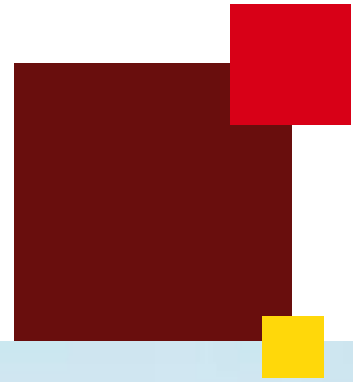




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Legal Overview

Tax on Withdrawal of Capital: what to wait for in 2021

14 April '20



One of the important tax measures declared by the President and the Government in late March - early April, is going to become the increase of the rate of withholding tax on income paid to so-called transit jurisdictions. Full parameters of such increase have not been officially announced, however, according to information available, Cyprus, Malta and Luxemburg have received Russia's proposal to increase the rate of taxes on dividends and interest to 15%. The full list of jurisdictions to which similar proposals will be sent is not yet available nor is there any clarity regarding the rate of tax on royalty which is also usually taxed at reduced rates.

It is important to note that after introduction in 2015 of the rule of "beneficiary ownership of income" (BOI) tax authorities started to contest the eligibility for reduced withholding tax rates under double taxation treaties (DTT) with a number of foreign countries. Such contesting is based on the assertion that the company being the recipient of payment does not engage in actual commercial activity and is in effect an instrument for transiting of income to real recipients who remain anonymous. The proposals which the President and the Government came up with proceed in effect from the irrefutable presumption that companies are registered in the jurisdictions to which changes will apply exclusively for the purpose of serving as an instrument for transiting of income, therefore the maximum tax rate provided for by the RF Tax code i.e. 15% shall apply to dividends. At the same time, the interest tax rate remains lower than the "default rate" (20%), but becomes higher than the one provided for by most of the DTTs.

Meanwhile the announced changes do not exclude possible application of the BOI principle to income received by companies incorporated in "transit" jurisdictions. This means that on the one hand application of even the 15% rate of the tax on interest may be contested by tax authorities if the first recipient's beneficiary ownership of the interest income is refuted. On the other hand, evidence to the effect that the BOI is not the company in a "transit" jurisdiction but a beneficiary included in the subsequent participation chain would in certain cases allow for decreasing of the tax rate below the announced 15%. For instance, an individual, being a Russian beneficiary of a Cypriot company, may claim application of the 13% tax rate if he/she proves that he/she actually receives income from a Russian company.

In view of the foregoing it is advisable to proceed with considering possible lawful optimization of the withholding tax rate applying the concept of beneficial ownership of income.

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