

## LT in Focus

A federal law, refining the tax exemption for property contributions and reconsidering certain tax benefits, has been adopted

On 30 September 2017, the President of the Russian Federation signed a [law](#) that reconsiders the tax treatment of property contributions and refines the terms of certain tax benefits (the "Law").

The key amendments will be effective starting from 1 January 2018.

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### Tax treatment of property contributions

The Law considerably narrows down the list of options of tax-exempt free-of-charge financial assistance shareholders can provide to their subsidiaries.

From now on, tax exemptions will only apply to the following types of income:

- Assets, including cash, received free of charge from a shareholder holding more than 50 percent in the receiving party, provided that such assets would not be transferred to third parties for a year of the date of its receipt (Sub-Item 11, Item 1, Article 251 of the Russian Tax Code)
- **Uncollected dividends** reinstated as retained earnings (Sub-item 3.4, Item 1, Article 251 of the Russian Tax Code, as amended)
- Property, property/other rights as per their monetary value received as **property contributions** in accordance with the civil laws of Russia (new Item 3.7 and Item 1, Article 251 of the Russian Tax Code).

Formerly, the benefit envisaged by Sub-Item 3.4, Item 1, Article 251 of the Russian Tax Code applied to all instances of free-of-charge financial assistance aimed at increasing a company's net assets, including through debt forgiveness; from now on, only the assets that were donated in a manner envisaged by the Russian Civil Code for capital contributions can be tax exempt.

In accordance with Russian civil law, property contribution covers cash, property, shares (stock), federal or municipal bonds, exclusive and other intellectual property rights as well as rights assigned under licence agreements as per their appraised monetary value (Part 1, Article 66.1 of the Civil Code).

Therefore, all assets that by virtue of the Russian Civil Code may not be used for property contributions and that do not fall within Sub-Item 11, Item 1, Article 251 of the Russian Tax Code, will be subject to regular taxation.

Taking into account the changes coming into effect as of 1 January 2018, the following types of income will now be taxable:

- Donated property rights other than qualifying for property contribution
- Debt forgiven by a shareholder

There is still a theoretical possibility of excluding a forgiven debt from the taxable income if the debt was incurred when acquiring property or borrowing from a shareholder that owns over 50 percent in the capital, as in such case provisions of Sub-Item 11, Item 1, Article 251 of the Russian Tax Code may apply.

The redemption of a debt owed to a shareholder can also be structured as a property contribution followed by repayment of the debt by a subsidiary.

We recommend taking the latest amendments into account when planning on extending financial assistance to subsidiaries and, if possible, close all planned transactions involving debt forgiveness, in 2017.

## Tax treatment of highly energy-efficient facilities

The list of highly energy-efficient assets (assets that were assigned the High energy efficiency class) that qualify for accelerated depreciation factor of up to two, will no longer include buildings.

Granting property tax benefits for newly commissioned highly energy-efficient assets or High energy efficiency class assets will remain at the discretion of the regions. Effective 1 January 2018, the foregoing tax benefit envisaged by Item 21, Article 381 of the Russian Tax Code will apply subject to the adoption of a respective regional law.

Likewise, Federal Law No. [401-FFZ](#) of 30 November 2016

authorised the regions to introduce tax benefits for movables recognised as fixed assets as of 1 January 2013.

After almost a year, only a few regions have adopted such a law.

Taking this into account, the three months remaining until the end of the year for the adoption and release of respective laws are likely to be insufficient for the regions.

We recommend taking into account the time regions might need to implement such tax benefits when making strategic decisions, regarding highly energy-efficient assets and analysing the possibilities of applying the benefits in the periods preceding the law enactment.

## Tax treatment of concession revenues

The document eliminates the uncertainty as to whether the expenses borne by a concessionaire to create, reconstruct, use and operate a property granted under a concession agreement that are further reimbursed by the concession grantor (concession grantor's compensation) are considered taxable income as per Sub-Item 37, Item 1, Article 251 of the Russian Tax Code.

According to the Law, such monetary compensation received by the concessionaire is deemed unattributable to the property granted under a concession agreement that is excluded from the taxable base.

Therefore, the position of the Russian Ministry of Finance expressed in its Letter No. [03-07-14/172](#) of 28 March 2016 stating that only the conceded property shall be considered property granted under a concession agreement for the purposes of Sub-Item 37, Item 1, Article 251 of the Russian Tax Code, has been formalised in legislation.

The Law also sets forth a procedure for recognising the reimbursement paid by the concession grantor as non-operating income similar to the subsidies issued to finance the future expenses and compensate the earlier incurred costs (Item 4.1, Article 271 of the Russian Tax Code).

## MET benefits for taxpayers registered in Crimea and Sevastopol

The Russian Tax Code is supplemented with Article 343.3, entitling the taxpayers to a reduction of the MET assessed on natural gas produced at all hydrocarbon deposits, fully or partially located in the Black Sea. The tax deduction will be granted for the period from 1 January 2018 to 31 December 2020 and will amount to the investments made

into fixed assets covered by the programme for the development of the gas transportation system of Crimea and Sevastopol (with account of the set restrictions).

Only the taxpayers registered in Crimea and Sevastopol before 1 January 2017 will be eligible for the deduction.

## Facilitation of transportation, property and land tax benefits for individuals

According to the Law, starting from 1 January 2018, individuals will be able to submit their application for a tax benefit without the supporting documents and not run an extra risk of denial.

The tax authorities will have to obtain the required information from the government bodies, companies, and officials, only failing which then can send a separate inquiry to the taxpayer.

## Income from bonds of Russian issuers

The Law repeals the upper time limit for issues of Russian companies' bonds, qualifying their holders for lower personal tax on income received in the form of interest (coupon, discount) and lifts restrictions for PIT exemption for income in the form of discount on redeemed rouble-

denominated traded bonds issued after 1 January 2017.

Previously, these provisions applied only to the bonds issued from 1 January 2017 through 31 December 2020.

## Other changes

- The Law envisages the application of a depreciation multiplier (up to 3) for depreciable fixed assets used in the water supply and discharge sector as per the list approved by the Russian Government (the provisions apply until 1 January 2023 to the fixed assets commissioned after 1 January 2018)
- The document provides for a specific procedure for assessing the real property tax base of foreign entities, as well as residential buildings and premises not recognised as fixed assets for accounting purposes: starting from 1 January 2018, if a cadastral value of such property is determined within the current tax (reporting) period, the tax for the entire tax period will be assessed based on such cadastral value
- The rules for assessing the land tax base if the cadastral

value changes during a tax period due to the changes in the permitted land use type or land category have been refined: thus, the Law introduces a special coefficient enabling a fair calculation of the taxable base with account of the changes in the permitted land use type or land category (the same approach was previously proposed by the Russian Constitutional Court in its Ruling No. [212-O](#) of 9 February 2017)

- The lack of clarity in the application of Sub-Item 55, Item 1, Article 251 of the Russian Tax Code has been addressed: the value of free-of-charge surety agreements between Russian non-bank entities will not be included in the tax base (a similar approach was previously proposed by the Russian Ministry of Finance in its Letter No. [03-03-06/1/3813](#) of 26 January 2017).

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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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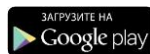
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## TaxSmart App



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