

Codification of beneficial ownership concept in Russia

Protecting treaty benefits

Tax & Legal



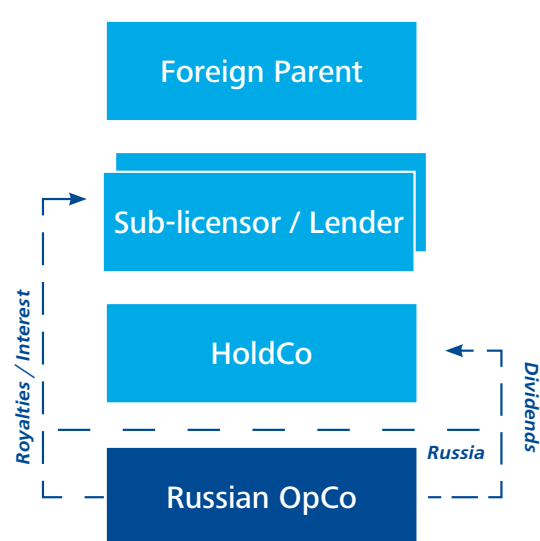
Who is affected

- Multinational companies with Russian operations;
- Russian OpCo making outbound dividend, royalties, interest payments to foreign group companies;
- Foreign recipients of income having insufficient substance, decision-making power or otherwise not qualifying as “beneficial owners of income” according to the new Russian rules;
- Russian OpCo or Foreign Recipient benefiting from provisions of the Double Tax Treaty (DTTs), e.g.:
 - (i) reduced/zero withholding tax (WHT) rates;
 - (ii) unlimited deduction of certain expenses which otherwise would have been limited under domestic law.



Why now

- Concept of Beneficial Ownership has been codified effective January 1, 2015;
- Potentially very broad application with limited guidance from authorities;
- Increased fiscal scrutiny over treaty abuse;
- A number of unfavorable court cases;
- “Look through” rules are introduced but subject to additional documentation requirements.



Risks

- Loss of treaty protection for outbound dividends, interest, royalties;
- Penalties for the withholding agent;
- Potential loss of other treaty benefits (i.e. unlimited deduction of marketing expense under Russian-German DTT, etc.) through application of unjustified tax benefit concept;
- Increased compliance burden.

How Deloitte can help



What to do

- To analyse corporate governance mechanisms, focusing on organization of decision-making processes in the Group (governing body, residency of individuals in the body, place of the Board);
- To analyse the substance of foreign recipients of income, their main activities, functions and risks, ability to independently operate and determine future economic destiny of income received, contractual or any other limitations/ commitments;
- To review and understand funding flows;
- To understand business process of the structure, including fund flows, jurisdictions of shareholders and income recipients;
- To develop documentary support needed for substantiation of beneficial ownership rights, including but not limited to:
 - Certified self-confirmation by the recipient
 - Excerpts from relevant corporate governance documents (Articles of Association, Powers of Attorney, Board Minutes, etc)
 - Proof of lack of/existence of relevant contractual commitments
 - Copies of relevant financial documents (Bank Statements, P&L, etc)
 - Statements by independent third-party as to the beneficial owner status of the recipient
- To affect functional, substance, other structural changes, if and as required.

Our team



Grigory Pavlotsky
Managing Partner
Tax & Legal Services CIS
 Tel: +7 (495) 787 06 00, ext. 2102
gpavlotsky@deloitte.ru



Gennady Kamyshnikov
Managing Partner,
Government relations
 Tel: +7 (495) 787 06 00, ext. 2092
gkamyshnikov@deloitte.ru



Raisa Alexakhina
Partner,
Tax Dispute Resolution
 Tel: +7 (495) 787 06 00, ext. 2950
ralexakhina@deloitte.ru



Yulia Krylova
Director,
International Tax
 Tel: +7 (495) 787 06 00, ext. 2461
ykrylova@deloitte.ru



Elena Solovyova
Partner,
International Tax
 Tel: +7 (495) 787 06 00, ext. 2064
esolovyova@deloitte.ru



Estella Dzhanturkhanova
Client Service Executive,
International Core of Excellence,
Russia and CIS
 Tel: +1 (212) 436 39 28
esdzhanturkhanova@deloitte.com

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