

Russian Tax Authority issues guidance on the application of beneficial ownership rules to holding companies

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On 8 August 2019, Russia's Federal Tax Service (FTS) issued guidance to the tax authorities regarding application of the beneficial ownership rules to holding and investment companies.¹

The guidance states that tax authorities must refrain from taking an overly formalistic approach to the determination of beneficial ownership, noting the current tendency of many authorities to conclude that an entity cannot be the beneficial owner of income if it only carries on holding activities (confirmed by corporate documents).

The guidance reminds tax authorities that the fact that a company makes investments and finances related entities does not automatically mean that it does not carry on independent business. Consequently, the mention of "holding activities" and "investment" among the stated activities of a foreign entity is not a sufficient basis in itself for drawing conclusions about beneficial ownership.

Tax authorities are advised to approach each case individually, checking for specific indications of artificiality in a holding company's activities, including the lack of independence in decision-making in relation to assets and income received.

The FTS's guidance is, on the whole, a positive development for taxpayers and tax agents, but it is important to recognize that the presence of a holding company and investment companies in a group's composition must serve a business purpose. The entry into force of the OECD² Multilateral Convention³ will add the principal purpose test to the existing criteria for obtaining tax treaty benefits and further impact the process of evidencing that benefits have been lawfully used.

Endnotes

1. Federal Tax Service Letter No. YeD-4-13/15696@ of 8 August 2019 "On Beneficial Ownership by Holding Companies of Income from Sources in the Russian Federation."
2. Organisation for Economic Co-operation and Development.
3. See EY Global Tax Alert, [The Latest on BEPS - 28 June 2019](#), dated 28 June 2019.

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