

PROTOCOL

BETWEEN

THE REPUBLIC OF AUSTRIA

AND

THE KINGDOM OF NORWAY

AMENDING THE CONVENTION FOR THE AVOIDANCE OF DOUBLE TAXATION
AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON
INCOME AND ON CAPITAL SIGNED IN VIENNA ON 28 NOVEMBER 1995

The Republic of Austria and the Kingdom of Norway desiring to conclude a Protocol amending the Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, signed in Vienna on 28 November 1995 (hereinafter referred to as "the Convention"),

have agreed as follows:

Article 1

(1) Sub-paragraph b) 4 of paragraph (3) of Article 2 of the Convention shall be deleted.

(2) The existing sub-paragraph b) 5, 6, 7 and 8 of paragraph (3) of Article 2 of the Convention shall become sub-paragraph b) 4, 5, 6 and 7.

Article 2

In sub-paragraph h) (ii) of paragraph 1 of Article 3 of the Convention the words "...and customs..." shall be deleted.

Article 3

(1) Paragraph (2) of Article 10 of the Convention shall be deleted and replaced by the following:

“(2) However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed 15 per cent of the gross amount of the dividends. Such dividends shall, however, be exempt from tax in the first-mentioned State if the beneficial owner is a company that is not a partnership.”

(2) Paragraph (3) of Article 10 of the Convention shall be deleted and replaced by the following:

“(3) Where dividends are derived and beneficially owned by the Government of a Contracting State, such dividends shall be taxable only in that State. For the purposes of this paragraph, the term "Government of a Contracting State" shall include:

a) In the case of Norway:

- (i) the Central Bank of Norway;
- (ii) the Norwegian Government Petroleum Fund;
- (iii) the National Insurance Fund; and
- (iv) a statutory body or any institution wholly or mainly owned by the Government of Norway as may be agreed from time to time between the competent authorities of the Contracting States;

b) In the case of Austria:

- (i) the Austrian National Bank ;
- (ii) a statutory body or any institution wholly or mainly owned by the Government of Austria as may be agreed from time to time between the competent authorities of the Contracting States.”

(3) The existing paragraphs (3), (4) and (5) of Article 10 of the Convention shall become paragraphs (4), (5) and (6).

Article 4

(1) Paragraph (5) of Article 13 of the Convention shall be deleted and replaced by the following:

“(5) Gains derived by an individual who is a resident of a Contracting State from the alienation of shares or other rights in a company which is a resident of the other Contracting State, as well as gains from the alienation of options or other financial instruments related to such shares or rights, may be taxed in that other State, but only if the alienator has been a resident of that other State at any time during the five years immediately preceding the alienation of the shares, rights, options or financial instruments.”

(2) The existing paragraph (5) of Article 13 of the Convention shall become paragraph (6).

Article 5

(1) Sub-paragraph b) of paragraph (1) of Article 24 of the Convention shall be deleted and replaced by the following:

“(b) Where a resident of Austria derives items of income which, in accordance with the provisions of Article 10 and paragraph (5) of Article 13, may be taxed in Norway, Austria shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in Norway. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given which is attributable to such items of income derived from Norway.”

(2) In paragraph (1) of Article 24 of the Convention the following new sub-paragraph c) shall be inserted:

“(c) Where in accordance with any provision of the Convention income derived or capital owned by a resident of Austria is exempt from tax in Austria, Austria may nevertheless, in calculating the amount of tax on the remaining income or capital, take into account the exempted income or capital.”

(3) In paragraph (2) of Article 24 of the Convention the following new sub-paragraph c) shall be inserted:

”c) Where in accordance with any provision of the Convention income derived or capital owned by a resident of Norway is exempt from tax in Norway, Norway may nevertheless include such income or capital in the tax base, but shall allow as a deduction from the Norwegian tax on income or capital that part of the income tax or capital tax, as the case may be, which is attributable to the income derived from the other Contracting State, or the capital owned in that other State.“

Article 6

(1) The existing Article 29 of the Convention shall become paragraph (1) of Article 29 of the Convention.

(2) The following new paragraph (2) of Article 29 of the Convention shall be inserted:

“(2) Insofar as, due to fiscal privileges granted to member of diplomatic missions and consular posts under the general rules of international law or under the provisions of special international agreements, income or capital is not subject to tax in the receiving State, the right to tax shall be reserved to the sending State.”

Article 7

(1) Paragraph (2) of Article 30 of the Convention shall be deleted and replaced by the following:

“(2) The time limit for claiming a refund of excess withholding tax is five years, starting from the beginning of the calendar year next following the year when the dividends, interest, royalty or other items of income were received.”

(2) The existing paragraph (2) of Article 30 of the Convention shall become paragraph (3).

Article 8

The Contracting States shall notify each other, through diplomatic channels, that all legal procedures for the entry into force of this Protocol have been completed. The Protocol shall enter into force on the first day of the third month next following the date of the later of the notifications referred to above and shall thereupon have effect in respect of taxes on income or on capital relating to the calendar year (including accounting periods beginning in any such year) next following that in which the Protocol enters into force and subsequent years.

IN WITNESS WHEREOF the plenipotentiaries of the two Contracting States, duly authorized thereto, have signed this Protocol.

DONE in duplicate in Vienna, 14th November 2005 in the German, Norwegian and English languages. In case of any divergence of interpretation the English text shall prevail.

For the Republic
of Austria:
Melitta Schubert mp.

For the Kingdom
of Norway:
Jan Petersen mp.

ADDITIONAL PROTOCOL

At the moment of signing the Protocol amending the Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, signed in Vienna on 28 November 1995 (hereinafter referred to as “the Convention”) the undersigned have agreed upon the following provision which shall be an integral part of the Protocol.

With respect to Article 27 of the Convention:

For the purpose of clarification it is understood that Article 27 of the Convention imposes the obligation on the Contracting State which has received a request for information to collect the requested information for the purposes of the requesting State in the same manner as such information would have been collected for its own purposes. If the requested State can obtain specific information only after the formal commencement of administrative or criminal proceedings concerning tax fraud, the aforementioned principle implies that such information also has to be collected upon the request of the other Contracting State if a comparable proceeding has been formally opened in the other State.

IN WITNESS WHEREOF the plenipotentiaries of the two Contracting States, duly authorized thereto, have signed this Protocol.

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