

Legislative Tracking

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Court practice

Digest of court rulings in cases related to applicability of certain provision of Section V.1 and Article 269 of Russian Tax Code released

The digest was prepared based on court materials and inquiries from courts concerning the new pricing principles introduced for tax purposes effective 1 January 2012.

Thus, the Presidium of the Russian Supreme Court made the following key resolutions regarding the applicability of transfer pricing rules:

- The control of taxpayers' compliance with the arm's length pricing principle is exercised by the Russian Federal Tax Service in accordance with Section V.1 of the Russian Tax Code and generally may not be a subject of the field or desk audits of lower tax inspectorates;
- If using the arm's length prices when assessing tax on certain taxpayers' operations is envisaged by Part 2 of the Russian Tax Code, the tax authorities may for these purposes apply income (revenue, profit) calculation methods provided for by Chapter 14.3 of the Russian Tax Code;
- If the price applied by a taxpayer is not arm's length, this does not necessarily mean receipt of an unjustified benefit; however, a significant deviation from the arm's length price may be taken into account as one of the elements of such unjustified tax benefit in conjunction with other factors;
- The court may treat parties as related for the tax purposes in instances not expressly specified by Item 2, Article 105.1 of the Russian Tax Code, if the taxpayer's counterparty (or counterparty's related parties) was able to influence the taxpayer's business decisions;
- The relation between the parties to a transaction may cause an adjustment of their income (profit, revenue) in accordance with section V.1 of the Russian Tax Code, if the transaction meets all controlled transaction criteria;
- A market value report may be admitted into evidence in the disputes arising out of the tax base adjustment in accordance with Section V.1 of the Russian Tax Code only in instances specified in this section;
- The fines imposed on a taxpayer for overdue filing of controlled transaction notice (or for data misrepresentation) do not depend on the number of transactions that were to have been included in the notice.

In respect of the thin capitalisation rules, the court has made the following key resolutions:

- The court can recognise a loan owed to a foreign company as controlled for the purposes of Item 2, Article 269 of the Russian Tax Code, if the foreign company holding an interest in the taxpayer was able to influence its related party's decision to issue the loan;

- The controlled debt resulting from a loan issued by a Russian entity only limits the deductibility of interest payable by the borrower for the profit tax purposes;
- If income payable to a foreign entity is recognised as a dividend following its re-qualification pursuant to Item 4, Article 269 of the Russian Tax Code, such re-qualification is taken into account in determining

such foreign entity's (withholding agent's) right to apply a lower tax rate on dividends under a double tax treaty.

[Official web site of the Russian Constitutional Court](#)

Clarifications from government bodies

Russian Ministry of Finance reaffirms that foreign SPV - an issuer of eurobonds - does not need to confirm beneficial income owner status in respect of accrued interest included in bond price and payable by Russian entity in secondary market

Russian Ministry of Finance Letter No. 03-08-05/3656 of 25 January 2017 sets forth that SPV companies are the foreign issuers, therefore, such foreign companies' interest (coupon) income from the issued bonds shall not be treated as a Russian-sourced income.

The Ministry has further outlined that the accrued interest payable by a Russian entity when purchasing eurobonds from the foreign entities in the secondary

market is non-taxable in Russia.

Therefore, in the situation under review the Russian Tax Code does not require that a Russian entity seek confirmation of a beneficial income owner status from a foreign SPV.

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Media review

Possibilities of amendments in "Yarovaya package" discussed by authorities

On February 17, 2017 the Russian Government will hold a meeting dedicated to the implementation of "Yarovaya package".

The agenda includes the discussion of possibility of the gradual implementation of changes (gradual extension of timelines and volumes of stored information) and the launch of data storage pilot project.

In January 2017, the Russian Government has already

called for easing the "Yarovaya package" (for more details see LT of [23 January 2017](#)).

The law obliging mobile network operators and Internet companies to store the entire user Internet traffic and telephone conversation records for six months, also known as the notorious "Yarovaya Package", enters into force on 1 July 2018.

[Vedomosti](#)

New IT Legal Drive for January 2017

We are pleased to present a new [IT Legal Drive](#) offering an overview of the latest Russian IT and E-commerce trends and news for January 2017.

Learn about the increase of penalties for breaching personal data laws, amendments to the messenger regulations and VKontakte lawsuit against a scoring company.

Roscomnadzor clams down on personal data processing

The penalties for breaching personal data laws will be raised effective 1 July 2017. Along with a significant increase of penalties, the new law introduces a classification of elements of the personal data offenses.

For more details please refer to LT in Focus of [13 February 2017](#)

Recent developments in environmental tax legislation and enforcement practices

"In 2017, for the first time ever the companies will be charged for recycling of their products and packaging that were either manufactured or imported in 2016. However, for most companies the methodology of environmental tax calculation and preparation of statutory reporting remains a big challenge.

This issue offers an update on the planned changes and clarifications on the most disputable issues.

For more details please refer to LT in Focus of [9 February 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,

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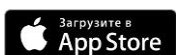


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TaxSmart app



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