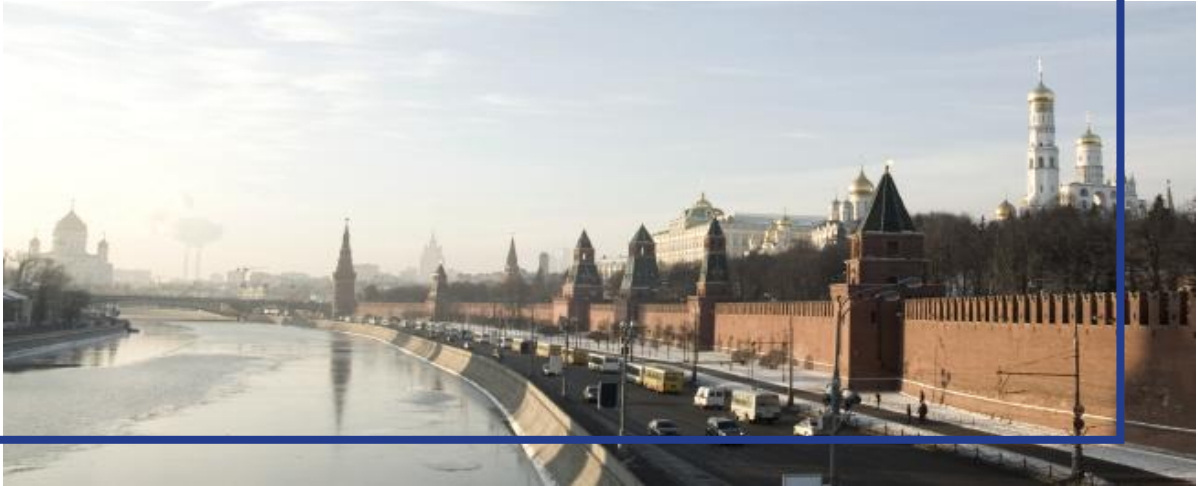


LEGAL NEWSLETTER



Moscow, March 2017

TAX LAW

APPLICATION OF DOUBLE TAX TREATY BENEFITS

Starting from 1 January 2017, new amendments to the Russian Tax Code have significantly toughened the requirements for the application of double tax treaty benefits. Now, in order to apply reduced withholding tax rates under the tax treaty with respect to dividends, interest or royalties, before the date of payment a Russian tax agent must have not only (1) a tax residency certificate of a foreign partner, but also (2) a confirmation of the fact that such partner has an “actual right for income” (Russian analogue for beneficial ownership).

As it follows from court practice, the tax authorities have intensified control over this issue. Moreover, Russian courts in a number of rulings have confirmed additional tax charges made by the tax authorities due to the absence of the actual right for income (beneficial ownership). The charges were made with respect to tax periods before 2017, when confirmation of the respective condition was not obligatory.

The Russian Tax Code stipulates that a person who has the actual right for income should:

- have a right to use or dispose of income received by the company;
- perform essential functions and bear risks associated with obtaining and disposal of income;



- not have limited rights to use/ dispose of income;
- not perform intermediary functions in respect of income in favor of another person who would not have the right to apply tax treaty benefits if he/she would receive such income directly from Russia.

The Russian Ministry of Finance in a number of its clarifications has stated that the actual right for income may be confirmed by:

- the letter of the recipient of income and other documents, confirming his/her right to use and dispose of income and the absence of limited powers in respect of such income;
- documents confirming that the recipient has income tax liabilities in the country of his/her residence (this should also confirm the absence of “treaty shopping”);
- documents confirming that the recipient performs real business activity in the country of his/her residence.

At the same time, there are no clarifications specifying the particular types of required confirmation documents.

Based on our experience, we believe that the following documents may be used for that purpose:

- letter of recipient of income or addendum to the agreement where the recipient warrants certain facts and agrees to indemnify losses if any of the warranties are untrue or inaccurate;
- recipient's annual report and financial statement for the previous reporting period;
- certificate confirming the amount of income tax paid by the recipient in the previous period issued by recipient's auditor;
- recipient's transfer pricing documentation and Country-by-Country Reporting;
- other official documents.

We will be happy to answer your questions and to share our experience.

CONTACTS:

David Lasfargue - Managing Partner
dlasfargue@jeantet.org

Anatoly Ivanov – Senior Tax Associate
aivanov@jeantet.org