



4.2. Evolution of the Concept of Beneficial Ownership for Income. The International Practice and Approaches of Federal Tax Service of the Russian Federation

Track: 4. Investments. Finance

Description

The concept of “real party in interest” (or “beneficial ownership”) is a mechanism of countering misuse of provisions of international treaties. This concept amounts to tax exemption and possible lowering of tax rates for tax residents of states signatory to a treaty, which is why benefits can only be provided to a beneficial owner of income, who has the right to manage it and determine its economic destiny. A resident company acting as an intermediary or a conduit cannot receive such benefits.

The Federal Tax Service of the Russian Federation adopted international approach to identification and proving of misapplications of provisions of double taxation treaties. Participants of the session will discuss the main approaches of foreign law enforcement practice, as well as analysis of legal approaches of the Federal Tax Service of the Russian Federation to disputes concerning verification of beneficial ownership.

One of the most topical issues of international treaties application is identification of key characteristics separating a beneficial owner from other persons, as well as actions a tax agent needs to perform to verify beneficial ownership. Participants will analyse legal positions that clearly demonstrate the scope of required evidence and possible risks for companies.

This topic will be relevant to representatives of both international companies and Russian institutions working with foreigners, as well as to consulting and law firms.

Moderator:



Sergey Arakelov

Deputy Head, Federal Tax Service of the Russian Federation

Born on February 3, 1975.

Education, academic degree:

In 1996 graduated from Moscow State Law Academy. Ph.D. in Economics.

Professional experience:

Works in tax authorities since July 1996. Acted as a deputy of various officers, from 1st category legal counsel of the Moscow State Tax Inspectorate to Head of Inter-District Inspectorate of the Moscow Federal Tax Service No 47.

In September 2010 was appointed Head of Federal Tax Service's Legal Office.

In December 27, 2010 was appointed Deputy Head of Federal Tax Service by the executive order of the Russian Federation Ministry of Finance dd. 27.12.2010 No 1557.

Class 2 Active State Advisor of the Russian Federation by the Decree of the RF President dd. 07.10.20132 No 770 "On the Appointment of the Russian Federation State Civil Service Class Ranks to Federal Civil Servants and Judiciary Class Ranks".

Coordinates and controls the following activities:

Legal Administration;

Administration for Pre-Trial Fiscal Disputes Settlement;

Administration for Bankruptcy procedure.

Coordinates legal activities across tax authorities, ensures coordinated position of tax authorities in courts, ensures the conformity of regulatory acts issued by Federal Tax Service to the RF legislation.

Coordinates the examination of fiscal disputes between Russian tax authorities and taxpayers.

Coordinates legal representation of the interests of the Russian Federation as a creditor in insolvency cases and bankruptcy procedures.

Speakers:



Walter Andreoni

Partner, Mercanti Dorio e Associati

Partner at Mercanti Dorio e Associati. Member of the Association of Professional Accountants. Holds a foreign relations degree from Leiden University; specializes in transfer pricing services, international tax management and corporate law. Published a number of articles on OECD comments and international taxation.



Marina Belyakova

Partner, Ernst&Young

Ernst&Young, Partner, International Tax Services, Moscow branch. Graduated from Moscow State University of International Relations (MGIMO), expert in International economic relations, member of Association of Chartered Certified Accountants. Has more than 14 years of experience of Tax consulting on the issue of structuring of investments in Russian and foreign assets, specializes on tax issues of developing international structures and joint ventures, support of merger and acquisition transactions primarily in oil and gas industry and energetics. Has considerable experience of consulting on tax issues of elaboration models of managing international groups of companies and transfer pricing. Before joining EY led Tax function in one of major Russian industrial groups



Daniil Egorov

Deputy Commissioner, Federal Tax Service of the Russian Federation

Deputy Commissioner of Federal Tax Service of the Russian Federation Class 2 Active State Advisor of the Russian Federation

Daniil Egorov was born in 1975 in Moscow.

1998: graduated from Peoples' Friendship University of Russia with specialization in Legal Studies.

2000–2001: commission member of the Inter-Regional Bar for Entrepreneurs and Citizens Assistance.

2001: legal advisor, legal manager of ZAO Eneco.

2001–2003: 1st category specialist, consultant of Executive Support Department, Moscow Directorate, Ministry of Taxes and Assessments.

2003–2005: head of Information Support, Electronic Data Input and Desk Audit Department, then head of Desk Audit Department, Moscow Inter-District Inspectorate No 44, Ministry of Taxes and Assessments.

2005–2009: head of Desk Audit Department and Field Audit Department No 2, Moscow Inter-District Inspectorate No 50, Federal Tax Service.

2009–2010: deputy head of Examination Department, Moscow Directorate, Federal Tax Service.

2010–May 2011: deputy head of Private Litigation Examination Department, Largest Taxpayer Litigation Examination Department, deputy head of Directorate and head of Pre-Trial Audit Directorate, Federal Tax Service.

Coordinates and controls the following activities:

Control Directorate

Transfer Pricing Directorate

Desk Audit Directorate

Operative Control Directorate

Mr Egorov supervises the following areas:

Organization of enforcement control and monitoring of Russian tax and assessment laws and regulations; tax and assessments calculation control following the tax checks.

Methodological coordination of examination, monitoring, integration and analysis of tax check results.

Coordination of analysis and systematization of the means of tax evasion identified following the tax checks.

Ensuring cooperation of tax authorities with law enforcement and other governing bodies in identification, prevention and suppression of tax offences.

Coordination of the work of tax authorities on till equipment registration, organization and methodological support of monitoring of compliance by organizations and individual entrepreneurs with legal requirements on the use of till equipment in cash and/or plastic card transactions and on fullness of respective cash proceedings.

Coordination of the work of tax authorities in control and monitoring of national private and promotional lotteries, as well as the intended use of lottery proceeds.

Coordination of national lottery permitting.

Coordination of the issue of marking labels for tobacco and tobacco products made in Russia.

Coordination of licensing of fraud-resistant printing products, including securities blanks, and trade of such products; reissue of the documents confirming the licenses; suspension, revalidation and cancellation of licenses.

Coordination of gambling licensing of betting shops and betting terminals; reissue of the documents confirming the licenses; cancellation of licenses.

Coordination of technical verification of gambling equipment.

Coordination of tax control during tax checks of major taxpayers.

Coordination of foreign currency transactions by residents and non-residents, other than lending institutions or forex exchanges.

Organization of enforcement control and monitoring of Russian tax and assessment laws and regulations, as well as regulatory acts adopted following the tax checks, including regarding income tax returns.

Interaction with authorities, institutions, organizations and public officials regarding the provision of data to tax authorities from:

Pension Fund of the Russian Federation;

Social Insurance Fund of the Russian Federation.

Coordination of methodological and organizational support of Federal Tax Service and local tax authorities regarding tax administration of prices and transfer pricing for the purposes of taxation and tax risk identification.

Coordination of the work of Federal Tax Service and local tax authorities regarding the analysis and evaluation of market processes and pricing on external and internal Russian markets of goods (operations, services), mechanisms and tax consequences of transfer pricing for the purposes of taxation and tax risk identification.

Coordination of development of recommendations regarding tax legislation improvement, as well as improvement and automation of the forms and methods to ensure that deal prices correspond to market prices (economic feasibility).

Coordination and control of the work of Control Directorate, Desk Audit Directorate and Transfer Pricing Directorate.

Coordination of the work of Inter-District Desk Audit Inspectorate of the Federal Tax Service, Inter-District Major Taxpayer Inspectorate of the Federal Tax Service Nos 3 and 9.

Coordination of the work of Inter-District Taxation Pricing Inspectorate of the Federal Tax Service.

Coordination of the work of local tax authorities in Southern Federal Okrug, organization of its cooperation with the office of the plenipotentiary representative of the president of the Russian Federation in Southern Federal Okrug and with local authorities in Southern Federal Okrug.



Mikhail Filinov

Partner, International Tax Structuring Services, PwC

Partner, International Tax Structuring Services. Since 1998 worked as a trainee in Tax Authorities, provided services in sphere of investment structuring of International and Russian companies and in sphere of structuring business of the companies. During 2011-2012 years worked for PwC office in Zurich where assisted Russian and international corporations and private clients. Michael graduated from the State University of Management (1999), has PhD degree in International Taxation (2002).



Alexey Karpenko

Senior Partner, Forward Legal

Senior Partner at Forward Legal; member of International Tax Specialist Group; allied member of Outer Temple Chambers; co-chairman of Russian office of the New York State Bar Association (NYSBA); author and co-author of publications on litigation, tax law and business restructuring in Russian and international legal and business media; speaker at numerous training courses, conferences and panels



Svetislav Koctic

Docent at the Faculty of Law, University of Belgrade

Docent, Tax Law, University of Belgrade Faculty of Law. In addition to teaching at the University of Belgrade Faculty of Law (both under graduate and graduate courses in general tax law and EU tax law), lectured at the East African School of Taxation (Kampala, Uganda), New York University School of Law (LL.M in International Taxation Lunch Lectures) and the Mediterranean International Tax Summer School (Ljubljana, Slovenia). Prepares the University of Belgrade Faculty of Law team for the European Tax College Moot Court Competition since 2010. Tax Services, Senior Manager, August 2008 – February 2011, Director, January 2013 – June 2016. The Tax Advisory Group of the

Tomanovic law firm, Zečević&Lukic law firm and a Team of Permanent Tax experts Lead by prof. Dr. Dejan Popovic and Svetislav Kostic. Member of the Executive Board and Secretary General of the Serbian Fiscal Society (Serbian IFA branch).

Member of the Serbian Ministry of Finance Working Group for the Reform of the Serbian Tax System. Author of Monographies and publications in periodicals.



Bart Kusters

Senior Research Fellow, International Bureau of Fiscal Documentation (IBFD)

Bart Kusters is a Senior Principal Research Associate in IBFD's Tax Services Department. Until January 2010, he was in charge of the IBFD Topicals Knowledge Group and until August 2005 he was the Head of the IBFD Asia-Pacific Research Team. After obtaining his master's degree in Law from the State University of Leiden in 1988, Mr Kusters started working in the Dutch tax administration where he successfully completed the postgraduate programme for tax inspectors. From 1992 to 2001, he was a senior staff member at the Dutch Ministry of Finance where he was responsible for tax treaty negotiations and application as well as for drafting direct tax legislation. From 2006 to 2009, he was the Key Expert Taxation in the European Technical Assistance Programme for Vietnam (ETV2). Furthermore, he is a permanent contributor on international tax matters for a leading weekly tax magazine in the Netherlands and is a regular speaker at tax conferences.



Viktor Machehin

Associate Professor, Kutafin Moscow State Law University (MSAL)

Associate professor of the Kutafin Moscow State Law University (MSAL) financial law department, associate professor of the Financial University under the Government of the Russian Federation tax policy and customs tariffs regulation department, head of Russian Tax Practice of Linklaters, scientific secretary of Russian department of the International Fiscal Society, Candidate of Juridical Sciences. Participates in organization of events on the topic of International Taxation in Russia. Specializes at Tax Law including Tax disputes and Tax consulting. Has depth of experience in consulting Major foreign companies most notably of financial industry as well as Russian companies, including companies with state participation, on wide range of issues including Tax legislation, taxation of securities, bank operations, structure products, international taxation, etc. Victor participated in Draft of a bill projects for the reform of Tax Legislation. Graduated from Plekhanov Russian University of Economics, Moscow State Law University. Speaks English and Victor is an author of numerous local and foreign publications on the topic of Taxation. According to The Legal 500, Chambers Europe и International Tax Review, Victor is one of lead experts in Russian Tax Law.



Samuel Ramp

Partner, Fischer Ramp Partner AG

An attorney and a certified tax expert, partner of Fischer Ramp Partner AG; focuses on tax planning (private clients as well as on financing and restructuring of national and international corporations), tax practice include tax litigation before authorities and courts; worked for the Zurich tax authorities; member of International Fiscal Organization (IFA); teaches at SIST, the Swiss Institute for Tax Studies (Schweizerisches Institut für Steuerlehre) and Treuhand Suisse; regular speaker at national and international tax conferences on the issue of international taxation and tax disputes; author of vast publications.



David Russell QC

Barrister, Lincoln's Inn

David Russell is a barrister and a Queen's Counsel. He was the president of the Taxation Institute of Australia from 1993 to 1995, and of the Asia Oceania Tax Consultants' Association from 1996 to 2000. He has lectured at the University of Sydney for the Master of Taxation course and the University of Queensland for the Master of Laws course. For many years, he has been the chairman of STEP Australia; he currently is a member of the STEP World Wide Council and various STEP Committees, including the Tax Committee. Mr Russell is a Academician of International Academy of Estate and Trust Law, an honorary member of the Taxation Institute of Hong Kong, a member of the Middle East and North Africa Branch Committee of the Chartered Institute of Taxation (UK), a member of the board of the International Tax Specialist Group. In 2012 he was appointed a member of the Order of Australia for "service ... to taxation law and legal education." In 2014 he became the Tax Institute's Chartered Tax Adviser of the Year. Mr Russell is an author of numerous publications on taxes and international taxation.