Russia extends release from withholding tax obligation on interest from Eurobonds


Background

Last year, Federal Law № 97-FZ dated 29 June 2012 “On Introduction of Amendments in Part One and Part Two of the Tax Code of the Russian Federation and Article 26 of Federal Law ‘On Banks and Banking Activity’” (the Law) came into force. The Law provides that Russian companies (i.e., Russian borrowers) are fully released from the obligation to withhold Russian profits tax from interest payments made to foreign companies on financing obtained under the Eurobond structures provided that such Eurobonds are issued before 1 January 2014.

Russia’s Ministry of Finance recently published the “Main Directions of Russian Tax Policy for 2014 and Planning for 2015 and 2016” (the Tax Policy). In this document the Ministry of Finance pointed out that the decision on the Russian withholding tax treatment of interest income payable under Eurobonds issued after 1 January 2014 should be made in 2013.

Under the Draft Law, the current release from the obligation to withhold Russian profits tax under the Eurobond structures is no longer limited to the Eurobonds issued before 1 January 2014 so in fact this release becomes permanent.

It should be noted, however, that despite the fact that the Tax Policy refers to a full exemption of Russian tax on interest from Eurobonds, the Draft Law does not envisage such an exemption and in essence merely extends the existing release for a tax agent from the obligation to withhold tax.
It should also be noted that the Tax Policy suggested to predicate the release from withholding tax on a “beneficial owner of interest income” not being a tax resident in an offshore jurisdiction. However, this condition is not reflected in the Draft Law. 

To come into force the Draft Law must be signed by the Russian President, which is likely to happen soon.
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