



Removing barriers for foreign investors

Applying a “look-through” approach when determining the beneficial owner of income with regards to cross-border transactions

On 27 November 2018, Federal law No. 424-FZ was promulgated on the federal government’s official legal information website. The law introduces a number of positive changes regarding the concept of beneficial owner of income (BO). Amendments to the key article regulating BO issues will apply retroactively from 1 January 2018.

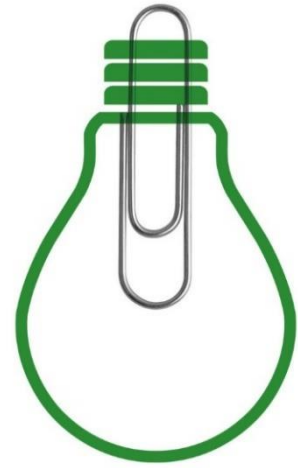
The amendments will strengthen the taxpayer’s position when applying provisions of double tax treaties (DTTs) providing exemptions from taxation or when applying reduced tax rates, and these changes will apply retroactively to earlier tax periods (years). In particular, the law will extend the application the “look-through” approach to all types of income (and not only to dividends, as is currently the case), as well as introducing a simplified procedure for the confirmation of BO status with respect to certain types of income recipients.

Recent court practice around BO issues in 2018 developed a doctrine of applying a “look-through” approach, i.e. applying provisions of the DTT concluded with the BO’s country of residence, notwithstanding the fact that the BO is not a direct income recipient, in cases where this is justified by the business logic of the transaction structure. However, the application of this approach was not based on direct legislative provisions, and as such gave rise to difficulties, which will now be resolved in the new law

The most significant amendments introduced by Federal Law No. 424-FZ are

1. A direct indication in the law that it is possible to apply the “look-through” approach to different types of income originating in Russia – earlier this was, with a literal interpretation of the Russian Tax Code (RTC), only true with respect to dividends (Art. 312 (1.1) of the RTC);
2. Extension of the lower tax rate to all dividends paid to any company that is partly owned by another company confirmed to be a BO entitled to the tax benefit (Art. 312(1.1) of the RTC). Earlier, the lower rate of tax only applied pro-rata for the dividends paid out depending on the BO’s ownership share of the company distributing the dividends.
3. Introduction of a rule requiring a separate determination of BO status with respect to each separate dividend payment and (or) for each group of income payment as long as these are made under the same contract (Art. 7 (2) of the RTC);
4. Extending the use of the “look-through” approach to cases of income payment to companies or persons located in countries that has no valid DTT with the Russian Federation (art. 7 (4) of the RTC);
5. Introduction of a special simplified procedure to confirm BO status with respect to certain types of recipients, namely:
 - natural persons;
 - governmental sovereign funds;
 - companies whose stocks are traded on the Russian stock market or foreign stock exchanges located in OECD countries;
 - companies whose share capital is at least 50% in direct state ownership in the Russian federation or in foreign states which allow the exchange of information for tax purposes with the Russian Federation (Art. 312 (1.5) of the RTC).





In 2018, Eversheds Sutherland's Tax Practice contributed to the **successful resolution of a number of complex tax disputes** where BO issues were involved. Our firm also assists with **tax structuring of transactions** on a constant basis, thereby helping our clients to achieve the business goals they pursue while complying with the requirements of Russian and international tax legislation.

We are happy to be of assistance by analyzing your transactions, whether they are in the planning stage or already closed, to verify their compliance with the adopted legislative changes, and to help you form the required defense file justifying the applied benefits and the BO status of payment recipients for submission to the tax authorities.

We also bring your attention to the fact that these legislative changes and earlier court practice around BO matters in the Russian Federation are significantly influenced by the approach used in the OECD Model Tax Convention as understood in the Commentaries thereto. In the current circumstances, where international taxation trends are increasingly used by domestic legislators and where supreme judicial authorities to a greater extent make reference to the convention's text, this document starts to gain a new practical value for taxpayers. With this in mind, Eversheds Sutherland's tax lawyers have prepared a **translation of the most recent version of the OECD Model Tax Convention (dated 18 December 2017) into Russian. Please find it attached.**

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