

## Legislative Tracking

### Be in the know

[Court rules on application of dividend beneficiary concept](#)

[Russian Supreme Court approves VAT exemption under contracts of shared investment in construction](#)

[Amendments to laws of Moscow regulating application of tax benefits pass second and third reading](#)

[Luxury retailers volunteer to participate in tax-free pilot](#)

[Russian Ministry of Natural Resources advocates for tougher liability for oil pollution damage](#)

[Tax administration to leverage on big data analysis](#)

### Court practice

#### Court rules on application of dividend beneficiary concept

The decision of Kemerovo Region's Commercial Court of 13 October 2016 on case No. A27-20527/2015 has been published. This case concerned the Tax Authorities' dispute of application of a reduced tax rate on dividends paid to a Cyprus-based shareholder on the grounds that such shareholder had not been a beneficiary owner of such dividends.

The Court upheld the fiscal authorities' position and indicated that the Cyprus-based companies were not the ultimate recipients of the dividends, which were passed through to companies resident in the British Virgin Islands.

It is worth noting that in this case the Court did not directly apply the comments on the meaning of "Beneficiary Owner" in the OECD Model Tax Convention, but pointed out that "the clarifications given by the Russian Supreme Court concerning unjustified tax benefits are consistent with the international tax practices." (The Russian Supreme Commercial Court's Resolution No. 53 of 12 October 2006).

The Court referred to Resolution No. 53 and ruled the arrangement to be a tax evasion scheme meant to avoid tax on dividends paid by a Russian company to the residents of a country that the Russian Federation has no double taxation treaty with.

However, despite establishing that "unjustified tax benefit" was received by the tax agent, the Court denied sanctions under Article 123 of the Russian Tax Code (a penalty of 20% of the dividend tax unpaid) on a no-fault basis, as there is no evidence that the management of the company knew that applying a lower tax rate on dividends was unjustified.

The court practice for disputes over application of lower rates to tax charged at source in the situations when income recipients are not beneficially entitled to such income, has been mostly in favour of tax authorities: [Decision](#) of Moscow Commercial Court of 31 October 2016 on case No.A40-113217/2016 (on dividends), [Resolution](#) of Moscow District Commercial Court of 4 October 2016 on case № A40-241361/2015 (on interest); [Resolution](#) of 9th Commercial Court of Appeal of 30 September 2016 on case № A40-442/2015, [Resolution](#) of Moscow District Commercial Court of 27 May 2016 on case A40-116746/2015.

[Electronic Justice: commercial courts files](#)

#### Russian Supreme Court supports VAT exemption for developers in relation to commercial premises in residential properties

The Russian Supreme Court has published its Ruling of 21 September 2016 on case No.A78-10467/2015 that settles

the dispute over charging VAT on developers fee related to commercial premises in residential properties

According to the tax authorities, commercial premises areas in multi-unit residential buildings are “business-related assets”, which do not qualify for VAT exemption envisaged by the Russian Tax Code (Sub-item 23.1, Item 3, Article 149).

Three courts supported the taxpayer’s position, stating that for the purposes of Sub-item 23.1, Item 3, Article 149 of the Russian Tax Code, an apartment building as a whole is a residential property, irrespective of non-residential premises it might have.

Therefore, the constructor’s services in respect of the

commercial premises and the parking places of a residential building are also exempt from VAT.

The Russian Supreme Court has upheld the lower courts’ decisions and denied escalation to the Supreme Court’s Panel on Economic Disputes.

The Russian Ministry of Finance, however, maintains a different attitude (see Letter No.[03-07-15/63397](#) of 31 October 2016).

[Electronic Justice: commercial courts files](#)

---

## Legislative initiatives

### Amendments to laws of Moscow on application of tax benefits pass second and third readings in Moscow Duma

The following draft laws have passed second and third readings in the Moscow City Duma:

- [Draft law](#) on application of tax preferences and other benefits by parties to Special Investment Contracts (for more information please refer to LT of [20 October 2016](#));

- [Draft law](#) on extension of lower corporate profit tax rates for residents of the Zelenograd R&D hub (for more information please refer to LT of [20 October 2016](#)).

*Official website of Moscow’s Economic Policy and Development Department*

---

## Media review

### Luxury retailers volunteer to participate in tax-free initiative

Moscow’s luxury retailers volunteered to participate in the tax-free pilot project alongside the large shopping malls.

Participants of the pilot were signed on by the Russian Ministry of Industry and Trade in August 2016, as the draft law on introducing tax-free in Russia was being developed (for the details of this initiative, please refer to LTs of [12 August 2016](#), [2 August 2016](#) and [29 April 2016](#)).

The project was scheduled to go live on 2 January 2017, but it might be postponed until 2Q 2017.

[Kommersant](#)

### Russian Ministry of Natural Resources advocates stricter law on oil spillage

The Russian Ministry of Natural Resources put forward an initiative to stiffen penalties for oil spillage.

According to the initiative, upstream and midstream oil companies and other companies whose business involves the risk of oil spillage will be obliged to develop spillage prevention plans and to book financial reserves/guarantees against oil spillage.

The Ministry also suggests raising the penalty for absence / non-implementation of spillage prevention plans to RUB 500,000, and the penalty for concealing oil spill – to RUB 1m.

The initiative envisages amendments to the Law on Environmental Protection and the Russian Administrative Offences Code.

[Rossiyskaya Gazeta](#)

### Tax administration to leverage big data

At the Digital Excellence Summit in Moscow the Russian Federal Tax Service (FTS) outlined the potential efficiency and operational benefits the big data is expected to bring to the country’s taxation system.

According to the fiscal regulator, the up-to-date IT-solutions enable covering 100% of taxpayers, analysing and predicting their tax behaviour and, within the limits of their competence and authority, to manage it, focusing on the causes of tax evasion, rather than on its consequences.

Big data will enable the authorities to adequately align the regulatory framework with the taxpayers’ actual business processes and transform the overall business culture.

The FTS is currently developing four projects that are expected to have a major impact on Russia’s business landscape: Nalog-3, an automated control system that will expand the fiscal control capacities; a retail sales control system based on the new generation of cash register equipment; an RFID labelling system; and a unified personal identification database.

[Kommersant](#)

## Deloitte publications

### Overview of intellectual property disputes

Deloitte has prepared [an Overview](#) of court practice on intellectual property (IP) disputes.

The document contains a summary of landmark legal cases on different aspects of accounting for and protecting the intellectual property. These cases may, in our opinion, substantially influence law interpretation and enforcement practices in the short term.

We believe that the Overview will be of special interest for lawyers, accountants and tax specialists.

\*\*\*\*\*

We hope that you will find the information in 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**

# Contacts



**Grigory Pavlotsky**  
Managing Partner  
Tax & Legal  
Deloitte CIS  
[gpavlotsky@deloitte.ru](mailto:gpavlotsky@deloitte.ru)



**Gennady Kamyshnikov**  
Managing Partner  
Public Sector  
[gkamyshnikov@deloitte.ru](mailto:gkamyshnikov@deloitte.ru)



**Oleg Berezin**  
Partner  
Pharmaceuticals  
[oberezin@deloitte.ru](mailto:oberezin@deloitte.ru)



**Artem Vasyutin**  
Partner  
Travel Hospitality & Leisure  
[avasyutin@deloitte.ru](mailto:avasyutin@deloitte.ru)



**Yulia Orlova**  
Partner  
Metals  
[yorlova@deloitte.ru](mailto:yorlova@deloitte.ru)



**Andrey Panin**  
Partner  
Oil & Gas, Energy & Resources,  
Mining  
[apanin@deloitte.ru](mailto:apanin@deloitte.ru)



**Artem Vasyutin**  
Partner  
Retail, Wholesale & Distribution  
[avasyutin@deloitte.ru](mailto:avasyutin@deloitte.ru)



**Vasily Markov**  
Director  
Technology, Media &  
Telecommunications  
[vmarkov@deloitte.ru](mailto:vmarkov@deloitte.ru)



**Tatiana Kofanova**  
Director  
Automotive  
[tkofanova@deloitte.ru](mailto:tkofanova@deloitte.ru)



**Alexander Sinitsyn**  
Director  
Banking & Securities, Insurance  
[asinitsyn@deloitte.ru](mailto:asinitsyn@deloitte.ru)

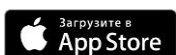


**Yulia Krylova**  
Director  
Real Estate  
[ykrylova@deloitte.ru](mailto:ykrylova@deloitte.ru)



**Oxana Zhupina**  
Director  
Food, Beverages & Agriculture  
[ozhupina@deloitte.ru](mailto:ozhupina@deloitte.ru)

### TaxSmart app



[deloitte.ru](http://deloitte.ru)

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as "Deloitte Global") does not provide services to clients. Please see [www.deloitte.com/about](http://www.deloitte.com/about) for a more detailed description of DTTL and its member firms.

Deloitte provides audit, consulting, financial advisory, risk management, tax and related services to public and private clients spanning multiple industries. Deloitte serves four out of five Fortune Global 500® companies through a globally connected network of member firms in more than 150 countries bringing world-class capabilities, insights, and high-quality service to address clients' most complex business challenges. To learn more about how Deloitte's approximately 225,000 professionals make an impact that matters, please connect with us on [Facebook](#), [LinkedIn](#), or [Twitter](#).

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively, the "Deloitte Network") is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser. No entity in the Deloitte Network shall be responsible for any loss whatsoever sustained by any person who relies on this communication.