

Application procedure for the Income and Capital Double Tax Treaties during year 2007 in regard to non-residents

New amendments have been made in the Tax and Social Insurance Procedure Code (TSIPC) by means of § 32 from the Supplementary and Final Provisions (SFP) of the Corporate Income Taxation Act (CITA, promulgated in State Gazette issue 105, dated 22 December 2006), effective as from 1 January 2007, concerning the DTT application procedure and more concrete the competences of the revenue authorities, settled in Art. 141 and Art. 142 in the TSIPC and also the consequences of their exercising or not-exercising.

There are no changes made in regard to the documents that shall be submitted in relation to the procedure – a Claim (in a standard form), declarations, certificates, excerpts and other evidence in writing, regarding the type, the grounds and the amount of the respective type of income as well as any other documents, that may be useful for clarifying and specifying the grounds for the DTT application.

I. Change in the term for executing an audit and issuing a statement a position for presence or lack of grounds for DTT application. Consequences from a failure to pronounce in the provided term on behalf of the revenue authorities.

As from 1 January 2007 a new, longer - 60-days term from the submission of the Claim for issuance of statement on DTT application has been specified within which term the revenue authorities shall make an audit and issue statement on the presence or lack of grounds for DTT application – Art. 141, Para. 1 of the TSIPC. The term for withholding and remittance the withholding tax under Art 202, Para. 2, item 1 of the Corporate Income Tax Act (effective as from 1 January 2007) for incomes of non-residents from source in the country has been extended correspondingly – up to three months from the beginning of the month following the month of accrual of the income. Thus the possibility for the person to obtain a positive statement for the application of DTT before the deadline for remittance of the withholding tax is ensured and it can avoid a taxation of the income pursuant to the internal law of the Republic of Bulgaria.

At present the failure to pronounce on the application for issuance of a statement within the statutory 60 days term shall be considered an implicit consent for presence of grounds for application of DTT (Art. 141, Para. 2, second sentence of TSIPC) and not an implicit refusal as it was under the previous procedure. The supplement in Art. 141, Para. 3 of the same code is in this regard – non-pronouncement in 60-days term shall be considered a compliance with the requirements for the application of the treaties.

II. Statement for lack of grounds for DTT application. Defense

The cases when the revenue authorities shall issue a statement for lack of grounds for application of DTT have been extended.

Except for the cases when the non-resident has not complied with the requirements under Art. 137-138 TSIPC (it has not certified it is a resident of another state party to the DTT, it is the beneficiary of an income from source in Bulgaria, it does not have a permanent establishment or fixed base on the territory of the Republic of Bulgaria and has not proved the grounds, the type, the amount of the income received and the fulfillment of other specific requirements, if such have been specified in the respective DTT), a statement for lack of grounds for DTT application shall be also issued in the case when the revenue authority has required the non-resident to eliminate any incompleteness in the DTT application claim or in the evidences enclosed thereto but this has not been done within 15 days (Art. 141, Para. 2, first sentence of the TSIPC).

The procedure for defense against a statement for lack of grounds for application of DTT has been regulated in a new way.

A possibility for its separate appeal has been introduced.

The persons who have the right to file a claim are the beneficiary of the income or the payer in the case payer has been explicitly authorized by the beneficiary.

The appeal shall follow the procedure for appealing tax assessment acts whereby the appeal shall be filed through the territorial directorate, before which the Claim has been submitted.

Up to 1 January 2007 the statement for lack of grounds for DTT application was subject to appeal only together with the tax assessment act or with the act for offset or refund, by virtue of which the DTT application has been refused.

III. Change in the maximum total amount of annually realized incomes with source in the country up to which the non-resident is not obliged to prove the grounds for DTT application by submitting a Claim in a standard form (the so called "minor cases").

The change increases the amount – from BGN 25,000 to BGN 50,000.

According to Art. 142, Para. 1 TSIPC effective as from 1 January 2007, when a payer accrues to a non-resident incomes with source in the country with a total amount up to BGN 50,000 per annum, the circumstances evidencing that the non-resident is a resident of another state under the DTT, that it is the beneficiary of the income from source in the Republic of Bulgaria, that it does not have a permanent establishment or a fixed base on the territory of the Republic of Bulgaria and that it meets the other specific requirements if such have been specified in the respective DTT, shall be certified before the payer of the income. In this case it is not necessary to submit a DTT application Claim.

IV. Legal effect of the statement for DTT application and the implicit consent for presence of grounds for its application.

In case there is a statement for DTT application, the revenue administration shall no longer has the possibility to exercise subsequent control on this issue by performing an audit pursuant to the general procedure.

In this case according to the new amendment in Art. 141, Para. 5, of the TSIPC effective from 1 January 2007 adjustments of the tax liabilities for the corresponding period may only be done when then the requirements under Art. 133, Para. 2 TSIPC are met, i.e. when the requirements tax liabilities and liabilities for statutory social security contributions are amended, after being determined by virtue of a tax assessment act has entered into force, namely:

- Where new circumstances or written evidence with considerable significance for establishing the liabilities for taxes and statutory social security contributions are found, which could not have been known to the person respectively the body which has issued the assessment act;
- Where following the respective legal procedure the untruthfulness of the written explanations of third parties is established, as well as of the conclusions of experts or of written declarations on the basis of which tax and mandatory social insurance contribution liabilities have been assessed or a criminal act on the part of the person audited is found or of his/her representative, of the revenue authority participating in the assessment of the tax and mandatory social insurance contribution liabilities, or considering the appealed assessment;
- Where the assessment is based on a document, established following the respective legal procedure to be false, untruthful or forged;
- Where the assessment is based on the act of the court or another government authority, which assessment has been subsequently repealed;
- Where another tax assessment act for the same period and with regard to the same liable person in respect to these liabilities has been issued and entered into force, which contradicts the previous act.

Following the aforesaid, the procedure for DTT application, which concludes with issuance of statement for presence or lack of grounds for their application is differentiated from the other means for control – the tax audit. The two procedures are now independent, their final acts – separate and equal and the defense against them - differentiated.

The purpose of this material is to remind the specifics and the new moments in the procedure for DTT application and does not review exhaustively the specific cases, which may arise. In case you have any questions regarding the aforesaid, please do not hesitate to contact us by phone 943 37 00, fax 943 37 07, e-mail: office@afa.bg or on the following address: Sofia 1504, 38 Oborishte St.