

SUMMARY OF ESSAY

**THE ELUSIVE FINGERPRINT: AN ANALYSIS OF THE CURRENT CHALLENGES IN
IDENTIFYING BENEFICIAL OWNERS IN BILATERAL INCOME TAX TREATIES**

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Summary

“Beneficial ownership” has in recent years become a topic of increasing importance for international tax practitioners. The growing number of cross-border transactions have compelled domestic authorities to ask themselves whether treaty benefits should be awarded to a party holding title to either corporate stock, or an interest-bearing note, or even a piece of intellectual property, just because of apparent legal status. Should the lender of a particular sum of money be subject to a more favorable withholding tax rate simply because it is blessed by a Bilateral Income Tax Treaty (BITT) between two consenting nations, if the interest received from the source

State is soon thereafter reverted to an entity located elsewhere? Who should be the beneficial owner of a particular flow of funds in a structure consisting of multiple entities, each one with a specific affiliation to the taxable event that led to the application of a BITT? Is it appropriate from a tax policy perspective to attribute ownership to an "economically dominant" party if that approach sacrifices the legal certainty essential to every multinational business plan?

This paper discusses the main challenges in the identification of "beneficial owners" in cross-border transactions taking place today, and it specifically addresses whether the concept of "beneficial ownership" as it stands in our BITTs is fit for purpose – in other words, whether it efficiently targets the individuals or entities that should be deemed as the true recipients of any particular item of revenue and whether its terms are appropriate in light of the stated purpose of treaties to avoid both double taxation and double non-taxation of income. We conclude that "beneficial ownership", though an important feature of tax treaties nowadays, has design flaws that may hinder its proper application in the future: these flaws are the lack of consistency in the utilization of this standard by government agencies, the lack of detailed objective criteria for the qualification of beneficial owners both at the level of the OECD (because of the coupling of objective criteria with subjective rules) and in BITTs currently in effect, and also the inappropriate use of this standard as an instrument of political influence over foreign tax policy.