



## LT Digest

### Be in the know

#### Legislative initiatives

##### Russian State Duma considers package of draft laws

The Russian State Duma has considered the following draft laws:

- Draft Law No. [274632-7](#), extending the current social contribution rates until 2020, passed the third reading
- Draft Law No. [240980-7](#), refining the term of profit tax benefits for the residents of advanced development territories and the Free Port of Vladivostok, passed the third reading (for more details, please refer to LT Digest of [31 July - 8 August 2017](#))
- Draft Law No. [261295-7](#), exempting the compensations payable to 214-FZ property buyers in case of developers' insolvency from personal income tax, passed the third reading
- Draft Law No. [1037957-6](#), refining the imposition of PIT on gains received in contests or games, passed the third reading
- Draft Law No. [226612-7](#), regulating winemaking, passed the first reading (for more details, please refer to LT Digest of [17 - 23 July 2017](#));

[Russian State Duma considers package of draft laws](#)

[Russian Ministry of Finance to develop draft law ratifying OECD's BEPS Convention](#)

[New guidelines for submission of documents underlying forex transactions by residents and non-residents released](#)

[Russian Supreme Court reaffirms Federal Tax Service's right to reverse decisions made in taxpayers' favour](#)

[Russian Ministry of Finance clarifies occurrence of obligation to withhold tax on interest qualified as dividends and capitalised into loan principal](#)

[Russian Ministry of Finance clarified tax treatment of non-deducted forgiven interest on loan](#)

[Russian Ministry of Finance clarifies personal income tax charges on bitcoin transactions](#)

[Russian Federal Tax Service clarifies transitional provisions relating to applicability of Article 54.1 of Tax Code to tax audits](#)

[Facebook and Twitter agree to comply with personal data laws](#)

[Large French companies to be subject to one-time exceptional surtax on corporate income](#)

[Comprehensive US tax reform proposals unveiled](#)

- Draft Law No. [274625-7](#), raising the minimum wage, passed the first reading
- Draft Law No. [211550-7](#), introducing a new form of securities (structural notes), passed the first reading (for more details, please refer to LT Digest of [26 June – 2 July 2017](#))
- Draft Law No. [274631-7](#) introducing investment deduction for profit tax passes Russian State Duma's three reading (for more details, please refer to LT Digest of [2 – 8 October 2017](#)).

*Source: Official Russian State Duma's website*

### Russian Ministry of Finance to develop draft law ratifying OECD's BEPS Convention

Russia joined the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting of 24 November 2016 on 7 June 2017.

For more details about the content of the draft, please refer to LT Digest of [5 - 18 June 2017](#).

*Source: Federal legislation draft portal*

### New guidelines for submission of documents underlying forex transactions by residents and non-residents released

The following amendments are introduced in the new

version:

Residents will no longer be required to obtain transaction passports from authorised banks

A procedure for the registration of contracts by banks with assigning of a unique ID depending on the contract's value is introduced

Resident exporters will be able to have their contracts registered within one business day

Residents will not have to submit statements of forex transaction to authorised banks, although the requirement to submit the underlying documents remains

For operations of crediting foreign currency to transit currency accounts, the relevant documents will have to be submitted by residents within 15 business days

The transaction passports that are open as at the date of the guidelines' entering into force and filed in an authorised bank's records will be deemed closed and remain on file, their number becoming a unique contract ID; such contract will be further serviced by the authorised bank in accordance with the new guidelines.

The new rules will enter into force starting from 1 January 2018.

*Source: Consultant Plus*

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## Tax disputes

### Russian Supreme Court reaffirms Federal Tax Service's right to reverse decisions made in taxpayers' favour

The Russian Supreme Court has released its Ruling No. 305-CG17-5672 of 31 October 2017 in Case No. A40-101850/2016, which settles the dispute over a superior tax authority's right to reverse (by virtue of Item 3, Article 31 of the Russian Tax Code) the lower authority's decisions made in a taxpayer's favour.

In the case under review, the tax authorities denied the taxpayer a VAT refund after a desk tax audit. The decision was subsequently reversed by the regional tax authority, citing insufficient evidence to prove the collusion between the taxpayer and its counterparties, aimed at obtaining an unjustified tax benefit.

More than a year after, the FTS reversed the regional tax authority's decision as contradicting the applicable laws, citing Item 3, Article 31 of the Russian Tax Code, and sustained the decision of the local tax authority.

The reversal was driven, among other things, by the investigation authorities' reports on pending criminal proceedings as per Articles 193.1 and 199 of the Russian Criminal Code initiated after the Federal Security Service checks.

Courts of three instances awarded the claim to the tax

authority.

The Russian Supreme Court also ruled in favour of the tax authority on the basis of the following important conclusions:

- Part 3, Article 31 of the Russian Tax Code expressly entitles a superior tax authority to reverse a lower authority's decision and to exercise control over the subordinate tax authorities, both through repeated field tax audits and by verifying the legitimacy of lower tax authorities' decisions, without **involving the taxpayers**
- A superior tax authority may reverse a lower tax authority's decision that grants certain benefits or deductions to a taxpayer (including a VAT refund), if such decision was made in breach of the tax legislation, thus exercising the right of the state to **rectify an identified tax assessment error**.
- A superior tax authority shall be entitled to realise its powers set forth by Item 3, Article 31 of the Russian Tax Code **during three years starting from the expiration of the audited tax period**.

*Source: Electronic Justice: commercial courts files*

## Clarifications from government bodies

### Russian Ministry of Finance clarifies occurrence of obligation to withhold tax on interest qualified as dividends and capitalised into loan principal

According to the Ministry, the lender will be deemed to receive income on the date of such capitalisation.

The Ministry has reaffirmed that, according to the general rules, if interest is paid before the end of a reporting period (on which date the marginal interest is calculated for thin capitalisation purposes), the withholding agent's obligation to withhold tax on interest classified as dividends arises **on the reporting date** (see Ministry of Finance Letter No. [03-03-RZ](#)).

Furthermore, since tax is withheld from a foreign taxpayer (the lender), the amount of capitalised interest will be reduced by the amount of tax paid by the withholding agent (the borrower).

The letter does not expressly define what the "reporting date" means – the end date of a reporting period or the statutory deadline for filing a profit tax return.

We are aware of one court dispute, in which the court ruled that if the interest on controlled debt is paid before the end of a reporting period, an obligation to withhold tax arises on the date the tax return is filed (Case No. [A56-61228/2015](#)).

*Source: [Consultant Plus](#)*

### Russian Ministry of Finance clarified tax treatment of non-deducted forgiven interest on loan

Citing Item 18, Article 250 of the Russian Tax Code, the Russian Ministry of Finance has concluded that the amount of accrued interest, written off under a debt forgiveness agreement, should be treated as non-operating income.

Remarkably, the Ministry did not comment on whether the deduction of disputed interest affects the treatment of interest as income, if the debt is forgiven by the creditor.

The Ministry previously expressed a similar position

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## Media review

### Facebook and Twitter agree to comply with personal data laws

The US-based social networks agreed to comply with the Russian legal requirements.

Facebook will set up a representative office in Russia, while Twitter is planning to localise the storage of Russian users' data in Russia.

Starting from 1 September 2015, personal data operators are required to store Russian citizens' personal data on servers located in Russia. A US social platform LinkedIn was the first player blocked for non-compliance in 2016.

(please see Letters No. [03-03-06/](#) of 14 January 2011 and No. [03-03-06/1/191](#) of 31 March 2011).

*Source: [Consultant Plus](#)*

### Russian Ministry of Finance clarifies personal income tax charges on bitcoin transactions

According to the Ministry, the existing laws do not provide for any specific tax treatment of bitcoin revenues.

However, the Ministry advised that Article 41 of the Russian Tax Code defines income as an economic gain received in the monetary form or in kind, recognised when and to the extent it is possible to evaluate such gain.

Therefore, the individuals who are remunerated by other individuals under service (work) contracts must self-assess their PIT and file respective tax returns.

*Source: [Consultant Plus](#)*

### Russian Federal Tax Service clarifies transitional provisions relating to applicability of Article 54.1 of Tax Code to tax audits

The FTS has reminded that Article 54.1 of the Russian Tax Code must be taken into account during:

- Desk audits of tax returns filed after the enactment of Federal Law No. [163-FZ](#)
- Field tax and transfer pricing audits scheduled after the enactment of Federal Law No. 163-FZ

The FTS underlined that Article 54.1 of the Russian Tax Code cannot be cited in court proceedings or in procedural documents or when appealing the tax authorities' decisions, made following the field and desk tax audits initiated prior to the enactment of Federal Law No. 163-FZ.

*Source: [Consultant Plus](#)*

Furthermore, in accordance with the Federal Law "On Information, Information Technologies, and Information Security", online messengers or social networks must store the metadata of transmitted messages and user information for a year. Starting from 1 January 2018, the content of the messages will also need to be stored for up to six months.

The "online information distributors" failing to comply with the above-mentioned requirements may be subject to penalties of up to RUB 1 million or blocked.

*Source: [Izvestiya](#)*

## International legislation news

### Large French companies to be subject to one-time exceptional surtax on corporate income

On 2 November 2017, the French government presented to the Parliament an amended finance bill for 2017 that would introduce an exceptional one-time surtax on corporate income of large companies.

The companies with a turnover of EUR 1 billion to EUR 3 billion would be subject to a surtax of 15 percent of their corporate profit tax liability. A higher rate of 30 percent would apply to the companies, whose turnover equals or exceeds EUR 3 billion.

For more details, please refer to the France Alert of [3 November 2017](#).

### Comprehensive US tax reform proposals unveiled

On 2 November 2017, the US legislators introduced a bill on the comprehensive tax reform - the Tax Cuts and Jobs Act.

The Bill is expected to amend the tax treatment of dividends payable by foreign subsidiaries, reconsider the tax treatment of CFCs, and limit interest deductions.

For details, please refer to United States Alert of [6 November 2017](#).

# Deloitte publications

## **Rosprirodnadzor assesses firsts results of extended producer responsibility (EPR) initiative**

Federal Law No. 456-FZ of 29 December 2014 amended Federal Law No. 89-FZ On Industrial and Consumer Waste (the "Law"), extending the responsibilities of producers and importers of goods and packaging.

According to the new provisions, the producers and importers are now obliged to file three different reports and pay an environmental duty (unless they arrange for the treatment and recycling of product and packaging waste).

For details, please refer to Legislative Tracking in Focus of [13 November 2017](#).

## **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](#).

## **The Russian Federation Council votes to tighten currency regulations**

On 8 November 2017, the Russian Federation Council approved the draft of Federal law On amending Articles 19 and 23 of the Federal Law On Currency Regulations and Control and the Russian Administrative Offences Code (Draft Law No. [1166026-6](#)) (the "Draft").

We already reviewed the Draft in our previous issues (please refer to LT Digest of [16 -22 October 2017](#)).

The final version of the Law envisages a number of important changes, to name but a few:

- Tightening control over the repatriation of foreign currencies and Russian rouble
- Expanding the authorised banks' powers to deny currency operations
- Introducing of administrative sanctions for corporate officers committing offences in sphere of currency control.

For details, please refer to Legislative Tracking in Focus of [9 November 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,  
**Deloitte CIS Partners**

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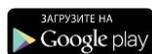


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## TaxSmart app



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