Russia; Malta

# Russian Ministry of Finance: Capital Gains from Sale of Shares Not Taxable in Russia Under Conditions

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Report from our correspondent Kristina Trouch

The Russian Ministry of Finance (MoF) has clarified that the capital gains derived by an individual, a tax resident of Malta, from the sale of shares held in the capital of a Russian limited liability company are not taxable in Russia under certain conditions.

Article 7 of the Russian Tax Code stipulates that tax liabilities must be determined in light of an applicable tax treaty which prevails over any conflicting Russian law provisions.

Under article 13, paragraph 4 of the Malta-Russia Income Tax Treaty (2013) (the Treaty), gains derived by a resident of Malta from the alienation of shares or other rights, more than 50% of the value of which is derived directly or indirectly from immovable property situated in Russia, may be taxed in Russia.

Article 13, paragraph 5 of the Treaty states that gains from the alienation of any property, other than the property referred to in paragraphs 1, 2, 3 and 4 of article 13 of the Treaty, will be taxable only in the contracting state of which the person alienating the property is a resident (i.e. Malta).

Consequently, if a Russian legal entity's assets do not include immovable property located in Russia, the capital gains derived by a tax resident of Malta from the alienation of shares held in the capital of such company are not subject to tax in Russia.

The Russian MoF published Guidance letter No. 03-08-09/19951 on 1 May 2023.

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