

Legislative Tracking



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4 July 2016

Official website of the Russian President

<http://www.kremlin.ru/acts/news>

Russian president signs new federal laws

The Russian president recently signed the following federal laws:

- No. [325-FZ](#) establishing less stringent standards of liability for economic crimes (for more details, please refer to LT of [27 May 2016](#));
- No. [304-FZ](#) setting new requirements for real estate developers designed to improve the protection of the rights of citizens that participate in shared construction projects (for more details, please refer to LT of [10 December 2015](#) and [21 April 2016](#));
- No. [369-FZ](#) envisaging the creation of a federal register of cost estimation standards and a federal information system for construction (for more details, please refer to LT of [1 June 2016](#));
- No. [290-FZ](#) envisaging a phased transition to the use of cash register equipment that passes electronic data about cash and electronic payments to the tax authorities through fiscal data operators (for more details, please refer to LT of [12 January 2016](#));
- No. [343-FZ](#) introducing changes to the regulation of major deals and interested-party transactions.

1 July 2016

E-justice: catalogue of commercial cases

http://kad.arbitr.ru/PdfDocument/79f52c08-dddd-4153-8afa-6c56f69014f6/A32-9413-2014_20160622_Opredelenie.pdf

Russian Supreme Court publishes full text of Ruling on deduction of volume rebates for food products from VAT base

The Supreme Court of the Russian Federation has published Ruling No. 308-KG15-19017 of 22 June 2016 resolving Case No. A32-9413/2014 of Danone Russia JSC on the deduction of a volume rebate provided to a customer in respect of food products from the VAT base in favour of the taxpayer.

The tax authorities disputed the deduction of a volume rebate provided for food purchases from the VAT base on the basis of item 6, Article 9 of Federal Law No. 381-FZ of 28 December 2009 “On the Regulatory Framework for Trade in the Russian Federation”, which stipulates that no remuneration based on the purchase of a certain volume of food products shall be taken into account when determining food prices.

The Supreme Court's statement of reasons includes the following important findings:

- The company substantiated the adjustment of the VAT base for sales on the company's part and the proportionate reduction of VAT deductions on the part of the purchaser, i.e. it proved that no violation of public interests (interests of the state budget) had taken place and the balance between public and private interests in terms of taxation had not been disrupted;
- The lower courts misinterpreted the provisions of the law governing trade and misapplied them to the disputed fiscal relations, thus contravening the fundamentals of the legislation on taxes and duties and the principle of the teleological interpretation of law;
- The law governing trade was adopted separately from the Russian Tax Code, it has an independent scope of regulation and may only apply to fiscal relations if it complies with the provisions of the Russian Tax Code and does not contradict the fundamental principles of Russian law. The application of this law by the lower courts led to the violation of fundamental principles such as the economic rationale for taxes and the obligatory existence of all elements of taxation, because the granting of the rebate in the disputed situation removed the object of taxation and the tax base was reduced.

Considering the above, the Supreme Court of the Russian Federation reversed the judgment of the lower courts and ruled in favour of the taxpayer.

4 July 2016

Official website of the OECD

<http://www.oecd.org/tax/morenews/>

OECD publishes public discussion drafts on BEPS Actions

The Organization for Economic Co-operation and Development (OECD) published the following documents for public review:

- [Public Discussion Draft](#) of the Revised Guidance on Profit Splits;
- [Conforming Amendments](#) to Chapter IX of the Transfer Pricing Guidelines, entitled "Transfer Pricing Aspects of Business Restructurings";
- [Public Discussion Draft](#) of the Additional Guidance on the Attribution of Profits to Permanent Establishments on Action 7 of the Base Erosion and Profit Shifting (BEPS) Action Plan (Preventing the Artificial Avoidance of Permanent Establishment Status).

4 July 2016

ConsultantPlus

<http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=QUEST;n=158212>

Russian Ministry of Finance clarifies procedure for assessing controlled debt on creditor-by-creditor basis

In this Letter, the Russian Ministry of Finance states that the amount of controlled debt shall be assessed in respect of each entity individually based on all debt obligations towards the given entity. Therefore, the capitalization ratio should be calculated separately for outstanding amounts owed to each entity covered by the concept of controlled debt, or each affiliate or foreign entity acting as a guarantor or otherwise bound by a commitment to secure the obligations.

The judgments delivered on the legal cases concerning the requirement to assess controlled debt in aggregate are contradictory. Thus, when resolving the cases of [Kolvinskoe CJSC](#) and [Bryansk Machine Building Plant Management Company CJSC](#), the court found it necessary to combine the amounts of outstanding debt owed to several creditors for the purpose of applying the thin capitalization rules, while in the case of [UII-Sibir LLC](#), the court found the taxpayer's assessment of controlled debt on a creditor-by-creditor basis legitimate.

Please note that the amendments made to the procedure for applying the thin capitalization rules under Federal Law No. [25-FZ](#) of 15 February 2016, which will take effect from 1 January 2017, require that an aggregate amount of controlled debt be determined.

Russian Ministry of Finance Letter 03-03-06/1/36454 of 23 June 2016

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