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### **Problems with intercompany profit distributions in Croatia**

According to Article 10 para. 2 subpara. (b) of the Austro-Croatian Double Taxation Convention cross-border intercompany profit distributions are exempted from source taxation. As a result, profits generated in the years 2001 to 2004 in a Croatian subsidiary and distributed in 2005 to its Austrian parent company are to be relieved from source taxation in Croatia.

Provided that the legal conditions of Article 10 para. 2 subpara. (b) are met the obligations imposed by this provision are absolute and unconditional. It would therefore be an infringement of the Convention if after a tax exempt profit distribution has been made in conformity with treaty law by the subsidiary the Croatian tax authority required - irrespective of the treaty rule - the payment of a 15% source tax as set out in domestic law and then refused to refund such tax on the grounds that - because of the subsequent tax payment enforced by the tax authority in disregard of the treaty provision - the distribution exceeded the distributable profits of the subsidiary.

In order to achieve compliance with treaty law the taxpayer (the Austrian parent company) is entitled to file a request for the initiation of a mutual agreement procedure under Article 25 of the Convention.

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