



LT Digest

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Court Practice

Supreme Court confirms that PIT shall not be charged on severance pay

The Russian Supreme Court has released a ruling of 16 June 2017 in case A42-7562/2015 that settles the dispute between PAO "Murmansk Trawler Fleet" (the "Company") and the tax authorities over the imposition of PIT on severance benefits paid to employees that leave the company by mutual agreement.

The Company did not withhold PIT on the above-mentioned benefits citing Item 3, Article 217 of the Russian Tax Code, according to which employment termination payments are not subject to PIT.

In the tax authorities' opinion, the payments in dispute do not qualify as severance benefits envisaged by the Russian Labour Code, therefore, shall not be PIT-exempt.

The Russian Supreme Court ruled in favour of the taxpayer on the basis of the following important conclusions:

- Severance pay as a type of employment compensation is envisaged by the law (Article 178 of the Russian Labour Code) and is aimed to protect the employees from a temporary loss of income in case of employment termination.

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- Leaving room for agreeing on additional instances of payment of severance benefits and the amounts thereof, the legislator had no intention to differentiate the rights and the scope of employee guarantees by the cause of dismissal: on the contrary, it acted with a view of protecting the employees from a temporary loss of income in as many instances as possible.
- The fact that the concrete instances of severance benefit payments can be agreed upon between an employer and an employee does not exclude these type of compensation from the regulatory framework and shall not mean that the PIT exemption granted by Item 3, Article 217 of the Russian Tax Code does not apply.
- To protect the public interest in instances where a severance pay is inconsistent with the compensatory nature of such payment, Item 3, Article 217 of the Russian Tax Code caps the PIT exemption at three (six in certain instances) monthly salaries.
- Given the foregoing, the court panel concluded that the taxpayer had been right in not withholding PIT from the employment termination payments.

[Electronic Justice: commercial courts files](#)

Russian Supreme Court denies tax sanctions for failure to report on branches

The Russian Supreme Court has released its ruling of 26 June 2017 in case No. A04-12175/2015, which settles the dispute between the tax authorities and Bridge-Building Company "Tyndatransmost" over the imposition of tax sanctions for failure to register the company's branches.

The company was accused of not registering its two branches with the local tax authorities and was subject to penalties of 10 percent of its total revenue as per Item 2, Article 116 of the Russian Tax Code.

The tax authorities' position was supported by three court instances.

However, the Russian Supreme Court ruled in favour of the taxpayer on the basis of the following important conclusions:

- The legislator differentiates between the taxpayer's obligation to register with the tax authorities and its responsibility to report its Russian branches to the tax authorities
- The branches are registered by the local tax authorities on the basis of the taxpayers' reports, therefore, if a taxpayer breaches the established procedure by failing to report on the branches, the breach will be qualified in accordance with Article 126 of the Russian Tax Code (RUB 200 per each non-submitted document)
- The sanctions envisaged by Article 116 of the Russian Tax Code imply deprivation of certain income, however, the tax authorities will still be unable to identify the taxpayer during its tax control activities and define its tax liability, therefore, the taxpayer's failure to report on a branch does not constitute an offence envisaged by Article 116 of the Russian Tax Code.

[Electronic Justice: commercial courts files](#)

International legislation news

Platform for Collaboration on Tax delivers toolkit to help address lack of comparables for transfer pricing analyses and better understand mineral product pricing practices

The [Toolkit](#) is meant for the tax authorities that audit pricing in controlled transactions.

The Toolkit addresses certain transfer pricing issues, including the functional analysis, selection of transfer pricing method, identification of data sources, performance of adjustments, and interpretation of collected data.

The document describes the common approaches to adjusting imperfect comparables and sets out a number of options that can be considered to mitigate the problems caused by poor availability of or access to relevant data, such as the safe-harbour mechanism and the profit split approach.

The Supplementary Report to the Toolkit highlights several issues related to pricing audits in the mining industry.

[Official OECD website](#)

OECD releases several BEPS discussion drafts

The OECD has released the following documents:

- [Additional Guidance](#) on attribution of profits to permanent establishment (including the examples illustrating the occurrence of PEs from commissionaire arrangements for sale and procurement activities and permanent establishments arising from business fragmentation)
- [Revised guidance](#) on profit splits

The public discussion of the drafts will continue until 15 September 2017.

For more details about the content of the drafts, please refer to the OECD Alert of [23 June 2017](#).

[Official OECD website](#)

Legislative initiatives

Russian State Duma to consider ratification of Council of Europe Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds from Crime and on the Financing of Terrorism

The Convention was signed on behalf of the Russian Federation in Strasbourg on 26 January 2009.

The ratification of the Convention will facilitate Russia's cooperation with other jurisdictions in combating money laundering and terrorism financing and will reinforce the legal framework of such cooperation.

The draft envisages a number of clauses that take into account the national regulatory requirements, including the provisions that regulate the forfeit, investigation powers and methods, requests for bank account information, service of process, request forms, and the language used, as well as the restricted use of information and evidence.

[Official website of the Russian State Duma](#)

Draft Law calling for repeal of national roaming submitted to Russian State Duma

The draft law proposes that all phone calls across Russia be charged at a single rate set by the respective mobile network operator, regardless of the caller's or receiver's location.

If adopted, the document will enter into force on 1 January 2018.

[Official website of the Russian State Duma](#)

List of basic best available technology equipment approved

The list will be applicable starting from 1 January 2019.

Fixed assets from the list will qualify for accelerated depreciation with a multiplier of up to 2.

[Official website of the Russian Government](#)

Russian State Duma to consider draft law introducing structured receipts

A structured receipt is a new type of security that entitles its holder to repayment of its total or partial nominal value or payment of income contingent upon certain circumstances specified in the decision to issue the receipt.

The structured receipts can be issued by credit institutions, brokers, dealers, and specialised structured products companies.

According to the draft, the issue, trading, and redemption of structural receipts, as well as the disclosure and provision of information will be exercised in accordance with the rules envisaged by the law on the securities market for similar bond transactions.

The structural receipts will not allow for early redemption, except in the circumstances beyond the issuer's control that are expressly named in the decision to issue such receipts.

Only the qualified investors will be permitted to buy

structural receipts. At the same time, the Central Bank of Russia will be entitled to determine the terms that will enable receipt offering to an unlimited number of buyers.

Furthermore, the draft proposes introducing a new type of specialised issuer - the structured products company.

[Official website of the Russian State Duma](#)

Central Bank of Russia develops proposals to streamline regulation of banking groups and holdings

To ensure equal treatment of all market players, the CBR has submitted its proposals to the Russian Ministry of Finance that introduce amendments to Federal Laws No. [86-FZ](#) "On the Central Bank of Russia" of 10 July 2002 and No. [395-1](#) "On banks and banking" of 2 December 1990, aimed at streamlining the regulation of banking groups and holding companies.

The initiative proposes equal regulatory treatment for banking holdings and groups in consistency with the international approach.

According to the document, the term "banking holding company" will also apply to informal associations of banks and non-bank financial institutions having common shareholders. Apart from its own risks, a member of a banking holding company assumes the risks borne by other members. Financial difficulties or loss of business reputation of one bank may hamper the financial strength of other credit institutions that are members of the same holding company.

Banking holding companies will have to comply with the applicable prudential ratios, capital conservation buffers, risk and capital management, and internal control requirements.

The 'fit and proper' requirements will equally apply to the heads of banking holding management companies and top-managers of credit institutions.

Activities of banking holding companies will be overseen by the CBR of Russia.

The document proposes obliging the owners of banking holding companies that include non-financial companies to separate its banking entities into a sub-holding and establish a bank holding company. However, no transfer of shares will be required.

Unless otherwise provided for by the federal laws, a bank holding company will have all responsibilities pertinent to holding companies. A sub-holding will also have to be established, if a bank holding company is based abroad.

It is expected that the requirements towards banking groups' and holding companies' management bodies will apply starting from 1 January 2020, while the other regulatory provisions related to banking holding companies will enter into force as of 1 January 2021.

[Official CBR website](#)

EU extends sanctions targeting specific sectors of Russian economy until 31 January 2018

The measures restrict access to the European financial markets for Russia's leading state-owned banks, their non-EU branches, as well as for three major energy and top-three defence companies.

The EU continues an arms embargo and a ban on exports of dual-use goods meant for the military purposes or for the Russian army.

Furthermore, the EU curtails Russia's access to certain oil exploration and extraction technologies.

[Official website of the European Council](#)

Import rates reduced for galena and lead concentrate

The Eurasian Economic Commission Resolution No. 66 of 20 June 2017 zeroed the EAEU's import duty rates

for galena and lead concentrates containing at least 45 percent of lead (EAEU's commodity codes 2607 00 000 1) from 25 May 2017 through 24 May 2019.

The existing import duty rate is three percent of the products' customs value.

The Resolution will enter into force 30 calendar days after its official publication, but not earlier than 2 September 2017, and will apply to the products imported on 25 May 2017 and later.

[Garant: legislative tracking](#)

Clarifications from government bodies

Russian Federal Tax Service clarifies treatment of receivables of liquidated foreign corporation

According to the Ministry, if the receivables are non-recoverable due to the liquidation of a foreign corporation, such receivables can be treated by the taxpayer as bad debt and be written off subject to the availability of relevant supporting documents (contracts, payment orders, etc.).

Such bad debt can be expensed by the taxpayer in the reporting period, in which a relevant public authority of the liquidated corporation's country of origin issued a statement of liquidation.

[Consultant Plus](#)

Russian Ministry of Finance clarifies that no debt due from foreign counterparty whose country restricts payments to Russia can be treated as uncollectible

The Ministry has advised that if the counterparty's country of origin had imposed restrictions on the performance of obligations towards Russian entities, such counterparty's debt due to the Russian entity will not be treated as uncollectible in the meaning of Item 2, Article 266 of the Russian Tax Code and cannot be deducted for corporate profit tax purposes.

[Consultant Plus](#)

Russian Supreme Court Plenum clarifies certain issues related to economic disputes involving foreign element

In particular, the Plenum has clarified:

- The provisions that govern the commercial courts' jurisdiction in economic disputes involving a foreign element
- The mechanism for determining a legal status of a foreign participant of a commercial arbitration
- The litigation procedures for economic disputes involving a foreign element
- The requirements for foreign documents
- The procedure for establishing the content of provisions of a foreign law applied by a commercial court in economic disputes

[Official website of the Russian Supreme Court](#)

Media review

EU's fourth directive on beneficial ownership register enters into force

The European Union's Fourth Directive requiring all member states to ensure that beneficial ownership information for all companies, including offshore, is stored in a central register, entered into force on 26 June 2017.

The register shall set forth the names, nationality, and place of permanent residence of actual owners of companies and trusts.

It is expected that the EU's law enforcement agencies and banks will be the first to get access to the register.

[Vedomosti](#)

Credit institutions to test first remote identification solutions

Credit institutions are planning to test the client voice and face recognition technologies based on the national biometric platform (NBP) designed by Rostelecom.

The testing will begin in July 2017 and will be pioneered by VTB 24, Rosselkhozbank, Binbank, and Rosbank.

The NBP is expected to eventually enable the Russian citizens to go through the legal formalities without a passport.

The NBP is planned to be launched by the end of 2017.

The draft law on remote identification for bank clients is now pending approval of the Russian State Duma (for more details, please refer to LT Digest, [24-30 April 2017](#)).

[Izvestiya](#)

Credit institutions starting to exchange information on suspicious customers

Starting from 28 June 2017, the Russian Service for Financial Monitoring (Rosfinmonitoring), the Central Bank of Russia and the banks will exchange information about suspicious clients that were denied service in accordance with the anti-money laundering regulations.

The database of 200,000 Russian companies and individuals was sent out to the banks by Rosfinmonitoring.

[Izvestiya](#)

All-Russian Insurance Association puts forward initiative to centralise management of Russia's social and economic risks

The Association proposes to establish a risk office that will accumulate information from the market participants and risk data from the public authorities, such as the Social Security Fund, Emergencies Ministry, Rostekhnadzor, Healthcare Ministry, Labour Ministry, and Federal Statistics Service.

The pilot system will incorporate the best practices of using the satellite monitoring in agricultural insurance and medical insurers' cancer statistics.

The Russian Finance Ministry's initiative to provide insurers with access to private medical records is meant as one of the milestones of the risk office project.

The information exchange and the cooperation in handling big data between the insurance community and the government appears to be mutually beneficial: the insurers see the benefit in the popularisation of their services and the ability to develop tailor-made products and tariffs, while the state will have the data for event simulation and modeling for budgeting purposes.

[Kommersant](#)

Russian Federal Tax Service calls for harmonising e-service VATisation in EAEU and EU

Following the conference "Managing indirect taxation of e-services and e-commerce", Dmitry Satin, Deputy Head of Russian Federal Tax Service, put forward an initiative to unify the rules for determining the location of the buyer and, hence, the place of supply of electronic services in the EAEU and EU countries.

The e-service taxation regulations requiring payment of VAT in the country of the buyer have been in force in Russia from 1 January 2017. For more details, please refer to LT in Focus [16 June 2016](#).

[Official Russian Federal Tax Service website](#)

European Commission admits Google's market abuse

The European Commission has slapped Google with a record EUR 2.42 billion fine for breaching the EU's antitrust rules.

According to the EU's competition watchdog, the company abused its market dominance as a search engine. Thus, Google systematically upped its Google Shopping service in search results, squeezing out companies that offer similar services. In the majority of search requests, the competitors were displayed on the fourth search result page.

The company has 90 days to cease and desist or face another fine of five percent of its parent company Alphabet's annual turnover.

[Vedomosti](#)

Mail.Ru Group receives confirmation from Russian tax authorities that IVAS revenues are eligible for VAT exemption

Taking into account the clarifications received from the tax authorities, Mail.ru Group has announced that most of its revenues generated from Internet value-added services (IVAS) in 2017 will be VAT-exempt.

The group plans to update its full-year guidance accordingly.

The clarifications on the VATisation of IVAS revenues were released by the Russian Finance Ministry in January 2017 (for more details, please refer to LT in Focus of [20 April 2017](#)).

[Official London Stock Exchange website](#)

Russian Federal Anti-Monopoly Service ("RAMS") to finalise anti-monopoly compliance draft

Deputy Head of RAMS Sergey Puzyrevsky announced at the meeting of the Anti-Monopoly Law Committee of the Association of Lawyers of Russia that a [draft law](#) on anti-monopoly compliance passed all discussions in the Russian Government, where all disputed issues were settled.

He also informed that the national competition development plan will be finalised shortly.

[Official Russian Antimonopoly Service website](#)

Russian Federal Tax Service to create electronic vendor integrity check tool

The tool is planned to be based on the tax scores assigned to businesses.

The system of scores will facilitate the selection of counterparties and mitigate risks of additional tax assessments in the instances when the counterparties are found to be shell companies.

The developers are now working on the product's functional requirements, including the implementation deadlines and the methods applied.

[RBCdaily](#)

Deloitte publications

Civil defence: a legislative update

According to Article 9 of Federal Law No. 28-FZ "On Civil Defence" of 12 February 1998 (as amended on 30 December 2015), civil defence trainings are mandatory for all companies. Russian Government Resolution No. 470 of 19 April 2017 specified and expanded organizations' civil defence duties.

Read more in Legislative Tracking in Focus of [27 June 2017](#).

New IT Legal Drive for April-May 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 April-May 2017.

In this issue, you will learn about the federal law on regulation of audiovisual services that has come into force, the draft law on telemedicine that the State Duma passed in the first reading, and the development of rules for remote access to banking services.

Russian Ministry of Finance elaborates measures to streamline taxation of controlled transactions

A draft law introducing material amendments to the Russian Tax Code provisions governing the taxation of controlled transactions was officially released on 7 June 2017.

The proposed amendments repeal the reporting requirements for immaterial transactions, enable the involvement of local tax authorities in transfer pricing audits, and regulate the signing of pricing agreements to international transactions involving a tax authority of a foreign state.

The public discussions of the draft will continue until 5 July 2017.

Read on for more details in Legislative Tracking in Focus of [15 June 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,
Deloitte CIS Partners

Contacts

Tax & Legal



Grigory Pavlotsky
Managing Partner
Tax&Legal, Deloitte CIS
gpavlotsky@deloitte.ru



Gennady Kamyshnikov
Managing Partner
Government Relations
gkamyshnikov@deloitte.ru



Oleg Berezin
Partner
Pharmaceuticals
oberezin@deloitte.ru



Andrey Panin
Partner
Oil & Gas, Energy & Resources, Mining
apanin@deloitte.ru



Yulia Orlova
Partner
Metals and Processing
yorlova@deloitte.ru



Oxana Zhupina
Partner,
Consumer Products
ozhupina@deloitte.ru



Artem Vasyutin
Partner
Retail, Wholesale and Distribution
Tourism and Hospitality
avasyutin@deloitte.ru



Alexander Sinitsyn
Director
Global FSI
asinitsyn@deloitte.ru



Tatiana Kofanova
Director
Automotive
tkofanova@deloitte.ru



Andrey Goncharov
Director
Legal Services
agoncharov@deloitte.ru

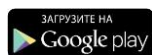


Yulia Krylova
Director
Real Estate
ykrylova@deloitte.ru



Vasily Markov
Director
Technology, Media, Entertainment &
Telecommunications
vmarkov@deloitte.ru

TaxSmart app



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