In response to your inquiry regarding the calculation and payment of tax on income payable to foreign organizations acting on behalf of third parties on Russian government securities, municipal securities, or equity or debt securities issued by Russian organizations, the Tax and Customs Tariff Policy Department advises as follows:

In accordance with Clause 1 of Article 214.6 and Clause 1 of Article 310.1 of the Tax Code of the Russian Federation (the “Code”), the securities depository is treated as a withholding agent calculating and withholding tax on income on the following securities held in foreign nominee accounts, foreign authorized holder accounts and (or) DR program accounts:

1) Russian federal government securities subject to mandatory centralized safekeeping;
2) Russian subfederal bonds subject to mandatory centralized safekeeping;
3) municipal bonds subject to mandatory centralized safekeeping;
4) equity or debt securities subject to mandatory centralized safekeeping issued by Russian organizations, with the date of the issue state registration or the date of the state registration number assignment being later than 1 January 2012;
5) other equity or debt securities issued by Russian organizations, except for those subject to mandatory centralized safekeeping, with the date of the issue state registration or the date of the state registration number assignment being earlier than 1 January 2012.

In order to perform the withholding agent functions, the securities depository shall be provided with information defined in Clauses 2-4 of Article 214.6 of the Code that contains data specified in Clause 5 of Article 214.6 of the Code, as well as with information defined in Clauses 2-5 of Article 310.1 of the Code that contains data specified in Clause 7 of Article 310.1 of the Code.

According to Clause 8 of Article 214.6 of the Code, if information specified in Clause 5 of Article 214.6 of the Code was not provided to the withholding agent in full, at the times, in the form, and in the manner specified in Article 214.6 of the Code, the withholding agent shall calculate and withhold tax on income on the relevant securities at the rate set forth in Clause 6 of Article 224 of the Code, which is 30 percent.

Similarly, with respect to the corporate income tax, Clause 9 of Article 310.1 of the Code stipulates that if information about organizations specified in Clause 7 of Article 310.1 was not provided to the securities depository in full, at the times, in the form, and in the manner specified in that Article, income on such securities is subject to taxation at the rate set forth in Clause 4.2 of Article 284 of the Code, which is 30 percent as well.

In accordance with Article 7 of the Code, where there is a double taxation treaty of the Russian Federation in effect, tax rates set forth by such treaty shall apply. In particular, it is possible to apply reduced or zero tax rates for interest or dividend income received from a Russian Federation source, as well as to exempt foreign persons from taxes on their interest income in the Russian Federation.

However, pursuant to Clause 6 of Article 214.6 and Clause 8 of Article 310.1 of the Code, where there are tax reliefs available for income on securities under the Code or an international treaty of the Russian Federation, information provided to the withholding agent shall also include the ground to apply such tax reliefs.

Therefore, in our opinion, documents evidencing the tax residency status of an actual recipient of income must be provided to the withholding agent if such recipient of income claims tax reliefs or exemptions under an international treaty. Please note that the tax laws do not require that a withholding agent possess such documents at the income payment date. However, the Code stipulates that such documents must be provided to a tax authority in the event of a tax inspection.

The Code also sets forth that documents evidencing the tax residency status and to be provided by the withholding agent to a tax authority in the event of a tax inspection in accordance with Subclause 3 of Clause 1 of Article 214.8 and Subclause 3 of Clause 1 of Article 310.2 of the Code are also required only if the withholding agent applies any tax reliefs (exemptions) under a
double taxation treaty. Tax authorities, therefore, may request documents evidencing the tax residency status of an income recipient from the withholding agent only if the withholding agent applies the relevant preferential tax rates (exemptions) when calculating tax.

In view of the aforesaid, in case the information defined in Clauses 2-4 of Article 214.6 and Clauses 2-5 of Article 310.1 of the Code was duly provided to the withholding agent, however there is no information on the tax residency of the organization or individual exercising the rights on securities (or when these rights are exercised on their behalf), in our opinion, the rate of 15 percent set forth in Subclause 3 of Clause 3 of Article 284 or paragraph 2 of Clause 3 of Article 224 of the Code applies to income payable to foreign entities in the form of dividends on equities held in foreign nominee accounts, foreign authorized holder accounts and (or) DR program accounts.

Therefore, in the event that a foreign nominee indicates, in summarized information, a country that has a double taxation treaty with the Russian Federation as a taxpayer’s tax jurisdiction, but at the same time the information provided omits a reference to the ground for application of preferential tax rates under the relevant international treaty, and also if there is no document supporting the application of tax reliefs, the withholding agent must calculate and withhold tax on dividend income payable to a foreign person from a Russian Federation source at the rate set forth by Subclause 3 of Clause 3 of Article 284 or paragraph 2 of Clause 3 of Article 224 of the Code, i.e., at the rate of 15 percent.

For the purpose of taxation of income payable to foreign persons on Russian bonds, a similar approach applies based on the qualification of the actual recipient of such income. Similar to the payment of dividend income from a Russian Federation source, if there is no ground for application by the withholding agent of preferential tax rates or exemptions under a double taxation treaty of the Russian Federation, the tax rates set forth by the Code apply.

In particular, pursuant to Subclause 1 of Clause 2 of Article 284 of the Code, the tax rate of 20 percent applies to interest income payable to a foreign organization, if information defined in Article 310.1 of the Code is provided (subject to the exceptions referred to in Subclause 1 of Clause 2 of Article 284 of the Code).

The tax rate of 30 percent applies to interest income received from a Russian Federation source by individuals who are not Russian tax residents pursuant to Clause 3 of Article 224 of the Code, or where an actual recipient of income has failed to provide the withholding agent with information required by the Code in full, at the times, in the form, and in the manner specified in Article 214.6 of the Code.

At the same time please note that this Letter issued by the Department neither contains nor makes more specific any legal rules, nor constitutes a regulation. Written clarifications given by the Russian Ministry of Finance on any issues related to the application of Russian tax laws, as may be sent to taxpayers and/or withholding agents, are intended only to provide information and clarification, and, therefore, do not prevent taxpayers, tax authorities, or withholding agents from applying provisions of Russian tax laws in a way that is different from the interpretation given in this Letter.

I.V. Trunin, Department Director

Attn.: Sergey Shatalov, Deputy Minister of Finance
of the Russian Federation

9 Ilyinka Street, 109097 Moscow

Dear Mr. Shatalov,

National Settlement Depository (“NSD”) acting as the Central Securities Depository in the Russian Federation presents its compliments to you and asks you to provide additional clarifications to Russian Ministry of Finance’s Letter No. 03-08-P3/27274 dated 5 June 2014 to the Federal Tax Service of Russia (the “Letter”) regarding the taxation of dividend income. Such additional clarifications are needed due to differences in interpretation of certain provisions of the Letter by withholding agents and foreign nominees/authorized holders.

1. Please clarify whether the provisions of the Letter apply to the taxation of interest income payable on Russian bonds.
2. Please also clarify the following provisions of the Letter:

2.1. “According to Clause 6 of Article 214.6 of the Code and Clause 8 of Article 310.1 of the Code, in case there exists any tax relief for securities income under the Code or under an double taxation treaty with the Russian Federation, the information provided to the withholding agent should contain the grounds to apply tax relief.

Therefore, we believe that it is necessary to provide the withholding agent with documents certifying the tax residency, in case if a double taxation treaty with a tax relief provision is available.”

In accordance with Articles 214.6 and 310.1 and Clause 2 of Article 312 of the Russian Tax Code, when paying out income on securities held in a foreign nominee securities account, the tax shall be calculated and withheld by the withholding agent exclusively on the basis of summarized information regarding the tax jurisdiction of securities holders or persons authorized to exercise the rights attached to the securities, without providing the withholding agent with any documents certifying the tax jurisdiction of the disclosed persons. The Russian Tax Code does not provide for a withholding agent’s obligation to collect such documents. It is also required to take account of the language of Clause 2 of Article 312 of the Russian Tax Code, pursuant to which the provisions of the said Clause that stipulate the need to provide a withholding agent with documents required to apply the provisions of double taxation treaty and tax reliefs thereunder do not apply to the application by withholding agents of international treaties in the cases provided for by Article 310.1 of the Russian Tax Code (see Russian Ministry of Finance’s Letters No. 03-08-05/24017 dated 21 May 2014 and No. 03-08-05/1793 dated 21 January 2014).

Do the provisions of the Letter cited above mean that a withholding agent may only apply a tax rate provided for by the double taxation treaty with the relevant country, as disclosed by a foreign nominee in summarized information that includes the ground to apply tax relief, if the withholding agent possesses documents certifying the tax residency status of income recipients? Is it correct that summarized information only, as received by a withholding agent pursuant to the Russian Tax Code, is insufficient for application of tax rates provided for by international treaties of the Russian Federation? This being said, we would also like to inform you that the collection of documents throughout the chain of foreign nominees and trustees and verification of such documents by the withholding agent is a lengthy and labor-intensive process that is impossible to complete within the time limits set forth by the Russian Tax Code for submission (and update) of information for tax withholding purposes.

2.2. “In view of the aforesaid, in case the information defined in Clauses 2-4 of Article 214.6 of the Code and Clauses 2-5 of Article 310.1 of the Code was duly provided, however there is no information on the tax residency of organization and/or individual exercising the rights on securities (or when these rights are exercised on their behalf), the rate of 15 percent set forth in Subclause 3 of Clause 3 of Article 284 of the Code applies to income payable to foreign organizations in the form of dividends on equities that are held in foreign nominee accounts, foreign authorized holder accounts and (or) DR program accounts.”

Do the above clarifications mean that in the event that a foreign nominee indicates, in summarized information, a country that has an international treaty with the Russian Federation as a taxpayer’s tax jurisdiction, but at the same time the tax disclosure omits a reference to the ground for application of preferential tax rates stipulated by the relevant international treaty for dividend payment, but includes a reference to Subclause 3 of Clause 3 of Article 284 of the Russian Tax Code, the withholding agent may apply a standard tax rate of 15%?

Given that Article 284 of the Russian Tax Code applies to legal entities only, please clarify whether the above cited provision of the Letter applies also to taxation of individuals?

2.3. “At the same time the documents certifying the tax residency required in case of a tax inspection under Subclause 3 of Clause 1 of Article 214.8 of the Code and Subclause 3 of Clause 1 of Article 310.2 of the Code, are also required only in case of tax reliefs under double taxation treaties.”
Does the above cited provision mean that, contrary to the provisions of Russian Ministry of Finance’s Letter No. 03-08-05/1793 dated 21 January 2014, documents certifying the tax residency status must only be available in case of application of preferential tax rates under international treaties, and that for taxpayers from countries that do not have an international treaty with the Russian Federation or Russian resident taxpayers availability (at the income payment date) of documents evidencing their tax residency status is not required?

Please confirm that documents evidencing the tax residency status, as referred to in Subclause 3 of Clause 1 of Article 214.8 and Subclause 3 of Clause 1 of Article 310.2 of the Russian Tax Code, may not be requested by tax authorities for said taxpayers also in the course of a tax inspection conducted to establish whether the tax was calculated and paid correctly.

Sincerely yours,

Eddie Astanin, Chairman of the Executive Board, NSD