



## LT Digest

### Be in the know

#### Legislative initiatives

##### President of Russia signs a set of federal laws

- Draft Law No. [74-FZ](#) of 17 April 2017 on the differentiation of administrative sanctions for anti-competitive agreements and other anti-competitive practices;
- Federal Law No. [68-FZ](#) of 17 April 2017, setting forth that a company liquidation record made in the Unified Register of Corporations on the basis of the commercial court's resolution on the completion of bankruptcy proceedings as per the bankruptcy laws shall be a valid cause for terminating the administrative proceedings against such company;
- Federal Law No. [69-FZ](#) of 17 April 2017, specifying the procedure for amending the Russian Code of Administrative Offences.

*Official Internet Portal for Legal Information*

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## Draft laws pending before Russian State Duma

- Draft Law No. [37671-7](#) regulating the legal status of audiovisual services rendered to the Russian consumers has been adopted in the third reading (for more details on draft content, please refer to LT of [28 November 2016](#));
- Draft Law No. [66477-7](#) proposing a classification of banks and higher capital and equity requirements has been adopted in the third reading (for more details please refer to LT of [5 December 2016](#), [29 December 2016](#));
- Draft Law No. [66499-7](#) on developing additional bank recovery and resolution mechanisms has passed the third reading;
- Draft Law No. [982552-6](#) specifying the requirements towards advertising of 214-FZ construction projects has been rejected;
- Draft Law No. [1106182-6](#) regulating real estate intermediaries and agents has been rejected.

*Official website of the Russian State Duma*

## Amendments to draft law on regulation of audiovisual services published

The initiative calls for the following amendments:

- To specify that audiovisual services with a daily audience across Russia exceeding 100,000 users during a month shall be put on a special register
- To specify the responsibilities of an audiovisual service's owner
- To refine foreign participation restrictions for operators of audiovisual services with a daily audience across Russia exceeding 100,000 users during a month
- To stipulate that the registered online media, search engines, and resources with audiovisual contents uploaded mainly by Internet users shall not be treated as audiovisual services
- To introduce administrative sanctions for the distribution of unregistered mass media by audiovisual service operators and for their failure to comply with violation notices issued by public authorities
- To extend the Moscow City Court's jurisdiction, enabling it to consider administrative cases on restricting access to audiovisual services as a first instance court
- To reschedule the enactment of the law from 1 March 2017 to 1 July 2017.

For more details about the content of the draft, please refer to LT of [28 November 2016](#).

*Official website of the Russian State Duma*

## Amendments to draft law on classification of banks and increase of capital and equity requirements

The initiative calls for the following amendments:

- To define the scope of permitted operations and transactions for the holders of basic banking

licences. For example, no bank (correspondent) accounts with foreign banks will be permitted other than for the purposes of participating in a foreign payment system

- A universal bank whose licence has been downgraded to basic will be allowed to continue engaging in the out-of-scope banking transactions to discharge its obligations under existing contracts until such contracts expire, but no longer than five years following such change of status
- A universal bank whose licence has been downgraded to basic must terminate bank (correspondent) account agreements with foreign banks within a year of the status change
- To oblige the credit institutions, other than those with the basic licenses, to disclose the information on the risks undertaken, procedures for risk assessment, risk and capital management policies
- To stipulate that universal banks with the capital of under RUB 1 billion holding a general license will be permitted to establish foreign branches (subject to the CBR's approval), representative offices (upon giving notice to the CBR), and other subsidiaries (subject to the CBR's approval) until 1 January 2019 only.

For more details about the content of the original draft, please refer to LT of [5 December 2016](#) and [29 December 2016](#).

*Official website of the Russian State Duma*

## Russian Government approves draft EAEU agreement on aligning approach to FX regulation

The Agreement sets forth the common FX transaction requirements for the EAEU's internal currency market. Still, each signatory state remains entitled to define its own procedures for carrying out, accounting for, and controlling currency transactions.

The Agreement also defines the approaches towards the opening of accounts in the EAEU-based banks by third-country residents and accounts with the banks located in such third countries by the EAEU residents.

The Agreement defines the types of breaches of currency laws and the respective criminal and administrative sanctions imposed by the EAEU states. The EAEU member states are expected to align the offence elements and respective sanctions for breaching the FX laws by 1 January 2019.

*Official website of the Russian Government*

## Draft resolution refining procedure for declaration of recyclable goods by manufactures and importers developed

The draft proposes the following amendments:

- To outline the specifics of declaring packaging of finished products and packaging as a finished product by manufacturers and importers of such products and packaging

Packaging is to be divided into two categories: packaging as a finished product and packaging of a finished product

- To finalise the list of non-declarable products and packaging

Thus, the items imported for packaging of goods used to further produce other goods and the packaging of exported items do not need to be declared

- To expand the list of documents that can be used to complete the declaration (source accounting documents, customs documents, shipping documents)
- To stipulate that a declaration must be completed for each type of packaging material

The draft enables the manufacturers and importers to identify the category of packaging themselves, including on the basis of the Customs Union's Packaging Safety regulation.

- If a legal entity or an individual entrepreneur is at the same time a manufacturer and an importer of products, the declaration shall be filed with Rosprirodnadzor.

[Federal draft legislation portal](#)

### **Russian Ministry of Finance develops draft law requiring repatriation of proceeds under foreign sales contracts that do not provide for cross-border movement of goods**

In particular, the draft introduces an obligation to repatriate the proceeds from the foreign sales contracts, according to which the goods are transferred outside Russia, not crossing the Russian border. Failure to comply will expose the residents to administrative sanctions.

The Ministry has noted that the existing wording of Item 2, Part 1, Article 19 of Federal Law No. [173-FZ](#) of 10 December 2012 "On Foreign Exchange Regulation and Control" does not cover the entire scope of transactions among residents and non-residents, regulating the movement of goods across the Russian border only. Therefore, the FX regulatory authorities are unable to control the FX transactions of residents under foreign sales contracts that do not envisage the actual movement of goods across the Russian border.

The draft law has not yet been officially published.

[Federal draft legislation portal](#)

### **President of Russia approves Russian environmental safety strategy until 2025**

The strategy defines the key mechanisms to implement the public environmental safety policy, such as:

- To carry out regulatory measures to control emissions of greenhouse gases
- To establish a technological regulation framework setting forth the environmental and industrial safety requirements
- To set emission limits and issue environmental permits
- To introduce comprehensive environmental permits for polluting facilities employing the best available technologies
- To create an environmental audit framework
- To incentivise the introduction of the best available

technologies, develop up-to-date waste placement, recycling, processing, and decontamination equipment and accelerate the use of recycled materials through subsidies, tax and tariff benefits, and other incentives

- To develop public information systems raising environmental awareness, including a common public database for consumer waste accounting

[Official Internet Portal for Legal Information](#)

### **Russian Government supports draft law on transit corridors**

The Russian Government has [supported](#) the draft law proposing the creation of transit transport corridors and recommended that the State Duma adopt it in the first reading.

The draft is aimed at creating transit corridors, improving their competitiveness, setting up transit freight train routes and introducing specific customs regimes for transit freights.

The draft is expected to be further amended prior to its second reading in order to:

- Define the procedure for collecting transit transportation monitoring charges
- Discuss whether a competent authority shall be entitled to set up transportation schedule per each transit corridor
- Refine the mechanism for granting privileges to transit rail freight companies, including provision of rolling stock on a priority basis.

According to the Russian Government, no toll limits shall be set for transportation of transit freights.

A similar draft law No. [315406-6](#) had already been submitted to the Russian State Duma and returned to the legislator.

[Economica i Zhizn](#)

## Court Practice

### Russian Federal Tax Service sums up court decisions in tax cases for 1Q 2017

The Federal Tax Service has released a digest of decisions made by the Russian Constitutional and Supreme Courts in tax cases in 1Q2017.

The digest covers court opinions on the following matters:

- Recovering a PIT debt originating from undue deduction treated as unjust enrichment: the Russian Constitutional Court acknowledged the legitimacy of recovering personal income tax debts treated as unjust enrichment as per the Civil Code of Russia within three years of the deduction approval (Russian Constitutional Court Resolution No. [9-P](#) of 24 March 2017, for more details please refer to LT Digest of [10-16 April 2017](#));
- Recovering budgetary damages from the actual company head found guilty of tax evasion (as per Item 2, Article 199 of the Russian Criminal Code): on the basis of the criminal investigation findings, the Constitutional Court ruled that the owner had actually controlled the company's business without being its CEO, and supported the tax authorities' claims (the Constitutional Court Ruling No. [396-Q](#) of 28 February 2017; for more details, please refer to LT Digest of [27 March – 2 April 2017](#));
- Recovering tax debt from related parties: the taxpayer's debt can be recovered from a formally unrelated party – a bank that took over the taxpayer's asset (case No. [A51-4996/2015](#));
- VATable transfer of property in settlement of loan: the court ruled that transferring property to settle a loan qualifies as property disposal and is therefore subject to VAT (case No. [A50-20135/2015](#));
- Field audit prevalence over desk audit: the court acknowledged that results of a desk tax audit can be overridden by a field tax audit (case No. [A40-89628/2015](#));
- Unjustified tax benefits: the court ruled that the tax authorities provided sufficient proof that the contract in dispute was aimed at generating an artificial document flow meant to conceal a real sales transaction between the taxpayer and the supplier and to underreport the sale proceeds (case No. [A21-5397/2015](#));
- Severance payment deduction: severance payments may be deducted for PIT purposes provided they are economically justifiable (Case No. [A40-7941/2015](#)).

[Consultant Plus](#)

### Google reaches settlement in antimonopoly case

On 17 April 2017, the Moscow District Commercial Court approved the settlement on case No. [A40-240628/2015](#), thus terminating the litigation between the Russian Federal Antimonopoly Service (FAS) and Google.

The Federation Antimonopoly Service claimed that Google's rivals had not been able to include their own offerings in the operating system that powers a majority of smartphones and other mobile devices in Russia.

Google was also accused of imposing onerous requirements on mobile phone makers to access its Google Play apps store.

The Russian regulator has ordered Google to stop its uncompetitive practices and reconsider its licensing agreements with the mobile device manufacturers.

The first instance court and the court of appeal supported the regulator's position.

The court of cassation approved the settlement agreement. The text of the agreement itself has not yet been published.

According to the settlement agreement, Google will no longer demand exclusivity of its applications on Android devices in Russia, and it will not restrict the pre-installation of any competing search engines and applications, including on home screen; it will now have to allow third parties to include their own search engines into the selection window.

According to the settlement agreement, though, Google does not undertake to stop bundling Google Play with Android for distribution purposes.

Google will develop a Chrome widget for Android devices already used in Russia, which will allow users to set the default search engine.

Within 60 days of the settlement's approval, the Russian search engines will be able to apply to Google to discuss their inclusion in the selection window for the following year.

Google will also have to pay a fine of RUB 438 million for breaching the competition laws and RUB 1 million for failure to act on the FAS violation notices.

[Official Russian Antimonopoly Service website](#)

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## Clarifications from government bodies

### Ministry of Finance clarifies procedure for increasing CFC's registered capital with retained earnings

According to the Russian Ministry of Finance, a foreign corporation's obligation to use retained earnings to increase its registered capital can be verified by references to the respective provisions of applicable laws that expressly and unambiguously attest to such obligation, terms and conditions, procedure, and

timeline of increasing the registered capital with retained earnings, as well as by the documents confirming such increase.

Applicability of Item 8, Article 25.15 of the Russian Tax Code is determined annually at the end of the respective CFC's financial year.

According to Item 8, Article 25.15 of the Russian Tax Code, if a foreign corporation is unable to distribute its

According to Item 8, Article 25.15 of the Russian Tax Code, if a foreign corporation is unable to distribute its profits (fully or partially) among its shareholders as it should because the applicable laws stipulate using such profits to increase its registered capital, such profits will not be included into the CFC's controlling owner's tax base.

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### **Russian Ministry of Finance clarifies CFC profit calculation if financial statements are not available**

The Ministry has clarified that, pursuant to the provisions of Article 309.1 of the Russian Tax Code, a CFC's profit (loss) shall be determined on the basis of its financial statements or in accordance with the rules set forth by Chapter 25 of the Russian Tax Code for the Russian taxpayers.

Each CFC's profit (loss) determined based on the data from its financial statements shall be verified by such financial statements for the respective period(s) or tax reports.

If such financial statements are not available, the CFC's profit (loss) shall be determined in accordance with Chapter 25 of the Russian Tax Code based on its source documents.

Such documents may include the CFC's bank account statements and source documents, verifying the transactions made in accordance with the customary business practices of the country of incorporation.

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### **Ministry of Finance clarifies imposition of VAT on assignment of promissory notes**

The Ministry has clarified that assignment of promissory notes and repayment of the debt to the assignee shall be VATable as per Sub-Item 1, Item 1, Article 146 of the Russian Tax Code.

At the same time, assignment (re-assignment, acquisition) of loans and repayment of debt by the borrower to each new creditor according to the original loan contract shall be exempt of VAT.

[Garant: Prime](#)

### **Russian Federal Tax Services clarifies treatment of interest-free loans in 2017**

The regulator has clarified that interest-free loans between related parties will be deemed uncontrolled in 2017 regardless of contract dates, if the beneficiaries and parties to such transactions are registered in the Russian Federation.

[Garant: Prime](#)

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## **Media review**

### **Initiative to establish common blockchain e-database of notarised PoAs**

The Central Bank of Russia has come up with a proposal to establish a common blockchain e-database of notarised PoAs.

The e-database is meant to protect banks from fake PoA schemes.

The project's sponsors hope to ensure a greater database security and stability through the decentralisation benefits of blockchain: database is not hosted on one server, but its copies are distributed across different locations among all blockchain participants. Once a user modifies the data, the changes will be immediately recorded in each copy of the database.

The initiative is currently being reviewed by the Russian Ministry of Economic Development and the Ministry of Communications and Media.

[Izvestia](#)

### **Draft law to ban use of software enabling access to blocked websites**

The draft proposes the following amendments:

- To oblige the owners of IP anonymisers and VPN services to block websites from the list of banned resources

- To introduce a ban for using networks, IT systems, and software to access blocked websites
- To oblige search engines to exclude the websites blocked for illegal content distribution from search results; failure to comply will entail penalties of up to RUB 700,000.

The draft law has not yet been officially published.

[Vedomosti](#)

### **Initiative to introduce e-shop owner identifier**

Speaking at the conference "Online cash registers. New retail opportunities", Mikhail Mushustin, Head of Russian Federal Tax Service, has put forward a proposal to tie the domain names of online shops to concrete legal entities or individuals.

Thus, he proposed developing a mechanism for identifying the online shops' domain names and recording their owners to ensure transparency of e-commerce, including for tax purposes.

The Russian Corporate Register currently does not record domain names registered for specific legal entities.

[Vedomosti](#)

### **Blockchain employment record book developed**

Superjob, a Russian recruitment website, has developed an electronic blockchain-protected employment record book (ERB) that will become an element of the Superjob's ERB distributed database.

One's employment status, including the employment commencement and termination, will be automatically updated in the ERB through its integration with the basic HR administration systems, such as 1C, SAP etc., as well as with the Federal Tax Service's and the Pension Fund's databases.

The technology implies that copies of the database or its parts are distributed across the employer's multiple computers and are synchronised according to the formalised rules.

Superjob plans to perform a closed testing of the EBR shortly.

[\*Economica i Zhizn\*](#)

### **Oil industry tax reform approved**

Oil industry tax reform was approved at a meeting held by the Deputy Prime Minister Arkadiy Dvorkovich.

The reform envisages the transition from the mineral extraction tax to the added income tax.

A new 50-percent tax will be piloted on certain fields in Western Siberia with a depletion level of 20 – 80 percent and production volumes of up to 10 million tons, as well as on green fields with a depletion rate of 5 percent.

To minimise the losses for the state budget, the deductible expenses will be limited to RUB 7,140 per ton vs. the originally planned RUB 9,510 per ton.

[\*Vedomosti\*](#)

### **Electronic employment books initiative discussed by Russian Government**

In 2017, the governmental experts on social matters are planning to develop proposals to introduce the electronic employment record books (ERB).

In particular, the initiative envisages amending Chapter 49.1 of the Russian Labour Code that regulates remote work.

Furthermore, the Ministry of Communications and Mass Media proposed integrating the electronic ERB with the common government services portal.

[\*Rossiyskaya gazeta\*](#)

# Deloitte publications

## VAT exemption for in-game purchases

On 23 January 2017, the Russian Federal Tax Service released clarifications regarding tax exemptions for in-game purchases.

Learn about the possibilities of claiming exemption on licensing of rights to extra game functionalities and content from Deloitte's specialists in Legislative Tracking in Focus of [20 April 2017](#).

## New IT Legal Drive for March 2017

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

Learn about the draft law designed to regulate the product/service aggregators, new rules for public control of personal data laws compliance, amendments to the rules of creating and maintaining the Russian software and database register and the development of the Russian e-commerce strategy.

## Real Estate Highlights The News Kit, March 2017

We are pleased to present our regular [digest](#) of real estate news. The News Kit contains an overview of recent developments, most important legislative initiatives, clarifications from regulatory authorities, and court decisions on real estate disputes for March 2017.

Learn about the public declaration of goals and objectives for 2017 released by the Russian Federal Tax Service, the changes in the list of Moscow's real estate to be taxed on the basis of its cadastral value, and about a draft law aimed at limiting the tax benefits for property contributions to capital.

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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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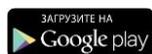


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## TaxSmart app



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

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