The Russian and United Arab Emirates Double Tax Treaty: Time to Rev Up The Cross Border Investment Incentives!

Written By Dr Peter Wilson

Dr Peter A Wilson | LinkedIn

https://pbfirstglobaltax.com
admin@pbfirstglobaltax.com

THE RUSSIAN AND UNITED ARAB EMIRATES DOUBLE TAX TREATY: TIME TO REV UP THE CROSS BORDER INVESTMENT INCENTIVES!

On the 10th of February 2023, the IBFD confirmed the recent publication of a Russian Ministry of Finance press release expressing an interest in renegotiating in 2023 the 2011 Russian/ United Arab Emirates DTC. Given the current global circumstances, why would the Russian MOF be bothering? It is intriguing that Russia is interested in renegotiating the DTC when it was expected it was unlikely to do so if a direct consequence would be an increase in the outflow of the Russian capital.

While the DTC is only 12 years old, its form survives from ancient times! While both partners have included the DTC in their listing of Conventions covered by the Multi-lateral Instrument in an effort to update it, doing so has only gone part of the way towards making it more relevant.
Of the many criticisms one can launch against the DTC, those perhaps more relevant today include:

Its inapplicability to resolve instances of double taxation on individuals:
The DTC does not allow ceding a taxing right to one of Russia or the UAE when an individual is a resident under both countries' domestic tax laws. With the ever-increasing frequency of travel between Russia and the UAE of internationally mobile business people and the UAE reducing the number of days to 90 to qualify for UAE domestic tax residence (along with other requirements), the likelihood of dual residence is increasing. While this outcome should be of little concern to Russian tax-resident individuals who are also UAE tax residents and earning UAE-based salary income, even after the introduction in the UAE of corporate tax, this will concern those dual residents who conduct a UAE business in their own name and especially those doing so with a UAE issued licence. This is because those people are likely liable to UAE corporate tax. If Russian tax residents are also liable to Russian tax on the same income under Russia's worldwide taxation system, this will lead to double taxation because a unilateral tax credit is not granted under Russian domestic law for tax paid abroad on foreign-source income. While tax credits are available if provided for in a DTC, relief will only be allowed for UAE tax if the DTC provides for such relief.

Double taxation of Business Profits:

The absence of both a business profits article and a transfer pricing article from the DTC results in potential double taxation after the introduction of the UAE's taxation on business profits since Russian companies are taxed on a worldwide basis. The absence of these articles leads to complex administration for the businesses and the tax authorities, together with a substantial financial burden for the companies when trying to determine which tax amount is owed to which country.

In the early years of the UAE corporate tax, limiting withholding tax to 0% is unlikely to be a problem, but it gives rise to problems immediately for UAE sited real estate owned by a Russian company or a Russian resident. For Russian citizens who have become UAE residents or newly established UAE companies investing directly in Russian businesses or companies, relief can only be expected from Russia's domestic taxes on the gains or withholding taxes if the DTC is changed to include a typical tax credit article.

Exchanging of Information:

The sting in the tail of the existing DTC is that even though it does not provide relief from double taxation for individuals and non-government companies, information on those persons can be exchanged.

Summing up:

It is clear the incentive for the UAE to update the DTC is to provide a more welcoming tax environment for inbound Russian FDI, one which complements the UAE Government's current approach generally to Russian inbound FDI, one wonders whether Russians would be so eager to agree if a consequence is to increase the outflow of personnel and capital.

Dr Peter Wilson is an international taxation adviser with more than 40 years of experience. Peter has advised companies, individuals, partnerships, trusts, foundations, collective investment funds, pension funds and governments on taxation, international tax law and associated planning and compliance, firstly from a base in Sydney, Australia, then London, New York and now in Dubai.

He also advises corporate service providers, financial institutions, investment managers, and administrators on their client taxation matters together with FATCA, CRS and ESR reporting obligations.

If you would like to book a consultation with Dr Peter Wilson email admin@pbfirstglobaltax.com

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admin@pbfirstglobaltax.com