

## LT in Focus

# 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 ("Draft Law") was officially released on 7 June 2017.

The proposed amendments repeals 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 on the proposed amendments and their implications.

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### Introduction of 'materiality' criteria for TP documentation purposes

The Draft Law proposes releasing the taxpayers from the obligation to prepare transfer pricing (TP) documentation for immaterial transactions.

A transaction (a group of transactions) will qualify as immaterial if its value accounts for less than five percent of the total revenue from all transactions made between the same parties in a respective calendar year but no more than RUB 60 million for domestic transactions or RUB 10 million for all other transactions.

It should be noted that the transactions meeting the immateriality criteria will still be treated as controlled and remain subject to the audit for compliance with the arm's length principle.

However, the Draft Law proposes repealing the penalties for non-payment of tax resulting from non-arm's length pricing in such transactions.

### Engagement of local tax authorities in transfer pricing audits

Defining the scope of the local tax authorities' powers in auditing the compliance with the TP rules is high on the agenda, therefore, its regulatory formalisation is of vital importance.

According to the existing court practice, the local tax authorities are not entitled to audit pricing in controlled transactions; however, if a party receives an unjustified tax benefit as a result of such transaction, the benefit may be valued by the local authorities in accordance with the TP methods.

The Draft Law proposes two substantial developments to the local tax authorities' role in auditing the controlled transaction pricing:

- Possibility to involve the local tax officers to audit pricing in controlled transactions
- Possibility to initiate TP audit based on the information from the local tax authorities about non-arm's length pricing.

The adoption of these amendments will help the Russian Tax Service to significantly increase its tax audit capacities.

According to the Russian Tax Service, only nine taxpayers were audited in 2012, six in 2013, and two audits for 2014-2015 are pending.

If the local authorities are enabled to participate in the audits, these figures will increase manifold.

## Streamlined procedure for signing bilateral (multilateral) pricing agreements

In March 2017, the Russian Ministry of Finance drafted [an order](#) regulating the signing of bilateral (multilateral) pricing agreements (for more details, please refer to LT Digest, [6 – 16 March 2017](#)).

However, due to a conflict with a number of Russian Tax Code provisions, the enactment of the order was postponed.

The Draft Law proposes formalising certain aspects of signing such agreements.

In particular, it calls for the following amendments:

- To authorise the Russian Federal Tax Service to negotiate and sign bilateral (multilateral) agreements on behalf of the Russian Federation
- When considering the bilateral (multilateral) agreement requests, to enable the application of TP methods envisaged by the laws of a foreign state, which a party to the transaction is a tax resident of (provided the results of such methods and the methods envisaged by Article 105.7 of the Russian Tax Code are comparable).

This provision is expected to facilitate negotiations with the foreign authorities.

- To stipulate that requests for signing of bilateral (multilateral) agreements shall be processed within 24 months (but may be extended to 27 months).

However, it is not quite clear how the Russian Tax Service plans to ensure compliance with such terms as the duration of the mutual agreement procedures will depend on a foreign authority as well.

- To envisage additional grounds for refusal to sign the pricing agreement, including bilateral (multilateral):
  - Failure to reach an agreement with a foreign authority on the terms of pricing agreement
  - Failure to provide a reworked pricing agreement within 30 days of the decision to rework
  - Taxpayer's refusal to sign a pricing agreement, including non-appearance at the Russian Tax Service for signing
- To envisage a taxpayer's right to request for pricing agreement with the Federal Tax Service in case the taxpayer was denied in conclusion of the bilateral agreement
- To refine the procedure for amending the agreement and the list of grounds for early termination

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## Updated list of domestic controlled transactions

The Draft Law proposes to align the controlled transactions criteria envisaged by the Russian Tax Code for the instances where at least one of the related parties applies a lower profit tax rate permitted by the Russian Tax Code. Thus, the list of controlled transactions is supplemented with domestic transactions where at least one of the parties is:

- An agricultural or a fish-farm business applying a zero profit tax rate
- A resident of a territory of priority social and economic development or of the free port of Vladivostok applying a zero federal profit tax rate, payable to federal budget
- An educational or a medical facility or a social service applying a zero tax rate

Furthermore, the Draft Law supplements the Russian Tax Code provisions regulating the assessment of income from the controlled transactions: if a party that derives income from a controlled transaction does not assess profit tax in accordance with Chapter 25 of the Russian Tax Code, an estimated value of such income calculated based on the accrual method will be used.

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We hope that you will find this newsletter interesting and informative. Please feel welcome to contact us for more information on the topics covered.

Best regards,

**Deloitte CIS Partners**

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## Transfer pricing



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## TaxSmart App



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