

## LT in Focus

# Is audit secrecy a secret?

On 17 July, bill No. [96436-7](#) that entitles the tax authorities to request for documents received by audit firms during their engagements passed the third reading.

The bill was developed to comply with the OECD recommendations following Phase I of the Russian legislation's peer review in the framework of the Global Forum on Transparency and Exchange of Information for Tax Purposes.

The provisions of the bill reflect the global trends to improve transparency and fight aggressive tax planning.

Read on for a detailed analysis of the bill.

### [New information sources for tax control purposes](#)

### [Requests for documents during tax audits](#)

### [Inquiries under international treaties](#)

### [Document disclosure process](#)

### [Effective date](#)

### New information sources for tax control purposes

As part of their tax control activities, the tax authorities will now be able to request for documents/information that audit firms received from customers while delivering audit and assurance services and certain other services listed in the bill, in particular:

- Implementation and maintenance of accounting records, reconstruction of financial accounts, preparation of financial statements, financial advisory services
- Tax advisory services, implementation and maintenance of tax accounting records, reconstruction of tax accounts, preparation of tax returns
- Advising management on financial and business operations, including corporate restructuring or privatisation
- Legal support in audit-related matters, including legal consulting and representation in civil and administrative proceedings, before tax and customs authorities or federal and local authorities.

This brings up the question whether the tax authorities will be able to request for information from non-audit firms that render the above-mentioned services.

According to Item 1, Article 3 of Federal Law No. 307-FZ of 30 December 2008 'On Auditing', an audit firm is a for-profit entity that is a member of a self-regulated audit organisation, which implies that the bill should not apply to the consulting companies that do not qualify as audit firms.

### Requests for documents during tax audits

During the tax and transfer pricing audits, audit firms will be obliged to make available all documents/information underlying the assessment and payment of taxes/levies/social contributions, requested by the tax authorities.

However, the above-mentioned documents (information) can be requested from the audit firms only if they had been originally requested from the taxpayer itself, but had not been provided in a manner dictated by the Russian Tax Code.

The documents (information) will be requested by the local tax authorities (at the place of auditor's registration) on the basis of a resolution of the head (deputy head) of the Russian Federal Tax Service (FTS).

Yet, the bill does not expressly define the 'documents (information) underlying the tax assessment'; in particular, will the tax authorities be entitled to request for the interim audit records or advisory service deliverables (e.g. the restructuring, tax efficiency improvement or tax risk analysis reports) or just for the general business contracts and source documents.

At the same time, the definition of documentary evidence

set forth in Article 252 of the Russian Tax Code implies that the requests are likely to apply to the documents evidencing the general business transactions, accounted for tax purposes.

However, the tax authorities may well interpret the new provisions more broadly.

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### **Inquiries under international treaties**

In instances envisaged by the Russian international treaties, documents (information) can be requested from audit firms on the basis of inquiries from the foreign competent authorities.

In this case, the documents (information) will also be requested by the local tax authorities (at the place of auditor's registration) on the basis of a resolution of the FTS head (deputy head).

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### **Document disclosure process**

An audit firm must make the requested documents available within 10 days of the request.

The documents should be provided according to the general rules envisaged by Items 2 and 3, Article 93 of the Russian Tax Code.

Interestingly, no separate penalties are envisaged for non-compliance.

Mostly likely, failure to provide the requested documents may result in a penalty of RUB 10,000 set forth by Item 2, Article 126 of the Russian Tax Code (failure to disclose

taxpayer information).

However, amendments introducing the tax and administrative sanctions for non-compliant audit firms will likely be introduced in the future.

A natural question arises: will the audit firms be entitled to inform their client of the above-mentioned requests?

The bill does not prohibit to notify the taxpayers of the pending domestic requests; as far as foreign inquiries go, notification is allowed unless expressly prohibited by the enquiring party.

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### **Effective date**

If adopted, the law will enter into force on 1 January 2019.

Since no transitional period has been mentioned, we believe that starting 1 January 2019 the tax authorities will be able to request for historical data as well.

Yet, there is room for a different interpretation since requesting for information for prior periods may be treated as a breach of audit secrecy rules, applicable at the time when the documents were received.

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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.

**Deloitte CIS Partners**

# Contacts

## Tax Dispute Resolution

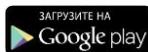


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## TaxSmart App



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