

# Flash Report

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## **2011 Tax Code: Beneficial Ownership**



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### ***Beneficial ownership test applies from 1 January 2011***

From 1 January 2011 the Tax Code specifies that the non-resident recipient of income sourced in Ukraine must also be considered the beneficial owner of such income in order to benefit from reduced tax rates under relevant tax treaties.

According to the 2011 Tax Code, agents, nominee holders and other intermediaries in respect of received income cannot be beneficial owners of income sourced in Ukraine, and, therefore, are not entitled to favorable treaty provisions.

The beneficial ownership rules have been subject to uncertain interpretations in many jurisdictions, and it is likely to take time for the Ukrainian authorities and courts to determine their views.

If a tax treaty includes the beneficial ownership provision, there is a clear risk that the tax office will apply an aggressive approach to the arrangements. All arrangements with non-residents, particularly of a back-to-back nature, should be re-examined in light of the Tax Code.

Currently, the effective tax treaties for Ukraine with Cyprus, Spain and Mongolia do not have the beneficial ownership provisions.