

Russia

# Ministry of Finance: Ownership Period Must Be Recalculated for Acquiring Company to Obtain Exemption of Dividends

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Report from our correspondent Kristina Trouch

The Ministry of Finance (MoF) has clarified that dividends received by a Russian resident company are subject to a zero corporate income tax rate, provided that on the day of the decision to pay dividends (or the decision to withdraw from the legal entity or to liquidate it), the entity receiving dividends has continuously owned at least 50% of shares in the authorized capital of the dividend payer for at least 365 calendar days, or owns depositary receipts that entitle it to receive dividends in an amount corresponding to at least 50% of the total amount of dividends payable by the legal entity (article 284, paragraph 3(1) of the Tax Code).

In the event of reorganization of a legal entity in the form of a merger with another Russian legal entity, the acquiring legal entity is considered reorganized from the moment an entry on the termination of the activities of the merged company is made in the Unified State Register of Legal Entities (article 57 of the Civil Code).

Under article 218, paragraph 2 of the Civil Code, in the case of reorganisation of a legal entity, the ownership of the assets of the reorganized entity passes to the legal entities that are its successors.

Therefore, the MoF explained that as a result of a merger between a Russian resident legal entity and another Russian legal entity, the ownership of shares held by the merged entity passes to the successor from the moment an entry is mentioned in the Unified State Register of Legal Entities about the termination of the merged entity.

Consequently, for the purposes of application by the successor of the zero corporate income tax rate under article 284 of the Tax Code, the period of ownership of shares held by the entity that merged with the successor entity must begin anew.

The MoF further explained that there are no grounds for calculating the period of continuous ownership of shares for the purposes of article 284, paragraph 3(1) of the Tax Code based on the rules stipulated in article 284.2, paragraph 6 of the Code.

Article 284.2 of the Tax Code regulates the application of a zero corporate income tax rate to transactions with shares (participation interest in the authorized capital) of Russian legal entities and/or foreign entities.

The procedure established by article 284.2, paragraph 6 of the Tax Code for determining the 5-year period of ownership of shares of the successor entity as a result of reorganization is used directly for the purposes of applying the zero corporate income tax rate provided for in article 284.2 of the Tax Code.

Moreover, article 284, paragraph 3(1) of the Tax Code does not allow the calculation of the 1-year period of ownership of shares for the purposes of applying a zero corporate income tax rate to dividend income received by Russian legal entities, as provided for in article 284.2, paragraph 6 of the Tax Code.

The MoF published Guidance letter No. 03-03-10/69388 on 31 August 2023.

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