In response to the inquiry regarding the documents required for the identification of the actual recipient (beneficial owner) of dividend income, the Tax and Customs Tariff Policy Department together with the Federal Tax Service of Russia advise as follows:

Articles 232 and 312 of the Tax Code of the Russian Federation (the “Tax Code”) that govern the application of double taxation treaties to non-Russian individuals and organizations receiving income from a source in the Russian Federation do not contain any provisions that oblige Russian withholding agents who received a certificate of residence (a “certificate”) from non-Russian taxpayers to identify the actual recipients of such taxpayers’ income.

The contents of a standard certificate form are governed, inter alia, by clause 4 of Russian Federal Tax Service’s Order No. ШИ-4-3/6дсп dated 18 February 2008, subject to the provisions of Article 4 of the OECD Model Tax Convention.

Certificates of residence issuable by Russian or non-Russian competent authorities for the purposes of application of double taxation treaties do not contain details of beneficial owners (actual recipients) of taxpayer’s income.

To identify the actual recipient (beneficial owner) of dividend income for the purposes of applying reduced tax rates under a double taxation treaty, a non-Russian shareholder may be requested to provide the following documents (information):

1) documents (information) showing that the income recipient has (or does not have) a discretion to dispose of or use the dividend income, including:

   documents showing the existence (or non-existence) of contractual or other legal obligations to third parties (resident or incorporated in a jurisdiction with which the Russian Federation does not have a double taxation treaty), which restrict the income recipient’s rights to use the dividend income for the purpose of benefiting from an alternative use thereof;

   documents showing that the further transfer of income by the income recipient to third parties (resident or incorporated in a jurisdiction with which the Russian Federation does not have a double taxation treaty) is (or is not) predetermined;

2) documents (information) showing that the income recipient incorporated or resident in a jurisdiction with which the Russian Federation has a double taxation treaty has tax liabilities payable, the existence of which evidences that there will be no Russian withholding tax savings in
the event of further transfer of the received income to third parties (resident or incorporated in a jurisdiction with which the Russian Federation does not have a double taxation treaty);

3) documents (information) showing that the income recipient incorporated or resident in a jurisdiction with which the Russian Federation has a double taxation treaty actually conducts business in such jurisdiction.

In our opinion, the fact that the Tax Code does not mention any specific documents required for the identification of the actual recipient of income shows that the lawmakers do not envisage that withholding agents should stick to a restricted list of documents, but rather they should pay attention to the substance of information provided to them.

Besides, a withholding agent’s duty to take steps to identify non-Russian counterparties as actual recipients of income is not excessive, as such steps are necessary to calculate fair tax payable. Similar provisions that require taxpayers to support their costs and expenses by documents for the purposes of calculating fair tax payable are contained in article 252 of the Tax Code, and, similarly, the Tax Code does not set out an exhaustive list of documents that can be used to support such costs and expenses.

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 are intended only to provide information and clarification, and, therefore, do not prevent taxpayers from applying provisions of Russian tax laws in a way that is different from the interpretation given in this Letter.

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