

DOUBLE TAXATION TREATY BETWEEN AUSTRIA AND THE RUSSIAN FEDERATION

1.1 Introduction

The Double Taxation Treaty between Austria and the Russian Federation as amended on 20 June 2019 (DTT 2019 is currently in force.¹

Last Wednesday, 25 March 2020, Russian President Vladimir Putin published measures to protect the economy due to the coronavirus 2019 (COVID-19) and instructed the government of the Russian Federation to implement them. Among other things, existing double taxation treaties are to be amended or, if necessary, terminated.² It is unclear whether the DTT 2019 is affected.

1.2 Statement

1.2.1 Current Situation

Austrian parent companies with a minimum shareholding of 10% of the share capital in subsidiaries in the Russian Federation currently benefit from the favourable regime of the DTT 2019, which means that dividend distributions from the Russian subsidiary are only subject to a withholding tax of 5%, which must be paid to the Russian tax authorities.³

In principle, this does not prevent the incoming dividend from being taxed in Austria as well, with the withholding tax credited. However, under Austrian law, these dividends are covered by the tax privilege of "international intercompany shareholding". This means that dividends from a foreign subsidiary to an Austrian parent company that has held a 10% share in the foreign subsidiary for a period of at least one year before the date of distribution are not taxed, provided that the payment of the dividend was tax deductible at the level of the distributing foreign subsidiary and thus reduced the tax liability in the source state.⁴

Under these conditions, the tax burden remains 5% of the dividend distribution.

1.2.2 Intended Changes by Russian Federation

The income tax for natural persons in Russia is 13% even for those in a low income bracket. In contrast, other natural persons use the existing double taxation treaties to optimize their taxes and thus achieve a real burden of 2% of the gross amount.

To counteract this injustice, double taxation treaties with so-called "offshore jurisdictions" are to be renegotiated and the withholding tax is to be raised to 15%. It currently seems that the double taxation treaties with Cyprus, the Netherlands, Luxembourg, Hong Kong, Singapore and Switzerland have been affected.⁵ Other double taxation treaties, which also contain a withholding tax significantly below 15%, could in any case be subject to changes.

¹ <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20002582>, Status: 27 March 2020.

² <https://bcs-express.ru/novosti-i-analitika/putin-obiejavil-nalog-na-dividendy-vyvodimye-v-ofshory>, Status: 27 March 2020; <https://www.kommersant.ru/doc/4301580>, Status: 27 March 2020.

³ Art 10 Z 2 lit a DTT 2019.

⁴ Section 10 Corporate Tax Act

⁵ <https://bcs-express.ru/novosti-i-analitika/putin-obiejavil-nalog-na-dividendy-vyvodimye-v-ofshory>, Status: 27 March 2020.

If no agreement can be reached on the adjustment of the withholding tax, the relevant double taxation agreements should be terminated,⁶ which would result in effective double taxation.

1.2.3 Projection

According to Art 29 DTT 2019, DTT 2019 may be terminated by any contracting state no later than 30 June of each calendar year with effect 31 December of the same calendar year, so that DTT 2019 ceases to be in force on 1 January of the following calendar year. This means that the Russian Federation could terminate DTT 2019 on 30 June 2020, meaning that it would no longer be applicable from 2021 onwards. This would mean that both states would be able to tax dividend payments in full. However, the Austrian privilege of international intercompany shareholding would remain applicable.

Changes to the double taxation agreement between Austria and the Russian Federation could, however, be contractually agreed upon at an earlier time by mutual consent. It is not possible at present - in the absence of any reaction from the Austrian government - to estimate a period of time in more detail. According to a press release by the Russian Ministry of Finance, the changes announced by the President are to be limited to double taxation agreements with "offshore jurisdictions", such as Cyprus in particular, and are to enter into force on 1 January 2021 at the earliest with no retroactive effect.⁷

It would therefore be advisable for the Austrian parent companies affected to take precautions, as there is a very probable risk of an increase in withholding tax from 5% to 15%. As a precautionary measure, any distributable dividends should be paid out promptly, at least in 2020.

1.3 Executive Summary

Dividend distributions between companies which are resident in the various contracting states to DTT 2019 are subject to withholding tax. This means that the contracting state in which the company making the distribution is resident is entitled to withhold the percentage of the dividend payment set out in Art 10 DTT 2019.

At present, DTT 2019 provides for a withholding tax of 5% of the gross amount, provided that the distribution is made to a corporation which holds at least 10% of the subsidiary.⁸ Dividend distributions in all other cases are subject to a withholding tax of 15%.⁹

Plans include changing this withholding tax to 15% for all dividends. It is currently not known whether or when these changes will come into force.

⁶ <https://bcs-express.ru/novosti-i-analitika/putin-obieiavil-nalog-na-dividendy-vyvodimye-v-ofshory>, Status: 27 March 2020.

⁷ <https://www.vedomosti.ru/economics/news/2020/03/26/826350-o>, Status: 27 March 2020.

⁸ Art 10 Z 2 lit a DTT 2019.

⁹ Art 10 Z 2 lit a DTT 2019.