

No. 41717

**Austria
and
Kyrgyzstan**

Agreement between the Republic of Austria and the Kyrgyz Republic for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital (with protocol). Vienna, 18 September 2001

Entry into force: *1 May 2003 by notification, in accordance with article 28*

Authentic texts: *English, German, Kyrgyz and Russian*

Registration with the Secretariat of the United Nations: *Austria, 8 August 2005*

**Autriche
et
Kirghizistan**

Accord entre la République d'Autriche et la République kirghize tendant à éviter la double imposition et à prévenir l'évasion fiscale en matière d'impôts sur le revenu et sur la fortune (avec protocole). Vienne, 18 septembre 2001

Entrée en vigueur : *1er mai 2003 par notification, conformément à l'article 28*

Textes authentiques : *anglais, allemand, kirghiz et russe*

Enregistrement auprès du Secrétariat des Nations Unies : *Autriche, 8 août 2005*

[ENGLISH TEXT – TEXTE ANGLAIS]

AGREEMENT BETWEEN THE REPUBLIC OF AUSTRIA AND THE KYRGYZ REPUBLIC FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

The Republic of Austria and the Kyrgyz Republic, desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, and to develop and strengthen economic, scientific, technical and cultural co-operation

Have agreed as follows:

Article 1. Persons Covered

This Agreement shall apply to persons who are residents of one or both of the Contracting States.

Article 2. Taxes Covered

(1) This Agreement shall apply to taxes on income and on capital imposed on behalf of a Contracting State, irrespective of the manner in which they are levied.

(2) There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

(3) The existing taxes to which the Agreement shall apply are in particular:

a) in Austria:

- i) the income tax (die Einkommensteuer);
- ii) the corporation tax (die Körperschaftsteuer);
- iii) the land tax (die Grundsteuer);
- iv) the tax on agricultural and forestry enterprises (die Abgabe von land- und forstwirtschaftlichen Betrieben);

v) the tax on the value of vacant plots (die Abgabe vom Bodenwert bei unbebauten Grundstücken);

(hereinafter referred to as "Austrian taxes");

b) in Kyrgyzstan :

- i) the profits tax on legal persons;
- ii) the income tax on individuals;
- iii) the land tax;

(hereinafter referred to as "Kyrgyz taxes").

(4) The Agreement shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes which have been made in their respective taxation laws.

Article 3. General Definitions

(1) For the purposes of this Agreement, unless the context otherwise requires:

- a) the term "Austria" means the Republic of Austria;
- b) the term "Kyrgyzstan" means the Kyrgyz Republic. When used in the geographical terms the term "Kyrgyzstan" means the territory on which the Kyrgyz Republic carries out sovereign rights and jurisdiction in accordance with the international law and in which the taxation laws of the Kyrgyz Republic are in force;
- c) the terms "a Contracting State" and "the other Contracting State" mean Austria or Kyrgyzstan as the context requires;
- d) the term "person" includes an individual, a company and any other body of persons;
- e) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
- f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- g) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- h) the term "competent authority" means:
 - i) in Austria: the Federal Minister of Finance or his authorised representative;
 - ii) in Kyrgyzstan: the Ministry of Finance or its authorised representative;
- i) the term "national" means:
 - i) any individual possessing the nationality of a Contracting State;
 - ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State.

(2) As regards the application of the Agreement at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Agreement applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

Article 4. Resident

(1) For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, and also includes that State. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.

(2) Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);

b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;

c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;

d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall endeavour to settle the question by mutual agreement.

(3) Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the State in which its place of effective management is situated.

Article 5. Permanent Establishment

(1) For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

(2) The term "permanent establishment" includes especially:

- a) a place of management;
- b) a branch;
- c) an office;
- d) a factory;
- e) a workshop, and
- f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

(3) The term "permanent establishment" also includes:

- a) a building site or construction or installation or assembly project, or supervisory services connected therewith, but only if such site or project lasts more than twelve months or such services continue for more than twelve months; and

b) the furnishing of services, including consultancy services, by a resident of a Contracting State through employees or other personnel engaged by the resident for such purpose, but only where the activities of that nature continue (for the same or connected project) within the other Contracting State for more than twelve months.

(4) Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;

e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;

f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

(5) Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 6 applies - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

(6) An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

(7) The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 6. Income from Immovable Property

(1) Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.