

1995 Income and Property Tax Convention (English Translation)

Signed date: April 21, 1995

In force date: January 21, 1997

Effective date: January 1, 1998. See Article 25.

Status: In Force

CONVENTION BETWEEN THE GOVERNMENT OF THE RUSSIAN FEDERATION AND THE GOVERNMENT OF THE REPUBLIC OF BELARUS FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF TAX EVASION WITH RESPECT TO TAXES ON INCOME AND PROPERTY

The Government of the Russian Federation and the Government of the Republic of Belarus, desiring to conclude a Convention for the Avoidance of Double Taxation and the Prevention of Tax Evasion With Respect to Taxes on Income and Property,
Have agreed as follows:

Article 1 Persons to Whom the Convention Shall Apply

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

Article 2 Taxes Covered by the Convention

1. The taxes to which this Convention shall apply are taxes on income and property which are imposed under the laws of a Contracting State, irrespective of the manner in which they are levied.

2. Existing taxes to which this Convention shall apply are:

(a) in the case of the Russian Federation -- taxes which are imposed under the following Laws of the Russian Federation:

(i) "Concerning Tax on the Profit of Enterprises and Organizations",

(ii) "Concerning Income Tax on Physical Persons",

(iii) "Concerning Tax on the Assets of Enterprises",

(iv) "Concerning Tax on the Property of Physical Persons"

(hereinafter referred to as "Russian taxes");

(b) in the case of the Republic of Belarus:

(i) the tax on the income and profit of legal entities,

(ii) the income tax on citizens and

(iii) the tax on immovable property

(hereinafter referred to as "taxes of the Republic of Belarus").

3. This Convention shall also apply to any identical or substantially similar taxes on income which are imposed by the Contracting States after the date of signature of the Convention in addition to, or in place of, existing taxes. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective tax laws.

Article 3 General Definitions

1. For the purposes of this Convention, unless the context otherwise requires:

(a) the term "Contracting States" signifies the Russian Federation (Russia) or the Republic of Belarus, as the context requires;

(b) the term "Russia" means the Russian Federation and, when used in a geographical sense, means its territory, including inland waters and territorial seas, the air space over them and the continental shelf and exclusive economic zone in which the Russian Federation exercises sovereign rights and jurisdiction in accordance with federal law and the norms of international law;

(c) the term "Republic of Belarus" means the Republic of Belarus and, when used in a geographical sense, means the territory which is under the sovereignty of the Republic of Belarus and which under domestic laws and international law falls under the jurisdiction of the Republic of Belarus;

(d) the term "person" means an individual, legal entity or any other association of persons;

(e) the term "enterprise of a Contracting State" means an enterprise which is registered according to the laws of that State;

(f) the terms "agent of an independent status" with respect to a permanent resident of a Contracting State means a legal entity established under the laws of the other Contracting State in whose management, capital and control the first-mentioned person does not participate, or an individual who

is a permanent resident of the other Contracting State and does not have employment relations with the first-mentioned person;

(g) the term "international traffic" means any transport by ship, boat, aircraft, road or railway which is carried out by an enterprise of a Contracting State, except when the transport takes place between places in one and the same Contracting State;

(h) the term "fixed base" means any fixed place which a permanent resident of a Contracting State has in the other Contracting State and which is regularly available to him for the performance of independent personal services in that other State;

(i) the term "competent authorities" means:

(i) in the case of Russia -- the Ministry of Finance of the Russian Federation or its authorized representative;

(ii) in the case of the Republic of Belarus -- the Main State Tax Inspectorate or its authorized representative.

2. In the application of this Convention by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the tax legislation of that State.

Article 4 Permanent Resident

1. For the purposes of this Convention the term "permanent resident of a Contracting State" means any person who, under the laws of that State, is liable to taxation therein by reason of his domicile, permanent residence, place of registration as a legal entity or any other criterion of a similar nature. This term does not, however, include any person who is liable to taxation in that State only in respect of income from sources in that State or property situated therein.

2. If in accordance with the provisions of paragraph 1 a physical person is a permanent resident of both Contracting States, then his status shall be determined as follows:

(a) he shall be deemed to be a permanent resident of the Contracting 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 permanent resident 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 no permanent home available to him in either Contracting State, he shall be deemed to be a permanent resident of the State in which he has an habitual abode;

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

(d) if he is not a citizen of either Contracting State, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. If in accordance with the provisions of paragraph 1 of this Article a person other than a physical person is deemed to be a permanent resident of both Contracting States, the competent authorities of the Contracting State shall settle the question by mutual agreement.

Article 5 Permanent Establishment

1. For the purposes of this Convention the term "permanent establishment" means a fixed place of business through which an enterprise of a Contracting State carries on all or part of its business activities in the other State.

2. The term "permanent establishment" includes especially:

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop;

(f) a mine, an oil or gas well, a quarry or any other place of prospecting for or extraction of natural resources and

(g) a building site or a construction or assembly project.

3. Notwithstanding the preceding provisions this Article, the term "permanent establishment" does not include:

(a) the use of facilities and the maintenance of a stock of goods and merchandise owned by the enterprise solely for the purpose of storage or display;

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

(c) 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 nature;

(d) the maintenance of a fixed place of business solely for any combination of the activities mentioned in subparagraphs (a) to (c).

4. Notwithstanding the provisions of paragraphs 1 and 2, where a person other than an agent of an independent status, to whom paragraph 5 shall apply, operates in a Contracting State on behalf of an enterprise of the other Contracting State, the enterprise shall be deemed to have a permanent establishment in the first-mentioned State in respect of any activities which the person undertakes for the enterprise if that person has the authority to conclude contracts in that first State in the name of that enterprise and habitually exercises that authority, provided that its activities are not limited to the types of activity mentioned in paragraph 3 and the activities if carried out through a fixed place of business would not make that fixed place of business a permanent establishment under the provisions of that paragraph.

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

6. The fact that an enterprise of a Contracting State controls or is controlled by an enterprise of the other Contracting State or which carries on business activities 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 the Use of Immovable Property

1. Income derived by a permanent resident of a Contracting State from immovable property situated in the other Contracting State may be taxed in that other State.

2. The term "immovable property" has the meaning which it has under the laws of the Contracting State in which the property in question is situated. The transport facilities mentioned in subparagraph g) of paragraph 1 of Article 3 shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting or use in any other form of immovable property.

Article 7 Business Profits

1. The profits of an enterprise of a Contracting State may be taxed only in that State unless the enterprise carries on business activities in the other Contracting State through a permanent establishment situated therein. If an enterprise carries on business as aforesaid, its profits may be taxed in the other State, but only so much of them as is attributable to the permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business activities in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently of the enterprise of which it is a permanent establishment.

3. In determining the profits of a permanent establishment there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including management and general administrative expenses, whether incurred in the State in which the permanent establishment is situated or elsewhere.

4. Where it is usual practice in a Contracting State to determine profit which is attributable to a permanent establishment on the basis of an apportionment of the enterprise's total profits, nothing in paragraph 2 shall preclude a Contracting State from determining taxable profits by such an apportionment as is customary.

5. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8 Profits From International Traffic

1. The profits of an enterprise of a Contracting State from the operation of the means of transport mentioned in subparagraph g) of paragraph 1 of Article 3 in international traffic shall be taxed only in that State.

2. For the purposes of this Convention, profits from international traffic include profits derived from the direct use, letting or use in any other form of means of transport and the use, maintenance or letting of containers and related equipment.

3. The provisions of paragraph 1 shall also apply to profits from participation in a pool, a joint venture or an international transportation organization.

Article 9 Dividends

1. Dividends paid by an enterprise of a Contracting State to a permanent resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the enterprise paying the dividends is a permanent resident, and according to the laws of that State, but the tax so charged must not exceed 15 per cent of the gross amount of dividends.

3. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, conferring the right to participate in profits, as well as income from other rights which is subjected to the same taxation treatment as income from shares according to the laws of the State of which the enterprise distributing the profits is a permanent resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a permanent resident of a Contracting State, carries on or has carried on business activities in the other Contracting State, of which the enterprise paying the dividends is a permanent resident, through a permanent establishment situated therein, or performs independent personal services from a fixed base situated therein, and the dividends are attributable to such permanent establishment or fixed base. In such case the provisions of Articles 7 and 13 of this Convention, as the case may be, shall apply.

Article 10 Interest

1. Interest arising in a Contracting State which is paid to a permanent resident of the other Contracting State may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises and in accordance with the laws of that State, but if the recipient of the interest is the beneficial owner, then the tax so charged must not exceed 10 per cent of the gross amount of interest.

3. Notwithstanding the provisions of paragraph 2, interest arising in:

(a) Russia which is paid to the Government of the Republic of Belarus or the National Bank of the Republic of Belarus shall be exempt from Russian tax;

(b) the Republic of Belarus which is paid to the Government of Russia or the Central Bank of Russia shall be exempt from tax of the Republic of Belarus.

4. The term "interest" as used in this Article means income from debt-claims of every kind, and in particular, income from government securities, bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalties for late payment shall not be regarded as interest for the purposes of this Article.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a permanent resident of a Contracting State, carries on or has carried on business activities in the other Contracting State in which the interest arises through a permanent establishment situated therein, or performs independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively attributable to such permanent establishment or fixed base. In such case the provisions of Articles 7 or 13 of this Convention, as the case may be, shall apply.

6. Interest shall be considered to arise in a Contracting State when the payer is a government body created in that State, or a permanent resident of that State. Where, however, the payer of the interest, whether he is a permanent resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then interest shall be considered to arise in the Contracting State in which the permanent establishment or fixed base is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner of the interest or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner of the interest in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 11 Income From Copyrights and Licences

1. Income from copyrights and licences arising in a Contracting State and paid to a permanent resident of the other Contracting State may be taxed in that other Contracting State.

2. However, such income from copyrights and licences may be taxed in the Contracting State in which it arises and according to the laws of that State, but if the recipient is the beneficial owner of such income, the tax so charged may not exceed 10 per cent of gross income from copyrights and licences.

3. The term "income from copyrights and licences" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, copyrights for any literary, artistic or scientific work, including cinematograph films and tapes for radio and television broadcasting, any patent, trademark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience, or for the use of, or the right to use, industrial, commercial or scientific equipment.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of income from copyrights and licences being a permanent resident of a Contracting State, carries on business activities in the other Contracting State in which income from copyrights and licences arises through a permanent establishment situated therein, or performs independent personal services from a fixed base situated therein, and the right or property in respect of which income from copyrights and licences is paid is effectively connected with that permanent establishment or fixed base. In such case the provisions of Articles 7 or 13 of this Convention, as the case may be, shall apply.

5. Where, by reason of a special relationship between the payer and the beneficial owner of the income from copyright and licences or between both of them and some other person, the amount of the income from copyrights and licences, having regard to the use, right of use or information for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner of the income from copyrights and licences in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 12 Income From the Sale of Property

1. Income derived by a permanent resident of a Contracting State from the sale of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Income derived from the sale of property forming part of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, or property pertaining to a fixed base situated in the other State which is available to a permanent resident of the first-mentioned State for the purpose of performing independent personal services, including from the sale of such permanent establishment or fixed base, may be taxed in that other State.

3. Income derived by a permanent resident of a Contracting State from the sale of the means of transport referred to in subparagraph g) of paragraph 1 of Article 3 and used in international traffic and property pertaining to the operation of such means of transport shall be taxable only in the Contracting State of which the person selling the property is a permanent resident.

Article 13 Income From Independent Personal Services

1. Income derived by a permanent resident of a Contracting State from the performance of professional services or other activities of an independent nature may be taxed in the other Contracting State only if:

(a) that resident has available to him in the other State a fixed base which he uses to carry on his activity, or

(b) the income is paid from sources in that other State.

In all other instances, such income may be taxed only in the first-mentioned State.

2. The term "professional services" includes, in particular, independent scientific, literary, artistic, sporting, educational or teaching activities, as well as the independent activities of doctors, lawyers, engineers, architects, dentists and accountants.

Article 14 Income From Employment

Remuneration derived by a permanent resident of a Contracting State in respect of an employment may be taxed in the other State if:

(a) the remuneration is paid by, or on behalf of, an employer who is a permanent resident of that other State, or

(b) the remuneration is borne by a permanent establishment or fixed base which the employer, being a permanent resident of the first-mentioned State, has in the other Contracting State.

Article 15 Directors' Fees

Payments derived by a permanent resident of a Contracting State in his capacity as a member of the board of directors or similar body of an enterprise of the other Contracting State may be taxed in that other State.

Article 16 Pensions

Pensions paid from sources in a Contracting State may be taxed only in that State.

Article 17 Payments to Students and Probationers

Payments which a student or probationer who is a permanent resident of a Contracting State and who is present in the other Contracting State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that other State provided that such payments arise from sources in the first-mentioned State.

Article 18 Other Income

Items of income arising in a Contracting State not dealt with in the foregoing Articles of this Convention may be taxed in that State.

Article 19 Property

1. Immovable property referred to in Article 6 which is owned by a permanent resident of a Contracting State and is situated in the other Contracting State may be taxed in that other State.
2. Property forming a part of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, or property pertaining to a fixed base available to a permanent resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, may be taxed in that other State.
3. Property represented by the means of transport referred to in subparagraph g) of paragraph 1 of Article 3 and operated in international traffic which is owned by a permanent resident of a Contracting State shall be taxed only in that State.

Article 20 Elimination of Double Taxation

Where a permanent resident of a Contracting State receives income or owns property in the other Contracting State which according to the provisions of this Convention may be taxed in the other State the amount of tax on such income or property payable in the other State may be deducted from the tax levied on the income or property of such person in the first-mentioned State. Such deduction shall not, however, exceed the amount of tax calculated in the first State in respect of such income or property in accordance with its laws and rules.

Article 21 Non-Discrimination

1. Citizens and enterprises of a Contracting State shall not be subjected in the other Contracting State to any taxation, or any requirement connected herewith, which is other or more burdensome than the taxation and connected requirements to which citizens and enterprises of that other State in the same circumstances are or may be subjected.
2. The taxation of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on an enterprise in that other State carrying on similar activities.
3. Enterprises of a Contracting State whose capital is fully or partially owned or controlled, directly or indirectly, by one or several permanent residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

Article 22 Mutual Agreement Procedure

1. Where a permanent resident of a Contracting State considers that the actions of one or both Contracting States result or will result for him in taxation not in accordance with this Convention, he may, irrespective of the remedies provided by the domestic legislation of those States, present his case to the competent authority of the State of which he is a permanent resident, or, if he is covered by paragraph 1 of Article 21 of this Convention, of the Contracting State of which he is a citizen. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.
2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State with a view to the avoidance of taxation which is not in accordance with the Convention.
3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any problems or doubts arising as to the interpretation or application of the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 23 Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention, insofar as the taxation thereunder is not contrary to this Convention. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as confidential in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, or the enforcement or prosecution in respect of, the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:

(a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

(b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

(c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or secret trade process, or information, the disclosure of which would be contrary to public policy.

Article 24 Members of Diplomatic Missions and Consular Establishments

Nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions and consular establishments under the general rules of international law or under the provisions of special agreements.

Article 25 Entry Into Force

1. The Contracting States shall give one another, through diplomatic channels, notice of the completion of the domestic agreement procedure necessary for this Convention to enter into force.

2. This Convention shall enter into force on the day of the receipt of the last of the notices mentioned in paragraph 1 of this Article, and its provisions shall have effect:

(a) in respect of taxes withheld at source, on income paid on or after the first day of January in the calendar year following the year in which the Convention enters into force;

(b) in respect of other taxes, for tax periods beginning on or after the first day of January of the calendar year following the year in which the Convention enters into force.

Article 26 Termination

This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplomatic channels, by giving written notice of termination at least six months before the end of any calendar year. In such case, the Convention shall cease to have effect:

(a) in respect of taxes withheld at source, on amounts paid on or after the first day of January of the calendar year following the year in which the notice of termination is given;

(b) in respect of other taxes for tax periods beginning on or after the first day of January of the calendar year following the year in which the notice of termination is given.

Done in Moscow, this 21st day of April 1995, in duplicate in the Russian and Belarussian languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE RUSSIAN FEDERATION:

FOR THE GOVERNMENT OF THE REPUBLIC OF BELARUS: