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Legal alert

Suspension of the most popular tax agreements between Russia and countries of the unfriendly world

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On 8 August 2023, Decree of the President of the Russian Federation No. 595 “On the Russian Federation’s suspension of certain provisions of international agreements on taxation to which the Russian Federation is a party” was published. According to its provisions, the Russian Federation is suspending the main provisions of double taxation treaties (“**DTT**”), and the Government has been instructed to submit the relevant draft law to the State Duma of the Russian Federation in the near future.

According to the regulations governing the Decree that are outlined in item 4 of article 37 FZ No. 101-FZ, it was established that such international agreements may be suspended by the President of the RF “in cases demanding the adoption of urgent measures” and by the Duma’s ratification of the relevant bill in concert with the mandatory, immediate notification of Federation Council and the State Duma.

After the President of the RF signs the law as required by the procedure in FZ No. 101-FZ, the main provisions of the DTTs will be suspended which will entail the cessation of the application of provisions on lower tax rates as well as benefits when making payouts to residents of the following countries:

1. Australia
2. Austria
3. Albania
4. Belgium
5. Bulgaria
6. Great Britain and Northern Ireland
7. Hungary
8. Germany
9. Greece
10. Denmark
11. Ireland
12. Iceland
13. Spain
14. Italy
15. Canada
16. Cyprus
17. Lithuania
18. Luxembourg
19. North Macedonia
20. Malta
21. New Zealand
22. Norway
23. Poland
24. Portugal
25. South Korea
26. Romania
27. Singapore
28. Slovakia
29. Slovenia
30. USA
31. Finland
32. France
33. Croatia
34. Montenegro
35. Czech Republic
36. Switzerland
37. Sweden
38. Japan

Types income deprived of benefits

1. Dividends
2. Interest on loan obligations and securities
3. Royalties

It is important to note that the Decree **does not specify a date** from which the DTTs will actually be suspended. It is expected that such date will be given in the adopted law. From said date indicating the start of the suspension, tax agents will no longer have the right to apply tax benefits at source when making payouts and shall withhold taxes at normal rates (when transferring funds, regardless of whether the payments relate to income from previous years or the current period):

Dividends	15%
Interest	20% excluding interest on loans from foreign banks and ECAs*
Royalties	20%

Income on transactions on the sale of shares in companies

Transactions on the sale of shares in companies will generally not be affected by the suspension of the DTTs since such income was not subject to taxation in the majority of the treaties, which is in line with the provisions of Russian tax law.

As before, the requirements of Russian legislation will impose the payment of taxes on such transactions if the sale of shares is made in relation to a company with a real estate share of more than 50%.

Permanent establishment

For permanent establishment, the suspension of the DTTs will be relevant mainly in cases where foreign companies did not recognize such PE in the Russian Federation due to narrower concepts of permanent missions in the DTTs than in the RF Tax Code, in particular, in cases of creating construction sites in the Russian Federation.

Offsetting foreign taxes in Russia

In accordance with the Decree, the provisions which allow for taxes paid on the territory of the RF to be offset against the payment of foreign tax and vice versa will not be stricken from most of the DTTs.

This means that Russian companies will be able to continue to offset sums withheld tax as before. The ability of foreign companies to offset such taxes now depends on the national legislation of the country of incorporation.

Provisions that will remain effective

The general provisions of most of the DTTs will not be subject to the Decree and will remain effective, namely:

- Information exchange
- Elimination of double taxation
- Mutual agreement procedures
- Employees of diplomatic missions and employees of consular offices

*On 11 August 2023, the press center of the Russian Ministry of Finance announced that in connection with the adoption of Decree No. 585, when paying income in the form of interest to:

- foreign banks
- export credit agencies

located in unfriendly countries who were previously exempt from withholding tax (or applied a reduced withholding tax rate) under Russia's international tax treaties, which are suspended by the Decree.

Tax agents are entitled to continue not to calculate and not withhold corporate income tax on such income from interest (or to calculate and withhold such tax at an appropriate reduced rate) provided that such foreign organizations (agencies) have an actual right to the income received.

As noted in a press release from the Russian Ministry of Finance, the necessary amendments to the Tax Code of the Russian Federation will be prepared during the fall session of the State Duma in 2023 and will be applied to the specified income in the form of interest paid starting from the date of suspension of the provisions of Russia's international tax treaties.

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