Kosovo Tax & Legal Alert

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I. Double Taxation Treaty Between Kosovo and Turkey

Although signed by the parties in 2015, the Double Taxation Treaty (DTT) between Kosovo and Turkey came into force and was applicable as of 1 January 2016. This marks the 10th Double Taxation Treaty of Kosovo. In general terms, this DTT follows the standard OECD model, with the few exceptions that will be outlined below together with the most significant provisions of this treaty.

Permanent Establishment

With reference to what constitutes a permanent establishment, this DTT includes an additional protocol for construction projects which states that *as long as Kosovo has a more than 12-month exemption period for construction projects in Kosovo through an agreement with another country, the exemption period for the purposes of this DTT is 18 months*. Please note that this applies only to building sites, construction, or installation project activities undertaken in Kosovo or Turkey. Meanwhile, in regards to a permanent establishment triggered by furnishing of services, this DTT does not foresee any provision on this issue. Therefore, the national laws of each country regulate the matter.

Business Profits

Business profits of an entity that operates in both countries (through a permanent establishment in the other country) are to be taxed accordingly in each state. Only the business profits of the permanent establishment are taxable in the other country. Permanent establishments will be treated as if they were distinct and separate entities, which engage in the same or similar activities, independently of the enterprise to which the permanent establishment belongs. Additionally, *in order to determine the profits of the permanent establishment, expenses such as executive or* *general administrative expenses will be allowed as deductions regardless of whether they are incurred in the State in which the permanent establishment is situated or elsewhere.*

Dividends

Dividends paid by a company which is resident of one State to a resident of the other State may be taxed in this other State.

However, *such dividends may also be taxed in the State where the distributing company is resident* as per the laws of this State, *but if the beneficial owner is a resident of the other State, tax on dividends may not exceed:*

- *5% of the gross amount of dividends if the beneficiary owns at least 25% of the capital of the company paying the dividends*
- *15% in other cases.*

In the case of Kosovo, however, dividends paid by a company which is resident of Kosovo to a resident of Turkey shall be subject to 0% taxation at source.

Profits of a company of one State carrying on business in the other State via a permanent establishment may, after having been taxed as business profits, be taxed on the remaining amount in the State where the permanent establishment is located as per the dividend provisions above.

Interest & Royalties

Interest and royalties arising in one State and paid to a resident of the other State, may be taxed in this other State.

However, *such interest or royalty may also be taxed in the State in which it arises as per the laws of this State, but if the beneficial owner is a resident of the other State, tax on interest may not exceed 10% of the gross amount.*

Specifically, interest arising in one State and paid to the government or central bank of the other State shall be exempt from income tax in the State in which it arises.

Capital Gains

Gains that are derived from the sale of ships, aircrafts, and road vehicles operated in international traffic, or movable property related to these is taxable only in the state where the resident seller of these assets is located.

Unlike the standard OECD model, this DTT does not foresee the taxation of gains derived by a resident of a State from the alienation of shares deriving more than 50% of their value directly/indirectly from immovable property situated in the other State may be taxed in this other State.

Independent Personal Services

Unlike the standard OECD model, this DTT includes the provision on 'Independent Personal Services', which specifies that:

Income derived by an individual who is a resident of a State in respect to independent professional services performed is taxable only in that State, unless he/she has a fixed base in the other State (if so, income taxed in the other State to the extent that is attributable to the fixed base). If his/her stay exceeds an aggregate of 183 days in any 12-month period, he/she is deemed to have created a fixed base in that State.

Professional services includes independent scientific, literary, artistic, educational or teaching activities, as well as the activities of physicians, lawyers, engineers, architect, dentists and accountants.

Directors' Fees

Directors' fees and similar payments derived by a resident of a State in his capacity as a member of the board of directors of a company which is a resident of the other State may be taxed in this other State.

Artistes and Sportsmen

Income derived by an entertainer/sportsman from activities exercised in a State are exempt from taxation in that State if his/her visit to that State is supported wholly/mainly by public funds of the other State.

Pensions

Annuities derived and beneficially owned by an individual who is resident of a State are taxable only in that State. Annuities means a stated sum paid periodically at stated times during a specified number of years, or for life, under an obligation to make the payments in return for adequate and full consideration.

Students & Teachers

In addition to the OECD provision on students, remuneration received by a teacher/instructor who is, or was immediately before visiting a State a resident of the other State, and who is present in the first-mentioned state for the purposes of teaching at a recognized institution or engaged in scientific research for period(s) not exceeding 2 years, is exempt from tax in the first-mentioned State provided that his/her payments arise from sources outside the first-mentioned State.

Method for Elimination of Double Taxation

For a resident of one State that derives income from the other State, the State of his/her residence will *allow as a deduction from the tax on income an amount equal to the income paid in the other State.*

Mutual Agreement Procedure

A taxpayer must claim the refund resulting from mutual agreement within a period of 1 year after the tax administration has notified the taxpayer of the result of the mutual agreement.

This DTT does not foresee assistance in collection of taxes from the Contracting States.

II. Double Taxation Treaty Between Kosovo and the United Kingdom

The treaty has entered into force on January 1st, 2016 after ratification by both parties.

In general terms, this DTT follows the standard OECD model, with the few exceptions that will be outlined below together with the most significant provisions of this treaty.

Permanent Establishment

With reference to what constitutes a permanent establishment, this DTT includes the provision that *a building site, construction, or installation project lasting more than 12 months* is deemed a permanent establishment. Meanwhile, in regards to a permanent establishment triggered by furnishing of services, this DTT does not foresee any provision on this issue. Therefore, the national laws of each country regulate the matter.

Income from Immovable Property

Income derived by a resident of one State from immovable property located in the other State may be taxed in this other State.

Business Profits

Profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein.

Dividends

Dividends paid by a company which is resident of one State to a resident of the other State may be taxed in this other State.

However, such dividends may also be taxed in the State where the distributing company is resident as per the laws of this State, but *if the beneficial owner is a resident of the other State:*

a) *Except if b) applies, such dividends are exempt from tax in the State of source.*
b) When beneficiaries of dividends are pension schemes and dividends derive from immovable property by an investment enterprise that distributes it annually and whose income from such immovable property is tax-exempt, a withholding tax not exceeding 15% of gross dividends applies.

Interest & Royalties

Interest and royalties arising in one State and paid to a resident of the other State, shall be taxable only in this other State.

However, *such interest or royalty may also be taxed in the State in which it arises as per the laws of this State, but if the beneficial owner is a resident of the other State, tax on interest may not exceed 10% of the gross amount.*

Capital Gains

Gains derived by a resident of one State from the alienation of immovable property in the other State may be taxed in this other State.

Gains derived by a resident of a State from the alienation of shares deriving more than 50% of their value directly/indirectly from immovable property situated in the other State may be taxed in this other State.

Income from Employment

Salaries, wages, and other similar remuneration derived by a resident of one State in respect of an employment shall be taxable only in that State unless such employment is exercised in the other State. If so, that remuneration may be taxed in this other State.

Remuneration of a resident in one State in respect of employment exercised in the other State will be taxable only in the State of residence if:

a) The recipient is present in the other State for a period(s) not exceeding 183 days in any 12-month period, and
b) Remuneration is paid by, or on behalf of, an employer who is not resident of this other State, and
c) Remuneration is not borne by a permanent establishment which the employer has in the other State

Directors' Fees

Directors' fees and similar payments derived by a resident of a State in his capacity as a member of the board of directors of a company which is a resident of the other State may be taxed in this other State.

Artistes and Sportsmen

Income derived by an entertainer/sportsman from activities exercised in a State are exempt from taxation in that State if his/her visit to that State is supported wholly/mainly by public funds of the other State.

Pensions

Pensions and similar remuneration paid to a resident of a State are taxable only in that State.

However, a lump sum payment derived from a pension scheme established in a State and beneficially owned by a resident of the other State shall be taxable only in the State of source.

Contributions made by or on behalf of an individual who exercises employment/self-employment in a State ("host") to a pension scheme that is recognized for tax purposes in the other State ("home") shall, for the purposes of determining the individual's tax payable in the host state and the profits of his employer which may be taxed in the host state, be treated in that State in the same way as in the host state (to the extent that they are not so treated by the home state).

The above apply only if:

a) The individual was not a resident of the host state, and was participating in the pension scheme immediately before he began to exercise employment/self-employment in the host state; and
b) The pension scheme is accepted by the competent authorities of the host state as corresponding to a pension scheme recognized as such for tax purposes by that State.

A pension scheme is recognized for tax purposes in a State if the contributions to the scheme would qualify for tax relief in that State if they were made by the individual.

Method for Elimination of Double Taxation

For a resident of one State that derives income from the other State, the State of his/her residence will *allow as a deduction from the tax on income an amount equal to the income paid in the other State.*

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