

FTS approves form of inquiry regarding beneficial owners

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Background New form of inquiry

On 20 December 2018 the Federal Tax Service (FTS) approved a form of inquiry which it will use to request information from legal entities regarding their beneficial owners (Order MMB-7-2/824).

Background

In 2017 Federal Law 115-FZ on Suppressing the Legalisation (Laundering) of Proceeds from Crime and the Financing of Terrorism was amended to allow state authorities to request information regarding beneficial owners. Following the amendments:

- certain authorised bodies were permitted to request information on beneficial owners from legal entities; and
- legal entities were required to maintain and disclose such information on request of an authorised body.

For the purposes of the law, 'legal entities' means not only Russian legal entities, but also foreign legal entities, including those that perform economic operations in Russia and interact with Russian clients.

According to Federal Law 115-FZ, authorised bodies can request the following information regarding beneficial owners:

- their surname, first name and patronymic (unless provided otherwise by law or national custom);
- their citizenship status;
- their date of birth;
- details of their identity document, migration card or document confirming their right to stay or reside in Russia (for foreign nationals or stateless persons);
- their place of residence (registration) or stay; and
- their taxpayer identification number (if available).

For the purposes of Federal Law 115-FZ, a 'beneficial owner of a legal entity' is defined as an individual who directly or indirectly (through third parties):

- owns a legal entity (ie, has an equity share therein of more than 25%); or
- has the ability to control a legal entity (such an opportunity might arise for a shareholder who has a small equity share, but significant control rights by virtue of, for example, a shareholder agreement).

At present, the FTS is one of two authorised bodies in Russia with the right to request information regarding the beneficial owners of legal entities (with the other being Rosfinmonitoring, Russia's anti-money laundering authority).

New form of inquiry

Although the FTS did not previously have an approved form of inquiry to request information regarding beneficial owners, it did request such information from legal entities. Such requests were made in free form as part of document requests when conducting field tax audits. Now, such requests will also be sent to legal entities which are not being audited during the relevant period.

The FTS can request information regarding the beneficial owners of legal entities to, among other things, identify tax evasion schemes. The FTS has recently been active in applying the concept of an

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"actual recipient of income", as enshrined in Article 7(3) of the Tax Code. This concept is close to that of a beneficiary owner, which is common in international practice. In essence, if agreements on the avoidance of double taxation and the norms of domestic legislation provide for a tax exemption for a payment source, such exemption does not apply where the resident of another state who receives income acts as a figurehead for another entity that is actually the beneficiary of the income in question.

The FTS has emphasised that the application of the beneficial owner of income concept does not require it to determine the ultimate beneficiary of a legal entity. It is sufficient to establish that the ultimate beneficiary is not the nominal recipient of the income.

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