

PROTOCOL
AMENDING THE CONVENTION
BETWEEN
THE GOVERNMENT OF THE REPUBLIC OF AUSTRIA AND
THE GOVERNMENT OF THE RUSSIAN FEDERATION
FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO
TAXES ON INCOME AND ON CAPITAL WITH PROTOCOL
SIGNED IN MOSCOW ON 13 APRIL 2000

The Government of the Republic of Austria and the Government of the Russian Federation desiring to conclude a Protocol amending the Convention for the avoidance of double taxation with respect to taxes on income and on capital with Protocol, signed in Moscow on 13th April 2000 (hereinafter referred to as "the Convention"),

Have agreed as follows:

Article 1

In Article 2 “Taxes Covered” of the Convention, paragraph 3, sub-paragraph b), the list of the Russian taxes shall be modified as follows:

- “(i) the tax on profits of organisations;
 - (ii) the tax on income of individuals;
 - (iii) the tax on property of organisations;
 - (iv) the tax on property of individuals
- (hereinafter referred to as “Russian taxes”).”

Article 2

1. Sub-paragraph a) of paragraph 2 of Article 10 “Dividends” of the Convention shall be modified as follows:

“a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 10 per cent of the capital of the company paying the dividends;”

2. Paragraph 3 of Article 10 of the Convention shall be modified as follows:

“3. The term “dividends” as used in this Article means income from shares of any kind and other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident. This term also means any payments on units of the mutual investment funds or similar collective investment vehicles (other than collective investment vehicles organized primarily for investing in immovable property, if at least 10 per cent of the units or other rights of such a vehicle belongs to the beneficial owner of that income).”

Article 3

1. New paragraphs 4 and 5 shall be added to Article 13 “Capital Gains” of the Convention that shall read as follows:

“4. Gains derived by a resident of a Contracting State from the alienation of shares or similar rights deriving more than 50 % of their value directly or indirectly from immovable property situated in the other Contracting State may be taxed in that other State.

5. Paragraph 4 shall not apply to gains derived from:

- a) the alienation of shares in the course of a corporate reorganisation,
- b) the alienation of shares listed on a registered stock exchange.”

2. Existing paragraph 4 of Article 13 of the Convention shall be renumbered as paragraph 6 and shall be modified as follows:

“Gains from the alienation of any property other than that referred to in paragraphs 1 to 5, shall be taxable only in the Contracting State of which the alienator is a resident.”

Article 4

A new paragraph 3 shall be added to Article 17 “Artistes and Sportsmen” of the Convention that shall read as follows:

“3. The provisions of paragraphs 1 and 2 shall not apply to income derived from activities performed in a Contracting State by entertainers or sportsmen if the visit to that State is wholly or mainly supported by the other Contracting State or a political subdivision or local authority thereof or by funds basically financed by those authorities. In such a case the income shall be taxable only in the State of which the entertainer or sportsman is a resident.”

Article 5

Sub-paragraph b) of paragraph 1 of Article 23 “Elimination of Double Taxation” of the Convention shall be modified as follows:

“b) Where a resident of Austria derives items of income which, in accordance with the provisions of Article 10 or paragraph 4 of Article 13, may be taxed in the Russian Federation, Austria shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in the Russian Federation. Such deduction shall not, however, exceed that part of the tax, as

computed before the deduction is given which is attributable to such items of income derived from the Russian Federation.“

Article 6

Article 26 of the Convention shall be replaced by the following:

“Article 26 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) or to the basic rights granted by a State, in particular in the area of data protection.

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

A new Article 26.1 “Assistance in Collection” shall be added to the Convention that shall read as follows:

“Article 26.1 Assistance in Collection of Taxes

“1. The Contracting States shall lend assistance to each other in the collection of tax to the extent needed to ensure that any exemption or reduced rate of tax granted under this Convention shall not be enjoyed by persons not entitled to such benefits. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.

2. In no case shall the provisions of this Article 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 carry out measures which would be contrary to public policy (ordre public).

3. The Contracting States undertake to lend each other support and assistance in the collection of taxes to the extent necessary to ensure that relief granted by the present Convention from taxation imposed by a Contracting State does not ensure to the benefit of persons not entitled thereto, provided that:

a) the requesting State must produce a copy of a document certified by its competent authority specifying that the sums referred to for the collection of which it is requesting the intervention of the other State, are finally due and enforceable;

b) a document produced in accordance with the provisions of sub-paragraph a) of paragraph 3 shall be rendered enforceable in accordance with the laws of the requested State. It is specified that under current Austrian legislation, such documents must be rendered enforceable by the Regional Tax Offices (Finanzämter); in the Russian Federation such documents are rendered enforceable by the Federal Tax Service;

c) the requested State shall effect recovery in accordance with the rules governing the recovery of similar tax debts of its own; however, tax debts to be recovered shall not be regarded as privileged debts in the requested State. In the Republic of Austria, judicial execution shall be requested by the Finanzprokuratur or by the finance office delegated to act on its behalf; in the Russian Federation judicial execution is done by the Federal Bailiff Service; and

d) appeals concerning the existence or amount of the debt shall lie only to the relevant authority of the requesting State.

The provisions of this paragraph shall not impose upon either Contracting State the obligation to carry out administrative measures different from those used in the collection of its own tax, or which would be contrary to its sovereignty, security, public policy or its essential interests.”

Article 8

A new Article 26.2 “Limitation of Benefits” shall be added to the Convention that shall read as follows:

“Article 26.2
Limitation of Benefits

Notwithstanding the provisions of any other Article of this Convention, a resident of a Contracting State shall not receive the benefit of any reduction in or exemption from tax provided for in the Convention by the other Contracting State if the main purpose or one of the main purposes of such resident or a person connected with such resident was to obtain the benefits of the Convention.”

Article 9

The following provisions shall be added to the existing Protocol to the Convention, which shall form an integral part of that Protocol:

“In General:

1. Interpretation of the Convention:

It is understood that provisions of the Convention which are drafted according to the corresponding provisions of the OECD Model Tax Convention on Income and on Capital (hereinafter referred to as "the OECD Model") shall generally be expected to have the same meaning as expressed in the OECD Commentary thereon. The understanding in the preceding sentence will not apply with respect to the following:

- a) any reservations or observations to the OECD Model or its Commentary by either Contracting State;
- b) any contrary interpretations in the Convention and its Protocol;
- c) any contrary interpretation in a published explanation by one of the Contracting States that has been provided to the competent authority of the other Contracting State prior to the entry into force of the Convention;
- d) any contrary interpretation agreed to by the competent authorities after the entry into force of the Convention.

The OECD Commentary - as it may be revised from time to time - constitutes a means of interpretation in the sense of the Vienna Convention of 23 May 1969 on the Law of Treaties.

2. Any information received under Article 26 “Exchange of Information” of this Convention or a certificate of residence or any other document issued by the competent authority of a Contracting State or its authorised representative shall not require a legalisation or an apostille for the purpose of application in the other Contracting State, including its use in the courts and administrative bodies.

Ad Article 1:

It is understood that the basic domestic rules set by domestic tax laws of the Contracting States for determining which facts give rise to a tax liability (anti-abuse rules) are not addressed in tax treaties and are therefore not affected by them.

Ad Article 3:

The term “political subdivision” in this Convention means, with respect to the Russian Federation, subjects of the Russian Federation, defined as such according to its legislation.

Ad Article 4:

It is understood that the place of effective management of a person other than an individual is situated where the key management and commercial decisions that are necessary for the conduct of the entity’s business as a whole are in substance made. All relevant facts and circumstances must be examined to determine the place of effective management. An entity may have more than one place of management, but it can only have one place of effective management at any one time.

Ad Article 6:

The provisions of paragraphs 1 and 3 of Article 6 shall also apply to the income received through a real estate investment fund or a similar collective investment vehicle, which is organized primarily for investing in immovable property and in which the beneficial owner holds at least 10 per cent of the units or other rights.

Ad Article 25:

It is understood that to the event that pursuant to an agreement or convention for the avoidance of double taxation concluded with a third country after the date of signature of this Protocol, Russia agrees to include an arbitration provision in such agreement or convention, the competent authorities of the Russian Federation and the Republic of Austria will start negotiations, as soon as possible, in view of concluding an amending Protocol aiming at inserting an arbitration provision into this Convention.

Ad Article 26:

1. 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.

2. It is understood that the exchange of information provided in Article 26 does not include measures which constitute “fishing expeditions” or to request information that is unlikely to be relevant to the tax affairs of a given taxpayer.

3. It is understood that paragraph 5 of Article 26 does not require the Contracting States to exchange information on a spontaneous or automatic basis.

4. It is understood that – in addition to the above mentioned principles – for the interpretation of Article 26 the principles established in the OECD Commentary on the OECD Model Tax Convention on Income and on Capital and also in the Commentary on the OECD Agreement on Exchange of Information on Tax Matters shall be considered as well."

Article 10

Each of the Contracting States shall notify the other of the completion of the procedure required by their respective law for the bringing into force of this Protocol. The Protocol shall enter into force thirty days after the date of the receipt of the latter of the notifications and its provisions shall have effect in both States for taxable periods beginning on or after 1st January in the calendar year next following that in which the Protocol enters into force.

IN WITNESS WHEREOF the plenipotentiaries of the two Contracting States, duly authorised thereto, have signed this Protocol.

Done in duplicate at this day of in the German, Russian and English languages, all texts being equally authentic. In the case of any divergence between the German and the Russian texts, the English text shall be the operative one.

For the Government
of the Republic of Austria

For the Government
of the Russian Federation