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THE AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF POLAND AND THE GOVERNMENT OF THE RUSSIAN FEDERATION CONCERNING THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO INCOME AND PROPERTY TAXES

22 мая 1992 г. было подписано соглашение между правительствами Республики Польша и Российской Федерации, касающееся упразднения системы двойного налогообложения в отношении подоходного налога и налога на собственность. Необходимость подписания этого соглашения объясняется намерением обеих сторон развивать и укреплять деловое, научное, техническое и культурное сотрудничество между государствами и избежать двойного налогообложения при взимании подоходного налога и налога на собственность. Рассматриваются основные преимущества такого законодательного регулирования.

On 22nd May 1992 in Moscow an agreement between the Government of the Republic of Poland and the Government of the Russian Federation concerning to the avoidance of double taxation with respect to the income and property taxes. The justification to conclude this agreement was the intention of the parties to develop and solidify the business, academic, technical and cultural cooperation between these states and the intention to eliminate double taxation to the income and property taxes. The article shows main advantages of such a regulation.

1. Introduction

The taxation system which is binding in Poland with regard to income taxes provides for the differentiation between individual income taxes and corporate income taxes. This issue is regulated by two main legal acts. The first one is the act of 26th July 1991 on the individual income tax (Dz. U. [the Journal of Laws] of 2000, No.: 14, position 176 with amendments), pursuant to which, the individuals who are domiciled on the territory of the Republic of Poland, are subject to obligation to pay taxes on their entire income irrespectively of the place of their revenue sources. The individuals who are not domiciled on the territory of the Republic of Poland, are subject to the obligation to pay taxes only on the income from the work performed on the territory of Republic of Poland on the basis of function-based relationship or employment relationship, irrespectively of the place of the remuneration payment and also on other income generated on the territory of Republic of Poland with the observance of the agreements on the avoidance of double taxation, in which the Republic of Poland is a party. The other legal act is the act of 15th February 1992 on the corporate income tax (Dz. U. [the Journal of Laws] of 2000 No.: 54, position 654 with amendments), pursuant to which the taxpayers who are corporate bodies, whose registered office or management board is located on the territory of the Republic of Poland, are subject to the obligation to pay taxes on their entire income irrespectively of the place of their generation. In this case the income generated outside the territory of the Republic of Poland is free from taxation, provided that an international agreement in which the Republic of Poland is a party provides for this.

2. The agreement between the Government of the Republic of Poland and the Government of the Russian Federation

2.1. General information

It clearly stems form the above information that Polish fiscal law, similarly as the taxation systems of the majority of the world countries provides for the necessity of the regulation aiming at the avoidance of double taxation of their citizens and enterprises. These regulations generally have forms of bilateral international agreements in which the Republic of Poland and another state are parties.

On 22nd May 1992 in Moscow an agreement between the Government of the Republic of Poland and the Government of the Russian Federation concerning to the avoidance of double taxation with respect to the income and property taxes (Dz. U. [the Journal of Laws] of 1993 No.: 125, position 569). The justification to conclude this agreement was the intention of the parties to develop and solidify the business, academic, technical and cultural cooperation between these states and the intention to eliminate double taxation to the income and property taxes.

2.2. The subjective scope of the agreement

The contract with its subjective scope comprises the persons whose domicile or registered office is located in one or two countries of the contract. The term «persons whose domicile or registered office is located in a country of the contract» refers to any person who, pursuant to the law of this country, is subject to taxation in this country with regard to their domicile, place of a permanent residence, registration place of a body corporate or any other criterion with a similar character. If the income is generated by a general partnership, the place of domicile is then defined to be the place of domicile of the person subject to taxation on account of the income of this partnership. If, pursuant to the above-stated provisions, a person that is not an individual has the registered office in both states of the agreement; the place of the actual management shall be regarded as the person's actual registered office. In the case that an individual has domiciles in both countries of the agreement, their status shall be defined according to the principles stipulating that the place of domicile shall be defined is the place of the person's permanent domicile; if the person has permanent domiciles in both countries, the country of their closer personal and business connections shall be regarded as their domicile (the centre of their vital interest); if it is not possible to determine in which of these countries this person has the centre of their vital interest or if they have no permanent domicile in any of these countries, the country in which the person usually stays shall be regarded as the person's domicile; in the case that the person usually stays in both countries or they do not stay in any of these two countries, the person shall be regarded to have domicile in the country whose citizen they are; if the person is the citizen of both countries or none of them, the appropriate authorities of both countries shall solve the problem by means of a mutual agreement.

2.3. The objective scope of the agreement

As for the objective scope of the agreement, it concerns, irrespectively of the method of collection, the income and property taxes or the taxes on part of the general income or general property which are collected for the benefit of each country of the agreement. The taxes on income and property are all the taxes which are collected from the entire income, entire property or part of income or part of property, including the taxes on the transfer of ownership of movable property or immovable property, the taxes on general sums of remunerations paid by corporations as well as the taxes on the property increase.

The currently existing taxes subject to the Agreement comprise the following:

a) in Poland:

1) corporate income tax,

2) personal income tax,

3) agricultural tax,

4) hereinafter referred to as «Polish taxes»;

b) in Russian Federation:

1) the taxes on profits and incomes stipulated in the legal acts of the Russian Federation – «On the Profit Tax of Corporations and Organisations», «On Taxation of Banks», «On Income Tax of the Insurance Activity» and «On Personal Income Tax»,

2) the taxes on property stipulated in the legal acts of the Russian Federation – «On Corporate Property Tax» and «On Personal Property Tax», hereinafter referred to as «Russian taxes».

The Agreement applies to all the taxes of the same or similar type referred to above, which, after signing this contract, shall be introduced together with the existing taxes or instead of them, including the taxes similar to those existing in one country of the agreement, but not applied in the other, and which may be later on introduced in this other country.

2.4. Income tax

The profits generated in one country of the agreement by the person whose domicile or

registered office is in the other country to the agreement may be subject to taxation in the first country only when particular profits are generated by the enterprise located in this country and only to the extend in which they may be ascribed to a particular enterprise. If a person with a domicile or registered office in one country of the agreement performs their activity in the other country of the agreement through an enterprise located in this country, in each of the countries to the agreement, the profits which could be gained if the enterprise performed an identical or similar activity in the same or similar condition and if the enterprise was absolutely independent of the person to whom it belongs, should be ascribed to this the enterprise. The determination of the company profits should be carried out each year in the same way, unless there are justified reasons to act differently.

2.5. Tax on interests

The term «interests» with respect to this Contract means the incomes on all kinds of claims resulting from debts, in particular the incomes on public loans and the incomes on bonds or promissory notes, including the bonuses and awards related to such promissory notes, bonds or loans and also the incomes of other type, which, pursuant to the taxation legislature of the country in which they are generated, are equal to the income on loans.

The interests which are generated in a country of the agreement and which are paid to the person whose domicile or registered seat in the other country of the agreement, may be subject to taxation in this other country. However, such interests may also be subject to taxation in the countrty of the agreement in which they are generated and pursuant to the legislature of this country, yet the tax determined in such a way cannot exceed 10 per cent of the gross amount of such interests.

2.6. Taxes on hired labour

Pursuant to the agreement, salaries, wages and other similar remunerations which a person whose domicile is in a country of the agreement receives from hired labour, are subject to taxation only in this country unless the work is being done in the other country of the agreement. If the work is being done there, the remuneration for this work may be subject to taxation in this other country. However, the remunerations which the person with domicile in a country of the agreement generates on the work performed in the other country of the agreement, shall be subject to taxation only in the first country in the following conditions:

a) the recipient of the remunerations stays in the other country for a period or periods no exceeding 183 days altogether within one calendar year, and

b) remunerations are paid by the employer who does not have the domicile or registered office in the other country or they are paid on his behalf, and

c) remunerations are not a paid by an enterprise or any permanent intitution which the employer owns in the other country.

2.7. Provisions on the avoidance of double taxation

If a person with a domicile or registered office in a country of the agreement generates income which, pursuant to the provisions of this agreement may be subject to taxation in the other a country of the agreement, the amount of the tax on this income to be paid in this other country of the agreement shall be subtracted from the amount of the income tax to be collected from this person in the first country of the agreement. Such a subtraction cannot however exceed the amount of the tax of the first country of the agreement calculated from the income in accordance with the tax legislation and practice applied in this country.

3. Conclusion

The agreement between the government of the Republic of Poland and the government of the Russian Federation concerning the avoidance of double taxation with respect to the income and property taxes became effective on 22nd February 1993. Its practical application indicates the achievement of the desired effect by the parties and helps to improve the relationships between these countries as well as to the permanent improvement of the economic growth by means of enabling the citizens and business entities of the signatories to carry out professional and business activity on the territory of the member states.