#)

Clarifications from government bodies

Russian Ministry of Finance clarifies procedure for disclosing beneficial income owner information to withholding agents for Russia-Germany tax treaty purposes

The Ministry has advised that, according to the Memorandum of Understanding of 19 January 2016 made for the purpose of implementing the Russian-German tax treaty, the countries have only reached an agreement regarding the provision of German residency certificates that grant a withholding tax exemption or decrease.

The Memorandum does not regulate the obligations of a foreign dividend recipient to provide the beneficial income owner information to the withholding agent for tax treaty purposes .

Therefore, the Memorandum does not prevail over the Russian Tax Code provisions obliging a foreign dividend recipient to disclose the beneficial income owner to the withholding agent.

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Russian Federal Tax Service clarifies calculation of dividends in case of "look-through" approach

The Ministry has reminded that if a foreign entity denies its beneficial ownership of the dividends and a person that is a beneficial owner of the dividends and that indirectly participates in a dividend payee is a Russian tax resident, such dividends may be taxed at a zero profit tax rate subject to a number of conditions.

According to one of them, the dividends payable to such Russian beneficial owner must account for at least 50 percent of the total distributed dividends.

The condition will be deemed complied with irrespective of a dividend amount received by the beneficial owner.

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Russian Ministry for Natural Resources clarifies fulfillment of statutory recycling targets by finished goods producers and importers

The Ministry has reminded that the manufacturers and importers of finished goods and packaging on the List of finished goods and packaging subject to recycling after losing consumer value approved by Russian Government Resolution of No. 1886-r of 24 September 2015 (the "List") are obliged to comply with the statutory recycling targets.

According to the Ministry, an obligation to comply with these targets arises if the consumption of goods sold generates waste. If the goods are sold to a consumer that uses them for further production, thus generating no consumption waste, no recycling obligation will arise.

For example, a producer of paper will not be required to comply with the recycling targets if its paper is sold for further production of print materials. Alternatively, if a producer of print materials sells such materials to a consumer that generates waste from using the materials, the producer will be responsible for waste recycling.

The regulator has advised that an obligation to comply with the statutory recycling targets neither applies to businesses that offer services involving the goods from the List, but that have not produced these goods (e.g. newspaper publishers).

At the same time, a company that actually prints these newspapers may be subject to the above-mentioned obligation if it directly sells the printed materials in Russia.

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Russian Ministry of Finance clarifies tax treatment of gratuitously received property rights

The Ministry has advised that only the property, gratuitously received from a company's shareholders with over 50-percent equity stake, may be excluded from the corporate taxable income base.

According to the Ministry, Article 251 of the Russian Tax Code does not provide for the exclusion of gains in the form of gratuitously granted property rights from the taxable base. Item 2, Article 38 of the Russian Tax Code does not treat property rights as property.

Therefore, a company that was gratuitously granted property rights by its sole shareholder, shall include in its taxable income base the respective gains that are valued on the basis of arm's length prices with account of provisions of Item 8, Article 250 of the Russian Tax Code.

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Russian Ministry of Finance clarifies assessment of profit tax on interest-free loans between related parties

The regulator has reminded that interest-free loans between related parties have been deemed uncontrolled as of 1 January 2017, regardless of whether such loans meet the criteria envisaged by Items 1-3, Article 105.14 of the Russian Tax Code.

Therefore, the provisions of para. 3, Items 1 and 1.1, Article 269 will not apply to uncontrolled interest-free loans.

With respect to income generated from using interest-

free funds, the Ministry advised that Article 41 of the Russian Tax Code defines income as "an economic gain in monetary form or in kind, which is taken into account where and to the extent that it is possible to evaluate such gain."

However, the legislation does not set out the procedures for determining and evaluating economic gains from interest-free loans for profit tax purposes.

Therefore, the gains generated by a borrower of an interest-free loan will not add up to such borrower's taxable income.

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Russian Ministry of Finance clarifies tax treatment of non-negotiable securities transactions

The Ministry has advised that the losses from transactions with non-negotiable securities and derivatives incurred before 31 December 2014 inclusive that have not been previously deducted for corporate profit tax purposes shall reduce the respective taxable income base in the tax periods by not more than 20 percent of the initial loss amount calculated as at 31 December 2014.

At the same time, only up to 50 percent of losses can be carried forward to the tax periods from 1 January 2017 through 31 December 2020.

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Russian Ministry of Finance clarifies calculation of withholding tax on payment of copyright royalties to UK partnership

According to the Ministry, provisions of the Russian-UK tax treaty do not cover partnerships and can only be applied to partners that are residents of the UK.

Therefore, a Russian company acting as a withholding agent does not have to withhold a corporate profit tax on the Russian-sourced royalties payable to each partnership member, provided every such member that is the beneficial owner of such income confirms to the withholding agent its UK residency certified by a competent authority.

The Russian withholding agent that pays out income may request from each partnership member a confirmation of its beneficial ownership for tax treaty purposes.

The Ministry further advised that if the dividends are paid to a UK-registered partnership by a withholding agent that is not entitled to apply the tax treaty to the partnership members, profit tax charged will be charged on the income at its source in Russia in accordance with Item 1, Article 310 and 284 of the Russian Tax Code.

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Russian Ministry of Finance clarifies assessment of corporate profit tax on income payable to foreign entity that does not have permanent establishment in Russia

According to the Ministry, the revenue received by a foreign entity, not meeting the permanent establishment criteria in accordance with Article 306 of the Russian Tax Code, from the sale of goods, other property or property rights, performance of works/services in Russia, shall not be subject to an at-source tax and is recognised as Russian-sourced income.

Therefore, such revenue shall be reported by a withholding agent in the tax return, indicating the income paid to foreign entities and taxes withheld.

At the same time, the income received by foreign entities from the performance of works or services in a foreign state, as well as under import or export agreements envisaging a direct sale of products of such entities to the buyers, in accordance with Article 309 of the Russian Tax Code will not be treated as Russian-sourced and does not have to be reported in tax returns.

The Ministry also clarified that if a withholding agent does not apply the Russian tax treaty provisions when paying income to a foreign entity, such foreign entity is not required to confirm its residency to the withholding agent as per Item 1, Article 312 of the Russian Tax Code.

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Russian Ministry of Finance clarified assessment of profit tax in instances when Russian resident participates in foreign entity via simple or investment partnership

According to the Ministry, if a Russian tax resident holds an interest in a foreign entity via a simple or an investment partnership, such partnership will not qualify as a CFC's controlling owner and is not required to file a notice of interest in a foreign entity or a CFC notice, or to assess, or pay the tax on the CFC's profit in Russia.

Partnership members will be treated as controlling owners of such foreign entity if the relation between such partnership and the foreign entity meets the respective Russian Tax Code criteria.

Therefore, partnership members are obliged to file a notice of interest in a foreign entity and a notice of CFC and to assess and pay the CFC profit tax as per their interest determined pro rata to the taxpayer's share in the partnership.

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Media review

Roskomnadzor clarifies its stance on collection of VKontakte users' data

In response to the inquiry filed by VKontakte, the Russian media watchdog has advised that the personal data of the social network's users cannot be processed without such users' consent obtained in accordance with the statutory procedures.

Roskomnadzor clarified that in accordance with Item 5.12 of VKontakte's user agreement, the users only give consent to granting access to the data they post on their personal pages, including their personal data, but do not authorise the collection, processing, and transfer of their personal data by/to third parties. Therefore, users' personal data can only be processed subject to their consent obtained in accordance with the Federal Law "On personal data".

[Izvestiya](#)

Bitcoin exchange operator sued in Singapore

Singapore's first legal dispute involving the cryptocurrency bitcoin was filed by the British electronic market maker B2C2 against Quoine, a bitcoin exchange

operator.

According to B2C2, it placed orders on Quoine's platform to sell ethereum for bitcoins at the non-arm's length price of 10 bitcoins for one ethereum.

The orders were executed in a series of trades on 19 April 2017, resulting in B2C2's paying 309.2518 ethereums for 3092.517116 bitcoins. The bitcoins were credited to B2C2's account the same day.

However, the next day, the trades were reversed by Quoine as executed with huge mark-ups. Ten bitcoins for one ethereum is 125 times higher than the actual market price, so the trade could be only completed because of a technical glitch, which forced the seller to reverse the transaction because of the losses it had sustained.

B2C2, however, cited the agreement claiming that an order, once executed, is irreversible.

Quoine said B2C2 as a "sophisticated" investor should have suspected the "abnormal rate" was a mistake and accused B2C2 of being opportunistic.

[The Straits Times](#)

Bitcoin splits into two cryptocurrencies

On 1 August 2017, the bitcoin, the world's most popular and most liquid cryptocurrency, split into two currencies: the Bitcoin (BTC) and Bitcoin Cash (BCC).

Bitcoin Cash was designed as a result of anti-SegWit2x efforts of major Chinese data miners. The updated protocol comes with a 2 MB block size increase and is designed to facilitate more transaction processing capacity and speed up adding the data to the block processed by data miners.

The Bitcoin Cash solution allows 8Mb of data to be added. It is expected that minor data miners will not have capacities to support the new protocol and will be forced out by the big players.

[Rossiyskaya gazeta](#)

BRICS countries approve intellectual property cooperation guidelines

Economy and foreign trade ministers of the BRICS countries approved the [text](#) of BRICS Intellectual Property Cooperation (IPC) Guidelines.

The document outlines the intellectual property

cooperation roadmap, including the coordination of efforts between the BRICS members' IP departments in the related fields.

[Official website of the Ministry of Economic Development of the Russian Federation](#)

Initiative to streamline government incentives for electric vehicles

Russian Prime Minister Dmitry Medvedev has tasked the ministries with developing of an electric vehicles incentive program.

The proposed measures included the transportation emission reduction and restricted use of internal combustion engine vehicles in big cities and resorts.

The initiative also provides for zero transportation tax rates and free municipal parking spaces for electric and hybrid cars and mid-term subsidies for the purchase of electric cars.

[Izvestiya](#)

International legislation news

Platform for Collaboration on Tax releases draft toolkit on taxation of offshore indirect transfers of assets

The toolkit is designed to help the developing countries tackle the complexities of taxing the offshore indirect transfers of assets.

The [toolkit](#) examines the principles that should guide the taxation of these transactions in the countries where the underlying assets are located, discusses economic considerations that may guide policy in this area, the types of assets that could appropriately attract tax when transferred indirectly offshore, implementation challenges that countries face, and

options which could be used to enforce such a tax.

The document specifically focuses on the tax treatment of such transactions in extractive industry.

[Official OECD website](#)

Deloitte publications

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

In its Letter No. [ED-4-2/13650@](#) of 13 July 2017, the Russian Federal Tax Service released the Guidelines for establishing the taxpayers' officers' tax evasion intent (the Guidelines). The document was prepared jointly with the Russian Investigation Committee and is meant to be used by the lower tax authorities.

For more details please refer to LT in Focus of [3 August 2017](#).

US Securities and Exchange Commission (SEC) followed by Monetary Authority of Singapore (MAS) clarified its stance on ICO and token sales

According to its recent rulings, certain types of tokens can be treated as securities and, therefore, are regulated by the federal securities law.

For more details please refer to LT in Focus of [3 August 2017](#).

Information technology in medicine

On 29 July 2017, the President of the Russian Federation signed a federal law that regulates medical service rendered using the information technologies.

For more details please refer to LT in Focus of [2 August 2017](#).

Changes in regulation of online messengers and VPN services

On 29 July 2017, the President of the Russian Federation signed two federal laws that introduced amendments to Federal Law "On information, information technologies, and information safety". The laws introduce the regulation of online messenger operators as of 1 January 2018 and limit the VPN services.

For more details please refer to LT in Focus of [2 August 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,
Deloitte CIS Partners

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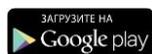


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