Czech Republic; Kosovo

Tax Agreement Between Czech Republic and Kosovo – Details

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Report from our correspondent Václav Zíka, Prague

Details of the Czech Republic - Kosovo Income Tax Agreement (2013), which generally applies from 1 January 2024, have become available. The agreement was concluded on 26 November 2013 in the English language.

The maximum rates of withholding tax are:

- 15% of the gross amount of dividends, reduced to 5% if the beneficial owner is a company (other than a partnership) holding directly at least 25% of the capital of the paying company;
- 10% of the gross amount of industrial royalties (including payments received as a consideration for the use of, or the right to use, computer software); and
- culture royalties and interest arising in a contracting state and beneficially owned by a resident of the other contracting state shall be taxable only in the other state.

Deviations from the OECD Model (2017) include the following:

- the preamble text reflects only the fact that both states desire to conclude the agreement;
- article 1 (Persons Covered) stipulates only the fact that the agreement applies to persons who are residents of one or both contracting states;
- article 2 (Taxes Covered) lays down the fact that the agreement does not cover capital taxes;
- article 3 (General Definitions) stipulates that the term "international traffic" means any transport by a ship, aircraft, road or railway vehicle operated by an enterprise that has its place of effective management in a contracting state, except when the ship, aircraft, road or railway vehicle is operated solely between places in the other contracting state. The agreement follows this concept in all provisions connected with the issue of international traffic. No definition of the term "recognized pension fund" is mentioned here;
- article 4 (Resident) uses the criterion of "place of effective management" as a tiebreaker rule in paragraph 3;
- article 5 (Permanent Establishment) mentions that the term "permanent establishment" likewise encompasses a building site, or a construction, assembly or installation project or supervisory activities in connection therewith, but only where such site, project or activities continue for a period of more than twelve months. The concept of a "service permanent establishment" is contained here and the decisive time threshold is "six months within any twelve month period". Paragraphs 4, 5 and 6 reflects the provisions of OECD Model (2014);
- article 7 (Business Profits) is based on the previous version of article 7 of the OECD Model as it read before 22 July 2010;

- article 8 (International Traffic) expressly mentions that for the purposes of article 8, and notwithstanding the provisions of paragraph 3 of article 12 (Royalties), profits from the operation of ships, aircraft, road or railway vehicles in international traffic include profits from the rental on a bare boat basis of such means of transport and profits from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used for the transport of goods or merchandise. This applies when such rental or such use, maintenance or rental, as the case may be, is incidental to the operation of ships, aircraft, road or railway vehicles in international traffic;
- article 9 (Associated Enterprises) in paragraph 3 contains a rule that the provisions of paragraph 2 shall not apply in the case of fraud, gross negligence or willful default;
- article 10 (Dividends) in paragraph 2(a) does not contain the rule of "365 day period" and in the definition of the term "dividends" the phrase "other income" is used instead of "income from other corporate rights";
- article 12 (Royalties) covers payments received as a consideration for the use of, or the right to use, any commercial, industrial or scientific equipment;
- article 13 (Capital Gains) does not contain any specific provision dealing with the alienation of shares and other interests in a company. This means that gains derived by a resident of a contracting state from the alienation of shares or other interests in a company shall be taxable, in accordance with paragraph 4, only in that state;
- article 14 (Income from Employment) in paragraph 2(a) does not contain the concept of physical presence of the recipient of the income. Instead, it is based on the time during which the recipient exercises the employment in the other state (183 days rule). The article also includes an expressive mention of the method of the computation of 183 days. Furthermore, it contains the definition of the term "employer" within the context of international hiring-out of labour;
- article 23 (Mutual Agreement Procedure) does not contain provisions on arbitration procedure. Persons may present a case only to the competent authority of the contracting state of which they are residents or, if the case comes under paragraph 1 of article 22 (Non-discrimination), to that of the contracting state of which they are nationals;
- article 24 (Exchange of Information) in paragraph 2 does not regulate the possibility for contracting states to use information received for other purposes; and
- article 26 (Miscellaneous Rules) incorporates anti-abuse provision and expressly mentions that persons benefiting from any special tax treatment granted under an incentive regime, including those carrying on business within free zones, are not considered to be persons in relation to whom the agreement applies (except for article 24).

With respect to the methods for eliminating double taxation (article 21), both states use the ordinary credit method. However, if, in accordance with any provision of the agreement, income derived by a resident of a contracting state is exempt from tax in that state, such state may still consider the exempted income when calculating the amount of tax on the remaining income of such resident.