



RUSSIA: New beneficial owner rules

The Russian Federal Tax Service has issued guidelines for applying the Russian beneficial ownership rules (as per Letter of the Federal Tax Service No. CA-4-9/8285 dated April 28, 2018) that can be used to deny tax treaty benefits to companies receiving passive Russian source income, as well as against complex anti-avoidance schemes for the transfer of income abroad.

The guide lines have increased the requirements for foreign recipients of Russian source income in order to qualify as beneficial owners eligible for tax treaty benefits.

The above may negatively affect some holding and treasury companies forcing extensive disclosure.

The Russian tax authorities may seek to deny tax treaty benefits to foreign recipients that do not have an actual, operating business. In fact pure holding and treasury activities for the benefit of affiliated companies may not be sufficient to show independent business activity, and may be insufficient to support a company being recognized as a beneficial owner.

According to the Letter, taxpayers must now justify the particular form of their transactions and the involvement of foreign recipients of income, and must present reasonable grounds for bearing commercial risks. This significantly departs from the earlier practice and position of the Russian Constitutional Court that limited the rights of the Russian tax authorities to use hindsight to challenge the rationality of commercial decisions, and places the burden of proof on taxpayers.

As a consequence, cross-border payments of passive income made by Russian subsidiaries to foreign affiliates (especially by companies acting as pure holding, treasury and licensing companies and companies administering interests of one group) will be highly scrutinized by the tax inspectors and this approach may apply to payments for the past three years that are still open for tax audits.

It's crucial now to review the group structure and verify if such companies may be considered as beneficial owners of Russian source income for tax treaty purposes and, possibly, reconsider further restructuring opportunities to mitigate withholding tax risks in Russia.

PLEASE FEEL FREE TO CONTACT US WITH ANY QUESTIONS OR QUERIES.

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