

PROTOCOL
BETWEEN
THE REPUBLIC OF AUSTRIA
AND
THE REPUBLIC OF UZBEKISTAN
AND ADDITIONAL PROTOCOL

AMENDING THE CONVENTION BETWEEN THE REPUBLIC
OF AUSTRIA AND THE REPUBLIC OF UZBEKISTAN FOR THE AVOIDANCE OF
DOUBLE TAXATION AND PREVENTION OF FISCAL EVASION WITH RESPECT TO
TAXES ON INCOME AND ON PROPERTY,
SIGNED AT TASHKENT ON 14 JUNE 2000

The Republic of Austria and the Republic of Uzbekistan,

Desiring to conclude a Protocol and Additional Protocol amending the Convention between the Republic of Austria and the Republic of Uzbekistan for the avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income and on property, signed at Tashkent on 14 June 2000 (hereinafter referred to as “the Convention”);

Have agreed as follows:

Article 1

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

“The Republic of Austria and the Republic of Uzbekistan,

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

Intending to conclude a Convention for the elimination of double taxation and prevention of fiscal evasion with respect to taxes on income and on property 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 2

Paragraph 3 of Article 4 of the Convention shall be deleted and replaced by the following:

“(3) Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the State in which its place of effective management is situated. In cases of doubt, the competent authorities of the Contracting States shall endeavour to determine by mutual agreement the State in which the person’s place of effective management is exercised, and in doing so shall take into account all relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by this Convention except to the extent and in such manner as may be agreed upon by the competent authorities of the Contracting States.”

Article 3

Paragraph 3 of Article 10 of the Convention shall be deleted and replaced by the following:

“(3) The term “dividends” as used in this Article means income from shares, “jouissance” shares or “jouissance” rights, mining shares, founders’ shares or other rights, not being debt-claims, participating in profits, as well as income 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.”

Article 4

Article 26 of the Convention shall be deleted and 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 the preceding paragraphs 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 5

The following new Article 26.1 shall be inserted immediately after Article 26 of the Convention:

“Article 26.1 ASSISTANCE IN THE COLLECTION OF TAXES

(1) The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.

(2) The term “revenue claim” as used in this Article means an amount owed in respect of 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 this Convention or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.

(3) When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting

State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.

(4) When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection.

(5) Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.

(6) Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.

(7) Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be:

- a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, or
- b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection

the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.

(8) 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);

- c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;
- d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State.”

Article 6

The following new Article 27.1 shall be inserted immediately after Article 27 of the Convention:

“Article 27.1 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 or property 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 7

(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 the Protocol shall have effect in respect of taxes for any fiscal year beginning after December 31 in the calendar year in which the exchange of instruments of ratification takes place.

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, Uzbek and English languages, each text being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Republic of Austria:

For the Republic of Uzbekistan:

ADDITIONAL PROTOCOL

At the moment of signing the Protocol amending the Convention for the avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income and on property signed at Tashkent on 14 June 2000, this day concluded between the Republic of Austria and the Republic of Uzbekistan, the undersigned have agreed that the following provisions shall form an integral part of the Protocol:

(1) With reference to Article 26

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 26 does not include measures which constitute “fishing expeditions”.

(2) 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 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 this Protocol;
- c) 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.

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

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

For the Republic of Austria:

For the Republic of Uzbekistan:
