



Azerbaijan –  
German Double  
Tax Treaty  
What is in for you?!



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7 December 2011

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# General overview of Double Tax Treaties of Azerbaijan

# General overview of Double Tax Treaties of Azerbaijan

## Purposes

- Elimination of double taxation
- Prevention of tax avoidance
- Allocation of taxing rights
- Limitation of restrictive national legislation

## Benefits

- Eliminated or minimized double taxation
- Preventing or reducing burdensome taxation of capital gains, dividends and royalties
- Determined residence and source state
- Opportunity for tax planning

## Scope

- Taxes: income and capital taxes
- Persons: residents and non-residents
- Territories: contracting states' territories

# General overview of Double Tax Treaties of Azerbaijan

- **1994-2011** – 41 DTTs were signed and 37 of them are effective
- **Major DTTs** – UK, the Netherlands, Switzerland, Austria, Luxembourg, Germany, UAE and etc.
- **Negotiations** – Spain, Malta, India, Denmark, Macedonia, Morocco and etc.
- Prevalence over national law in case of collision
- Protocols of the Double Tax Treaties (“DTT”) are important as DTTs

# General overview of Double Tax Treaties of Azerbaijan

Withholding tax rates applicable to payments made to non-residents

Payments	Statutory Rates	Netherlands	Luxembourg	UK	Austria	Belgium	Germany	Switzerland
<b>Dividend</b>	10%	5 -10%	5 -10%	15%	5-10-15%	5-15%	5-15%	5-15%
<b>Interest</b>	10%	10%	10%	10%	10%	10%	10%	5-10%
<b>Royalty</b>	14%	5-10%	5-10%	5-10%	5-10%	5-10%	5-10%	5-10%

# Azerbaijan – Germany DTT

# Azerbaijan-Germany DTT

## General

- Signed on 25 August 2004 and is effective from 28 December 2005
- Protocol which contains important provisions was annexed to the DTT

## Taxes covered

**Germany:** Income tax, Corporation tax, Trade tax, Capital tax

**Azerbaijan:** Profit tax, Personal income tax, Assets tax

## Persons covered

Persons who are residents of one or both of the Contracting States:

- Legal entities
- Individuals

# Azerbaijan-Germany DTT

- **Business profit taxation:**

**No Permanent Establishment =**

The profits of an enterprise of a Contracting State taxed only in that State

**Permanent Establishment (“PE”) =**

The profits of an enterprise of a Contracting State taxed in the other State but only attributable to the PE

- **PE**

**Fixed place of business PE**

**Construction PE – >12 months**

**Agency PE**

**Insurance PE**

- **No PE:**

Auxiliary activities

Activities of independent agents

# Azerbaijan-Germany DTT

## Attribution of profits to a PE

### Clarifications by the Protocol

- Only portion of income from sale of goods attributable to activities of a PE is taxable
- Only portion of income derived from turn-key projects attributable to activities of a PE is taxable

### Deduction of overhead expenses:

- Any expenses wherever incurred for a PE should be deductible in the source state
- Overheads must be supported by primary documents.

# Azerbaijan-Germany DTT

## Dividends

Recipient is a beneficial owner:

- 5% – if a beneficial owner holds directly  $\geq 25\%$  participation in value of 150.000 EURO
- 15% – if a beneficial owner holds directly  $< 25\%$  participation

Branch remittance tax is prohibited

## Interest

- General WHT rate – 10%
- Loans from public institutions is exempt from taxation (e.g. KFW, DEG)
- Interest paid by a PE is also covered by the DTT

## Royalties

- 5% – patent, design or model, plan, secret formula or process or information concerning industrial, commercial or scientific experience if they are not older than three years
- 10% – others

# Azerbaijan-Germany DTT

## Capital gains

- Capital gains derived from disposal of immovable property and movable property attributable to a PE is taxable in the source state
- Tax exemption for the capital gains derived from the disposal of shares in Azerbaijani subsidiaries
- Source state (Azerbaijan) can tax capital gains from the alienation of shares in an immovable property rich subsidiary

# Azerbaijan-Germany DTT

## Employment income

### Home state taxation

- Presence less than 183 days in the host state
- Not working for an employer which is a resident of the host state
- Not working for a PE located in the host state

This will not be considered in the case of professional secondment

### Host state taxation

- If person works in the host state and the above facts do not exist

## Directors fee

- Fees of members of board of a resident company in the state of residence is taxable in the residence state

## Elimination of double taxation

- Azerbaijan – ordinary tax credit
- Germany – exemption, and tax credit for passive income

# Claiming DTT benefits

# Claiming DTT benefits

- Regulations on administration of DTTs ("Regulations") as a mechanism of claiming DTT benefits

**Special Forms** – confirmation of residency, receipt of paid taxes, refund of over-paid taxes, advance exemption for certain payments

## Gaining exemptions:

- Advance exemption for royalty, interest, dividends and income from international transportation services
- Refund of taxes
- Non-PE division
- Automatic exemption for capital gains

# Claiming DTT benefits

## **DTA-01**

Application for confirmation of residency

## **DTA-02**

Application for confirmation of foreign source paid taxes

## **DTA-03**

Application for advance exemption for dividend, interest and royalty payments to non-residents

## **DTA-04**

Application for advance exemption from taxation for non-residents operating through a non-PE division

## **DTA-05**

Application for confirmation of Azerbaijani source paid taxes

## **DTA-06**

Application for refund of over paid taxes



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