

# *Key developments in tax law*

Tax Flash Report by PwC Experts  
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*January 2018*



# *In brief*

This *Tax Flash Report* focuses on the most important tax developments of the last year as well as on anticipated changes to tax law.

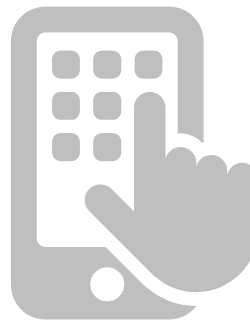
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# *Changes coming into effect on 1 January 2018*

# Three-tier transfer pricing documentation

## Federal Law No. 340-FZ of 27 November 2017

Members of Multinational groups of companies (MNCs) with a total income (revenue) of at least **RUB 50bn** for the preceding reporting period (if the parent company is a Russian tax resident) or above the threshold for country-by-country reporting in the jurisdiction of the group's parent company (if it is a foreign tax resident) are obligated to file three-tier documentation on transfer pricing (TP) with the tax authorities.

Under this law, Russian taxpayers that are part of MNC groups must submit the documentation listed to the right.

This law applies to financial years **starting in 2017** (except for the national documentation).

- ✓ Notification about membership in an MNC (Articles 105.16-2 of the RTC)
- ✓ Country-by-Country report (Article 105.16-6 of the RTC)
- ✓ Global documentation (Article 105.16-4 of the RTC)
- ✓ National documentation (Must be prepared from calendar year 2018, Article 105.16-2 of the RTC)

*For more details, please see:*

<https://www.pwc.ru/en/services/tax-consulting-services/legislation/tax-flash-report-2017-45.html>

# Preparing Country-by-Country report

A **Country-by-Country Report** (CbC report) is a document containing the financial, tax and other indicators for an MNC, broken down by countries where the group's entities operate.

The MNC's **parent company** or an **authorised group member that is a Russian tax resident** must file a CbC report with the Russian FTS. In turn, the FTS provides the report to the tax authorities of countries where other members of the MNC are located via automatic exchange. If the MNC parent company or authorised participant is a **foreign company**, the Russian tax authorities will be able to obtain the CbC report **via automatic exchange**.

In some instances, the CbC report may be requested from the Russian taxpayer of a MNE group.

For more details, please see: <http://www.pwc.ru/en/services/tax-consulting-services/legislation/tax-flash-report-2017-7.html>

In January 2017, the Russian FTS **signed** the Multilateral Competent Authority Agreement on Exchange of Country-by-Country Reports. The draft list of foreign states (territories) that automatically exchange CbC reports with Russia is available at [this link](#) (*in Russian*).

If the country where the parent company or authorised participant of the MNC is registered is not a party to the Russian agreement for automatic exchange of CbC reports or on the list of countries that do not automatically exchange CbC reports, the Russian taxpayer in the MNC may be requested to file a CbC report (Article 106.16-3.7 of the RTC).

# Concept of unjustified tax benefit included in the Russian Tax Code

## Federal Law No. 163-FZ of 18 July 2017 introduced Article 54.1 to the Russian Tax Code

Under Article 54.1 of the Russian Tax Code (RTC), taxpayers may reduce their taxes payable if there are no **misstatements** of business facts in accounting books.

To recognise expenses or receive a tax refund (reduce the tax due), **all** of the following conditions must be met:

- **The primary goal of the transaction** was not tax avoidance.
- **The transaction** was actually performed by a counterparty or other entity according to a contract.

The **taxpayer's intentions and the substance of the transaction (and whether it was performed by a specific entity)**, rather than the quality of the source documents or insufficient prudence when selecting a counterparty, are regarded as of paramount importance.

Under Article 2.2 of Federal Law No. 163-FZ of 18 July 2017, the new provisions apply to tax audits initiated under decisions taken **after 19 August 2017**.

The question of whether it has **retroactive power**, must be considered in light of **Article 5 of the RTC**.

When Article 54.1 of the RTC was introduced, the tax authorities issued numerous explanations as to how the new rules would be applied.

For more details, please see:

<http://www.pwc.ru/en/services/tax-consulting-services/legislation/tax-flash-report-2017-27.html>

<http://www.pwc.ru/en/services/tax-consulting-services/legislation/tax-flash-report-2017-41.html>

<http://www.pwc.ru/en/services/tax-consulting-services/legislation/tax-flash-report-2017-52.html>

# Investment deduction

Federal Law No. 335-FZ of 27 November 2017

Starting from 2018, taxpayers in Russian constituent **regions that have allowed the application of these incentives** will be entitled, at their discretion, to apply the regular depreciation mechanism **OR** the investment deduction.

## Depreciation



- Deduction of the full cost of an asset
- Use of a depreciation premium



## Investment deduction

(only in those regions that adopt the relevant law)

- Deduction of expenses directly from the amount of tax
- Limitations on the deductible amount
- Tax is reinstated in case the asset is sold
- TP control



# Investment deduction

(continued)

The incentives may be applied only if the relevant region makes a decision to adopt it.

Eligibility is limited to taxpayers who are purchasing and modernising fixed assets.

For more details, please see:

<http://www.pwc.ru/en/services/tax-consulting-services/legislation/tax-flash-report-2017-50.html>

<https://www.pwc.ru/en/services/tax-consulting-services/legislation/tax-flash-report-2017-54.html>

- ✓ The tax incentive will apply only to assets **in depreciation groups 3-7** (buildings, machinery, transport, and equipment with useful life of 3-20 years).
- ✓ The incentives will apply **only to newly** commissioned (or modernised) assets.
- ✓ The incentives **may not be applied to selected** items in a group, i.e. the incentive either applies to all of a group's new assets or not at all.

# Taxation of movable property

## Federal Law No. 335-FZ of 27 November 2017

The incentives established in Article 381.25 of the RTC for recognising movable property as fixed assets are **no longer applied at the federal level**. Starting from 2018, they apply **only** in those Russian regions where they have been specifically adopted in law.

Resolutions to extend the incentives were made in only a few regions (including Moscow Region). An overview on these regions is available at [this link](#) (*in Russian only*).

In regions where the incentive have not been introduced by law, movable property will be subject to tax in 2018 at a tax rate not exceeding 1.1%).

*For more details, please see:*

<http://www.pwc.ru/en/services/tax-consulting-services/legislation/tax-flash-report-2017-50.html>

<http://www.pwc.ru/en/services/tax-consulting-services/legislation/tax-flash-report-2017-54.html>

However, Russian regions may adopt laws to introduce additional tax incentives (up to a full tax exemption) with respect to movable property (listed in Article 381.25 of the RTC) that was deployed no more than three years ago, as well as property classified by regional law as **high-performance equipment**.

# *Incentives for energy-efficient facilities*

## Federal Law No. 286-FZ of 30 September 2017

Similarly, the incentives available under Article 381.21 of the RTC for newly commissioned energy efficient facilities no longer apply at the federal level. Starting from 2018, the incentives apply **only** in those Russian regions where they have been adopted into law.

Currently, application of these incentives may entail the risk of additional tax assessments, given that the definition of energy efficiency for individual categories of immovable property is unclear.

*For more details, please see: <http://www.pwc.ru/en/services/tax-consulting-services/legislation/tax-flash-report-2017-56.html>*



# *Income on Russian bonds are PIT exempt*

Under **Federal Law No. 58-FZ of 3 April 2017**, starting from 2018, income in the form of interest (coupons) received on marketable bonds issued by Russian entities in 2017-2020 and denominated in roubles are exempt from PIT, provided that the interest (coupon) payment does not exceed the amount of interest assessed at the current refinancing rate +5%. If the bond yields exceed the threshold, the excess is taxable for Russian tax residents at 35%.



For more details, please see: <http://www.pwc.ru/en/services/tax-consulting-services/legislation/tax-flash-report-2017-12.html>

# ***PIT on sale (repayment) of assets upon the liquidation of a foreign company***

**Federal Law No. 436-FZ of 28 December 2017**

In particular, the law stipulates a uniform taxation procedure for individual taxpayers to dispose of securities and other property (property rights) received upon the liquidation (closing) of a foreign company (unincorporated foreign entity), irrespective of the method of disposal. The law sets forth the date when the maximum value of such property is determined for cost deduction purposes as the date when the property was received.

Taxpayers may now gain exemption from property taxes when exercising property rights (e.g., settlement of rights of claim for loans granted) received from the liquidation of a foreign company or unincorporated entity.

The procedure for applying property tax incentives or cost deductions has been clarified in those instances when the tax benefit under Article 217.60 of the RTC is claimed along with the sale of assets received. It is relevant for the liquidation of foreign companies/entities as well as for subsequent asset sales over the same tax period.

*For more details, please see:*

<https://www.pwc.ru/en/services/tax-consulting-services/legislation/tax-flash-report-2017-45.html>

# Russian FTS blacklist, 2018

Under Order No. **MMB-7-17/709@** of **1 September 2017**, the Russian FTS updated the list of countries and territories that do not exchange information with Russia for tax purposes. Compared to the 2017 list, the **British Virgin Islands, South Korea and the Republic of Congo** have been **removed** effective for 2018. No new countries have been added to the list.

We would like to remind you that CFCs located in the countries mentioned on the list are not exempt from income tax in Russia.

For countries on the list, entities are required to file unqualified audit opinions when CFC profits are calculated on the basis of their financial statements.

*For more details, please see:*

<https://www.pwc.ru/en/services/tax-consulting-services/legislation/tax-flash-report-2017-53.html>

# Tax incentives for R&D investments

Federal Law No. 166-FZ of 18 July 2017 amended Articles 251 and 262 of the Russian Tax Code

- ✓ Intangible assets identified during stocktaking **are not included as income** (this rule applies to intangible assets identified by stocktaking from 1 January 2018 to 31 December 2019).
- ✓ The list of R&D expenses that can be accounted for using the **1.5** multiplier has been expanded to include the following:
  - incentive payments listed in Article 255.2 of the RTC and accrued insurance contributions;
  - expenses on the acquisition of exclusive rights for inventions, utility models or industrial designs, or the rights to use such IP under licensing agreements, provided they are used solely for R&D purposes (the provision is in force until the end of 2020).
- ✓ The 1.5 multiplier will apply to those expenses that form intangible assets and will be deducted **through depreciation**.

The administrative burden on companies conducting R&D is reduced if the R&D is registered in a special database, as defined by the Russian Government.

We believe that one such system is the Unified Public Information System for Civilian R&D Projects approved by Russian Government Resolution **No. 327 of 13 April 2013** (<http://www.rosrid.ru/>).

For more details, please see:  
<http://www.pwc.ru/en/services/tax-consulting-services/legislation/tax-flash-report-2017-32.html>

# *Shortened list of non-taxable operations with shareholders*

## Federal Law No. 286-FZ of 30 September 2017

The list of non-taxable income from company transactions with their shareholders has been shortened starting from 2018. Article 251 of the RTC was **supplemented with paragraph 3.7** and amended in **paragraph 3.4**. Starting from 2018, the following income will not be taxed: **(1)** the recovery of unclaimed dividends and **(2)** the receipt of property contributions from shareholders.

It is important that an increase in a company's net assets as a result of the discharge of obligations to a shareholder (including through a will) are excluded from the list. In other words, a company's income arising from debt forgiveness by a shareholder is not tax exempt under Article 251.3.4 of the RTC.

**Article 251.11 of the RTC**, which also regulates the taxation of property transfers between a subsidiary and parent company, will remain unamended.

*For more details, please see:*

<http://www.pwc.ru/en/services/tax-consulting-services/legislation/tax-flash-report-2017-47.html>



# Shortened list of non-taxable operations with shareholders

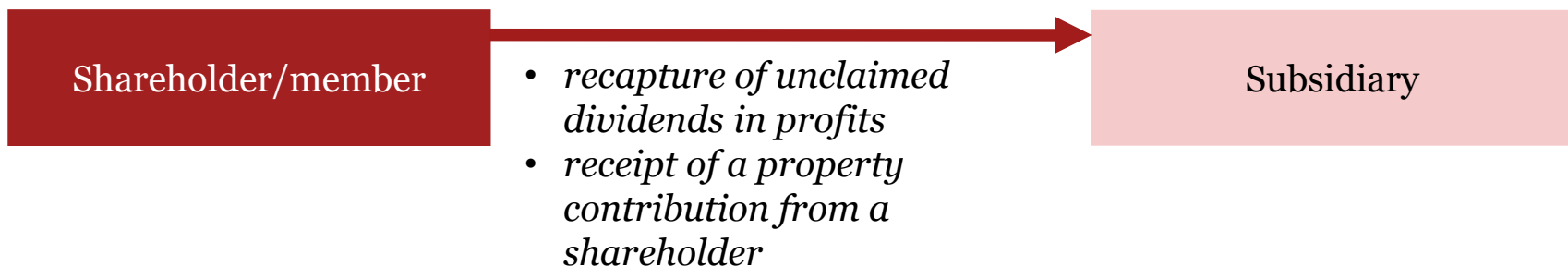
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## What operations involving shareholders will not be taxed starting from 2018?

*Article 251.1.11 of the RTC (unchanged)*



*Article 251, paragraphs 3.4 and 3.7 of the RTC (a new version)*



# VAT-related changes

Several changes to VAT legislation were introduced on 27 November 2017:

**Federal Law No. 350-FZ of 27 November 2017**

**Federal Law No. 335-FZ of 27 November 2017**

**Federal Law No. 341-FZ of 27 November 2017**

**Most of the changes took effect on 1 January 2018.**

## In particular, under these laws:

- ✓ The export of goods via re-export customs procedures is subject to 0% VAT. It is now possible to choose a VAT rate (0% or 18%) when providing international carriage services.
- ✓ The right to apply the 5% rule for VAT is restricted.
- ✓ Changes were made to the tax regime for electronic services, and to the procedures for reinstating VAT upon the receipt of subsidies, etc.
- ✓ A tax-free system was introduced in Russia.

For more details, please see: <https://www.pwc.ru/en/services/tax-consulting-services/legislation/tax-flash-report-2017-58.html>

## ***The VAT-invoice template and the procedures for maintaining purchase and sales ledgers and ledger of issued/received VAT invoices were amended***

On 19 August 2017, Russian Government Resolution No. 981 introduced changes to **Russian Government Resolution No. 1137 of 26 December 2011**, a key VAT-related regulation.

### **In particular,**

- ✓ The VAT-invoice template contains a new column called “Code of Goods Type”.
- ✓ The title of column 11 (“Customs Declaration Number”) has now been changed to “Registration Number of Customs Declaration”.
- ✓ Data must be entered in accordance with the Uniform State Register of Legal Entities/Uniform State Register of Individual Entrepreneurs.
- ✓ A number of new rules were introduced for forwarding agents, builders and customers.

For more details, please see: <http://www.pwc.ru/en/services/tax-consulting-services/legislation/tax-flash-report-2017-42.html>

# Clarified CFC rules

## Federal Law No. 436-FZ of 28 December 2017

The amendments concern the following:

- carry-forward of CFC losses for the three years immediately prior to 2015;
- tax treatment of CFC transactions with financial assets (including securities);
- distribution of CFC profits;
- substantiation of CFC profit tax exemption in Russia within multilevel ownership chains;
- exemption of CFC profits from transfer pricing (TP) audits, etc.

In addition, the list of activities that are not treated as control over a foreign entity exercised in Russia (Article 246.2, paragraphs 3.2 and 3.3 of the RTC) has been expanded.

Most of the law's provisions apply to legal relationships arising **after 1 January 2016**. This means that, when determining their income for 2017 and recognising CFC profits generated in 2016, controlling parties must be guided by the new rules.

*For more details, please see:*

<https://www.pwc.ru/en/services/tax-consulting-services/legislation/tax-flash-report-2017-45.html>  
and

<https://www.pwc.ru/en/services/tax-consulting-services/legislation/tax-flash-report-2017-64.html>

# Changes to DTTs

In June 2017, **Brazil** ratified the Convention for the Avoidance of Double Taxation with Russia, which comes into effect from 1 January 2018.

**Dividends** are subject to WHT at **10%** at **15%** (depending on whether certain participation criteria are met) while **royalties** and **interest** are taxed at **15%**.

In September 2017, **Russia and Japan** signed a Convention for the Elimination of Double Taxation to replace the convention between the USSR and Japan that had been in effect since 1986. The new convention is now pending ratification.

The convention contains LOB provision that may soon be introduced to international treaties in accordance with the [BEPS Action Plan](#).

**Dividends** may be subject to WHT at **5%**, **10%** or **15%** (depending upon certain conditions) while **interest** and **royalty** payments are **WHT exempt** (in certain instances, interest may be taxed at 10%).

For more details, please see: <https://www.pwc.ru/en/services/tax-consulting-services/legislation/tax-flash-report-2017-44.html>

No other DTTs were signed in 2017, and **no amendments** were introduced to the current DTTs.

In December 2017, the OECD published a **new version** of the Model Convention where BEPS initiatives were addressed.

For more details, please see:

<http://www.oecd.org/tax/treaties/model-tax-convention-on-income-and-on-capital-condensed-version-20745419.htm>

# Insurance contributions in 2018

Russian Government Resolution No. 1378 of  
15 November 2017

## Mandatory pension insurance

First RUB 1,021,000: **22%**  
Above: **10%**



## Mandatory medical insurance

Total payments: **5.1%**



## Mandatory social insurance

First RUB 815,000: **2.9%**  
Above: **0%**



# *Expected amendments to tax law*

# ***OECD Multilateral Instrument (MLI) to modify DDTs***

## **On 24 November 2016, the OECD published the Multilateral Instrument (MLI).**

The MLI will introduce new provisions that limit the use of tax benefits in DTTs. For example, applying a reduced rate on dividends under a DTT will not be allowed if the conditions for holding equity interest or shares by the time of a dividend payout are met over less than a 365-day period. The MLI also proposes taxing capital gains from shares (interest) represented by immovable property in the country where such property is situated, upon their disposal, if the property share test is met at any time during the 365 days preceding the transaction and not at the time of the transaction itself.

*For more details, please see: <http://www.pwc.ru/en/services/tax-consulting-services/legislation/tax-flash-report-2017-24.html>*

Russia was among the first countries to sign this document. Thus, **when determining tax regimes, several sources of legislation will need to be considered:**

- national tax law;
- DTTs;
- certain restrictions when the parties to a DTT had similar approaches when signing the MLI.



# Advance pricing agreements and other TP-related changes

A [draft law](#) that would amend the Russian Tax Code's approach to advance pricing agreements has been evaluated positively.

The bill introduces a procedure for executing agreements on foreign trade transactions and amends the general provisions for making advance agreements (including transactions made in Russia).

Several changes are likely to concern general TP aspects, in particular:

- ❖ audits can be conducted based on information from a territorial tax authority that the prices in transactions among related parties and equivalent transactions are *potentially not at arm's length*;
- ❖ *officers of territorial tax authorities* may become involved in transfer pricing audits;
- ❖ parties will be recognised as related if the ownership (including *indirect*, as well as direct interest) of each preceding party in each subsequent entity is over 50%;
- ❖ the list of controlled transactions will be expanded.



For more details, please see: <http://www.pwc.ru/en/services/tax-consulting-services/legislation/tax-flash-report-2017-25.html>

# *Advance pricing agreements and other TP-related changes (continued)*

On 10 January 2018, the Russian Ministry of Finance published a bill on the procedure for the Russian FTS and major taxpayers to enter into advance pricing agreements (<http://regulation.gov.ru/projects#npa=77309>)

The adoption of this procedure is included in Article 105.20.2 of the RTC.

It describes the procedures required for entering into an advance pricing agreement for cross-border transactions with a foreign resident, and establishes a recommended template for entering an agreement and a list of documents to be submitted.

The Russian FTS reviews the pricing procedure and/or the procedure for applying the pricing methods proposed by the taxpayer and whether they comply with Article 105.3 of the RTC.

Entering into advance pricing agreements would be permitted exclusively with entities in those countries that have a valid double tax treaty with Russia.

For the competent authorities to conduct negotiations on an agreement, the taxpayer must file an application with the Russian FTS, and its counterparty would be required to file an application for the above procedure with the respective foreign competent authority.

The bill contains a detailed chart that outlines the steps to follow when entering into a pricing agreement. The chart clearly shows the potential blind spots at each particular stage, depending on the circumstances, and helps taxpayers find their way through the negotiation process.

*In March 2017, we reviewed the previous version of the draft order in detail. For more details, please see: <http://www.pwc.ru/en/services/tax-consulting-services/legislation/tax-flash-report-2017-50.html>*

# Changes to TP rules and reduced timeline for tax audits

The bill **No. 249505-7** was adopted in the first reading in December 2017 (<http://sozd.parliament.gov.ru/bill/249505-7>)

- ✓ The threshold for domestic transactions is **RUB 3 billion p.a.**
- ✓ The threshold for transactions with foreign tax residents is **RUB 60 million p.a.**
- ✓ The length of a desk tax audit is **one month.**
- ✓ The subject of a second field tax audit when an adjusted tax return is filed concerns the **changes** that were made, rather than the period as a whole.



For more details, please see:

<https://www.pwc.ru/en/services/tax-consulting-services/legislation/tax-flash-report-2017-61.html>

# *An additional income tax on hydrocarbon production has been proposed*

The bill No. **325651-7** is pending a first reading in the State Duma (<http://sozd.parlament.gov.ru/bill/325651-7>)

The new tax treatment would fundamentally change the current approach to the taxation of oil and gas revenues. It shifts the main tax burden to a later period of a field's life cycle and stipulates that a new tax is payable only during the payback period of the project. The tax rate will depend on the earning capacity of each particular subsoil plot. This should help improve project economics, accelerate payback to creditors and, most importantly, support the development of low-margin hydrocarbon fields that contain hard-to-recover resources.

The tax rate is set at 50% of profits after a project has reached its payback period.

*For more details, please see:*

<https://www.pwc.ru/en/services/tax-consulting-services/legislation/tax-flash-report-2017-63.html>

# *The following publications and tools may be of interest to you*

To learn more about tax rules in Russia and other countries, please visit:



<http://taxsummaries.pwc.com/uk/taxsummaries/wwts.nsf/ID/PPAA-85RDKE>

This tool will help you compare tax environments in different countries.



[https://www.pwc.com/gx/en/services/tax/publications/paying-taxes-2018/explorer-tool.html?WT.mc\\_id=CT13-PL1300-DM2-TR2-LS1-ND30-TTA4-CN\\_payingtaxes-2018-data-explorer-button](https://www.pwc.com/gx/en/services/tax/publications/paying-taxes-2018/explorer-tool.html?WT.mc_id=CT13-PL1300-DM2-TR2-LS1-ND30-TTA4-CN_payingtaxes-2018-data-explorer-button)

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