

Legislative Tracking



If you would like advice with regard to any of these issues, please do not hesitate to contact the Tax & Legal Department of Deloitte CIS at +7 (495) 787 06 00 (Moscow) or + 7 (812) 703 71 06 (St. Petersburg).

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22 July 2016

E-justice: catalogue of commercial cases

http://kad.arbitr.ru/PdfDocument/6bc0d110-9572-46e4-8a48-75bf903e2724/A40-63374-2015_20160722_Opredelenie.pdf

Russian Supreme Court supports local tax authorities in assessment of additional tax on non-controlled transactions involving unjustified tax benefits

The Russian Supreme Court published Resolution No. 305-KG16-4920 of 22 July 2016 on Case No. A40-63374/2015 concerning unjustified tax benefits from the sale of under-priced real estate assets.

The company sold three of its real estate assets to three related parties that use a simplified tax system. According to the tax authority, the selling price was significantly lower than the market value (the tax authority determined the market value of one asset based on an independent expert review, while the market value of the other two was assessed based on the cadastral value adjusted for the inflation rate effective as of the date of the transaction), which resulted in the assessment of additional profit tax and VAT for the Company.

The courts of the first and second instances ruled in favour of the tax authority, while the court of cassation referred the case for retrial, calling for an investigation into the factors affecting the prices used in the disputed transactions.

The Russian Supreme Court annulled the resolution issued by the court of cassation and affirmed the decision of the lower courts. The Supreme Court concluded as follows:

- When conducting desk or field audits, local tax authorities are not competent to inspect the prices used in related-party transactions since the only agency authorized to exercise control over the transfer prices in terms of tax is the Russian Federal Tax Service (the central office) provided that the transaction concerned is recognised as controlled;
- The significance and distinctiveness of the deviation of the taxpayer's price from the market value, together with other circumstances under which the disputed transactions were conducted, may be of legal significance if a desk or field audit identified indications of an unjustified tax benefit;
- Significant deviations of the transfer prices from the market value put the practicability of conducting the transactions on such terms under doubt, which, considering that the parties to the transactions are related and that there were no valid economic reasons to set the prices as low as

they were, suggests that the parties acted to obtain unjustified tax savings;

- The existing tax legislation does not expressly prohibit the assessment of the amount of tax in arrears using the methods specified in Chapter 14.3 of the Russian Tax Code and available data on the market value of real estate assets, if the data is sufficient for the level of income which similar taxpayers could have received from such transactions under the same circumstances to be assessed, without the necessity of determining the exact value of such potential income.

With this in mind, the Russian Supreme Court concluded that the tax authority legitimately assessed the amount of tax in arrears based on the tax amount that could have been paid by similar taxpayers after the sale of similar real estate assets to non-related parties.

It should be noted that, when ruling on the case, the Supreme Court also took into account the overall tax savings from the disputed transactions (considering that the buyers of the real estate assets apply a simplified tax system).

In general, the position of the Russian Supreme Court concerning the assessment of additional tax liabilities on transactions between related parties involving the manipulation of prices is consistent with the earlier resolutions of the Supreme Court on Cases No. [APL 16-124](#) and [A63-11506/2014](#).

22 July 2016

Official website of the Russian State Duma

[http://asozd2.duma.gov.ru/addwork/scans.nsf/ID/3A70C2E16E9DE65543257FF800465144/\\$File/1133108-6.PDF?OpenElement](http://asozd2.duma.gov.ru/addwork/scans.nsf/ID/3A70C2E16E9DE65543257FF800465144/$File/1133108-6.PDF?OpenElement)

Draft law protecting small enterprises from changes in tax legislation

The Russian State Duma is considering Draft Law No. 1133108-6, which guarantees the same tax regime to small enterprises that existed as of the date of their incorporation should the tax laws be subject to any changes creating a less favourable business environment for such enterprises (compared to the previously effective laws). This rule will apply within the first five years of an enterprise's business operations.

The Russian State Duma is also reviewing Draft Law No. [1133113-6](#), which introduces similar amendments to Federal Law No. 209-FZ of 24 July 2007 "On the Development of Small and Medium-Sized Enterprises in the Russian Federation".

Please note that a draft law with similar content has already been submitted to the Russian State Duma for review (Draft Law No. [980348-6](#)).

22 July 2016

Federal portal for draft regulations

<http://regulation.gov.ru/projects#npa=50178>

Draft law introducing anti-monopoly compliance control binding on legal entities

The Federal Anti-Monopoly Service of Russia is preparing a draft law that would require legal entities to implement an internal anti-monopoly compliance control system.

Specifically, the draft law introduces the following amendments to the competition laws:

- It defines the concept of an internal anti-monopoly compliance control system and sets requirements towards companies' local regulations governing the procedures for maintaining anti-monopoly compliance;
- It requires public corporations, state-owned companies, natural monopolies and a number of other categories of entity to develop and adopt internal regulations for the implementation of an internal anti-monopoly compliance control system before 1 January 2017, and authorises all other businesses to implement a system for internal anti-monopoly compliance control;
- It envisages less stringent administrative liability for companies operating an internal system for anti-monopoly compliance control;
- It establishes administrative liability for not having an anti-monopoly compliance control system in place where it is required by law (a penalty from RUB 20,000 to 50,000 for legal entities).

22 July 2016

Official website of the Federal Tax Service

https://www.nalog.ru/rn77/news/activities_fts/6110258/

Russian Federal Tax Service introduces web-based portal promoting new procedures for online cash registers

The Russian Federal Tax Service launched a new web-based [portal](#), which is available on the agency's official website and is designed to promote the new procedures for the use of online cash registers.

This portal provides more details on the new procedures and the advantages it offers the user. Furthermore, it presents the Federal Tax Service's model for assessing threats to fiscal data security, as well as the fiscal data processing tools and systems developed by the Federal Tax Service, and creates a platform for [discussing](#) topical issues associated with the implementation of the new procedure for the application of online cash registers.

Furthermore, the Russian Federal Tax Service released the first issue of its [Newsletter](#) dedicated to the new procedures for online cash registers and clarifies individual provisions of the new law governing the procedures.

The abovementioned procedures came into force by virtue of Federal Law No. 290-FZ of 3 July 2016.

22 July 2016

Official website of the European Commission

http://ec.europa.eu/justice/criminal/document/files/aml-directive_en.pdf

European Commission adopts new regulations against tax avoidance practices and money laundering

The European Commission adopted the following regulations against tax avoidance practices:

- [Amendments to](#) Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and to Directive 2009/101/EC;
- A [regulation](#) supplementing Directive (EU) 2015/849 by identifying high-risk third countries with strategic deficiencies in their AML/CFT regimes, including the [list](#) of high-risk third countries;
- A new [directive](#) laying down the rules against tax avoidance practices that directly affect the functioning of the internal market.

20 July 2016

Official website of the OECD

<http://www.oecd-ilibrary.org/docserver/download/5jlv74ggk0g7.pdf?expires=1469450702&id=id&accname=guest&checksum=022D46E0BA8ED72253EADFFEF98FF01E>

OECD publishes working papers on tax design for inclusive economic growth

The Organization for Economic Co-operation and Development published a new report focused on the impact of taxes and tax policies on economic growth.

Specifically, the paper examines how the design features of countries' tax systems can influence inclusive economic growth and be strengthened to support it.

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