

Russia; United States

Russian MoF: Capital Gains Received by US Company from Sale of Shares in Russian Company Are Taxable in Russia

1 August 2023

Report from our correspondent Kristina Trouch

The Ministry of Finance (MoF) has explained that capital gains received by a US resident company from the disposal of shares in a Russian resident company, whose assets consist of more than 50% of immovable property located in Russia are taxable in Russia.

Article 247 of the Tax Code states that non-resident companies that do not operate in Russia through a permanent establishment are only taxed on income received from Russian sources, determined in accordance with article 309 of the Tax Code.

Based on article 309, paragraph 1(5) of the Tax Code, Russian-source income of a non-resident company includes income from the sale of shares in a Russian company whose assets consist of more than 50% of immovable property located in Russia. Such capital gains are subject to corporate income tax at the rate of 20%.

However, article 7 of the Tax Code stipulates that an applicable tax treaty prevails over the Tax Code.

In accordance with article 19, paragraph 1 of the [Russia-United States Income and Capital Tax Treaty \(1992\)](#) (Treaty), items of income of a resident of a contracting state, wherever they arise, that are not covered by the preceding articles of the Treaty, will be taxable only in that state.

At the same time, article 19, paragraph 3 of the Treaty states that, notwithstanding the provisions of paragraph 1, income received by a resident of a contracting state from the alienation of immovable property (as defined in article 9, paragraph 2 of the Treaty) located in the other contracting state, or of shares or other rights participating in profits of a company in which at least 50% of the assets consist of immovable property situated in that other contracting state, may be taxed under the national laws of that other state.

Therefore, income received by a US resident company from the sale of shares in the capital of a Russian company, whose assets consist of at least 50% of immovable property situated in Russia, will be taxed in Russia.

The MoF published these clarifications on 24 July 2023 in Guidance letter No. 03-08-05/58918.

Russia; United States - Russian MoF: Capital Gains Received by US Company from Sale of Shares in Russian Company Are Taxable in Russia (01 Aug. 2023), News IBFD.

Exported / Printed on 7 Mar. 2024 by hkermadi@deloitte.lu.