

PROTOCOL
BETWEEN
THE REPUBLIC OF AUSTRIA
AND
THE UNITED ARAB EMIRATES

AMENDING THE CONVENTION BETWEEN THE REPUBLIC OF AUSTRIA AND THE
UNITED ARAB EMIRATES WITH RESPECT TO TAXES ON INCOME, SIGNED IN
ABU DHABI ON 22 SEPTEMBER 2003

The Republic of Austria and the United Arab Emirates,

Desiring to conclude a Protocol amending the Convention between the Republic of Austria and the United Arab Emirates with respect to taxes on income, signed in Abu Dhabi on 22 September 2003 (hereinafter referred to as “the Convention”),

Have agreed as follows:

Article 1

The title to the Convention shall be deleted and replaced by the following:

“CONVENTION
BETWEEN
THE REPUBLIC OF AUSTRIA
AND
THE UNITED ARAB EMIRATES
FOR THE ELIMINATION OF DOUBLE TAXATION WITH RESPECT TO TAXES
ON INCOME AND THE PREVENTION OF TAX EVASION AND AVOIDANCE”

Article 2

The existing preamble of the Convention shall be replaced by the following preamble:

“The Republic of Austria and the United Arab Emirates,

Desiring to further develop their economic relationship and to enhance their cooperation in tax matters,

Intending to eliminate double taxation with respect to taxes on income without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Convention for the indirect benefit of residents of third States),

Have agreed as follows:”

Article 3

Sub-paragraph a) of paragraph 1 of Article 4 of the Convention shall be deleted and replaced by the following:

“a) in Austria:

any person who, under the laws of Austria, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof; this term, however, does not include any person who is liable to tax in Austria in respect only of income from sources in Austria;”

Article 4

Paragraph 1 of Article 10 of the Convention shall be deleted and replaced by the following:

“(1)

- a) Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.
- b) However, dividends paid by a company which is a resident of a Contracting State may also be taxed in that State according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the dividends.
- c) Notwithstanding the provisions of sub-paragraph b), dividends paid by a company which is a resident of a Contracting State shall be taxable only in the other Contracting State if the beneficial owner is:
 - (i) that other State itself, a political subdivision or local authority thereof or a Qualified Government Entity, or
 - (ii) a company (other than a partnership) which holds directly at least 10 per cent of the capital of the company paying the dividends.”

Article 5

Paragraph 1 of Article 24 of the Convention shall be deleted and replaced by the following:

“(1) In the case of Austria, double taxation shall be eliminated as follows:

Where a resident of Austria derives income which, in accordance with the provisions of this Convention, may be taxed in the United Arab Emirates, Austria shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in the United Arab Emirates.

Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to the income which may be taxed in the United Arab Emirates.”

Article 6

Article 27 of the Convention shall be deleted and replaced by the following:

“Article 27

EXCHANGE OF INFORMATION

(1) The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

(2) Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.

(3) In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

- a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of

which would be contrary to public policy (ordre public).

(4) If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

(5) In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.”

Article 7

The following new Article 28A shall be inserted into the Convention immediately after Article 28:

“Article 28A

ENTITLEMENT TO BENEFITS

Notwithstanding the other provisions of this Convention, a benefit under this Convention shall not be granted in respect of an item of income if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principle purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Convention.”

Article 8

The Protocol signed in Abu Dhabi on the 22nd day of September 2003, which forms an integral part of the Convention, shall be amended as follows:

1. The paragraph headed “Interpretation of the Convention” shall be deleted and replaced by the following paragraph:

“Interpretation of the Convention

It is understood that provisions of the Convention which are drafted according to the corresponding provisions of the OECD Model Convention on income and on capital shall generally be expected to have the same meaning as expressed in the OECD Commentaries thereon. The understanding in the preceding sentence will not apply with respect to any contrary interpretation agreed to by the competent authorities after the entry into force of the Convention. The OECD Commentaries – as they may be revised from time to time – constitute a means of interpretation. In case of any divergence in the interpretation as expressed in the OECD Commentaries, a common interpretation would have to be sought by mutual agreement according to Article 26.”

2. Sub-paragraph c) of the paragraph headed “Ad Article 4” shall be deleted and replaced by the following:

“c) the qualified government entities mentioned in sub-paragraph a) of the paragraph headed “Ad Article 10” of the Protocol in the case of the United Arab Emirates.”

3. The following new paragraph shall be added immediately after the paragraph headed “Ad Articles 7, 10 and 24”:

“Ad Article 10

With respect to sub-paragraph c) of paragraph 1 of Article 10 the term “qualified government entity” shall mean any entity or institution which is wholly owned directly or indirectly, by the federal or local government, a political subdivision, or a local authority thereof and shall include the following entities:

a) in the case of the United Arab Emirates:

- (i) Central Bank of the United Arab Emirates,
- (ii) Emirates Investment Authority,
- (iii) Abu Dhabi Investment Authority,
- (iv) Abu Dhabi Investment Council,
- (v) Investment Corporation of Dubai,
- (vi) Mubadala Investment Company,
- (vii) Abu Dhabi Developmental Holding Company (ADQ),
- (viii) International Petroleum Investment Company (IPIC),
- (ix) the Abu Dhabi Retirement Pensions and Benefits Fund,
- (x) the General Pension and Social Security Authority;
- (xi) any entity the capital of which is wholly owned directly or indirectly, by the United Arab Emirates, by the federal or local government, a political subdivision, or a local authority thereof, as shall be exchanged from time to time between the Contracting States through notifications by the competent authorities.

b) in the case of the Republic of Austria:

- (i) Oesterreichische Nationalbank (OeNB);
- (ii) any entity the capital of which is wholly owned directly or indirectly, by the Republic of Austria, as shall be exchanged from time to time between the Contracting States through notifications by the competent authorities.”

4. The paragraph headed “Ad Articles 8 and 13” shall be deleted.

5. The paragraph headed “Ad Articles 10, 11 and 13” shall be deleted and replaced by the following paragraph:

“Ad Articles 11 and 13

For the purposes of the interpretation of Articles 11 and 13 it is understood that interest and capital gains from the alienation of shares in a company, or of securities, bonds or debentures derived by a resident of a Contracting State, including the government, financial institutions or investment companies of that State, shall be taxable only in that State of residence.”

6. The following new paragraph shall be added immediately after the paragraph headed “Ad Article 23”:

“Ad Article 27

(i) The competent authority of the applicant State shall provide the following information to the competent authority of the requested State when making a request for information under the Convention to demonstrate the foreseeable relevance of the information to the request:

- a) the identity of the person under examination or investigation;
- b) a statement of the information sought including its nature and the form in which the applicant State wishes to receive the information from the requested State;
- c) the tax purpose for which the information is sought;
- d) grounds for believing that the information requested is held in the requested State or is in the possession or control of a person within the jurisdiction of the requested State;
- e) to the extent known, the name and address of any person believed to be in possession of the requested information;
- f) a statement that the applicant State has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

(ii) It is understood that the exchange of information provided in Article 27 does not include measures which constitute “fishing expeditions”.

(iii) With reference to the final sentence of paragraph 2 of Article 27 and in line with paragraph 1 of the Protocol on the “Interpretation of the Convention”, it is agreed that the guidance in paragraph 12.3 of the Commentary on Article 26 of the OECD Model Convention – as it may be revised from time to time – shall be followed. In seeking the authorization of the competent authority of the supplying State, the requesting State shall specify the other non-tax purposes for which it wishes to use the information and shall identify the legal agencies or judicial authorities with whom it will share the information.”

Article 9

(1) This Protocol shall be ratified and the instruments of ratification shall be exchanged as soon as possible.

(2) The Protocol shall enter into force on the first day of the third month next following that in which the exchange of instruments of ratification takes place and its provisions shall have effect:

- a) in respect of taxes withheld at source, for amounts paid after December 31 of the calendar year in which the exchange of instruments of ratification takes place;
- b) in respect of other taxes, for any fiscal year beginning after December 31 of the calendar

year in which the exchange of instruments of ratification takes place.

(3) This Protocol shall form an integral part of the Convention and be terminated at the time of termination of the Convention.

IN WITNESS WHEREOF, the undersigned, duly authorised thereto, have signed this Protocol.

DONE in duplicate at ***, on ***, in the German, Arab and English languages, each text being equally authentic. In the case of divergence between the texts the English text shall prevail.

For the Republic of Austria:

For the United Arab Emirates:
