



Ministry of Finance of the Russian Federation



29.07.2014

Press Release

The Permanent Court of Arbitration in The Hague yesterday published the Final Awards in the three related arbitrations brought by Yukos' former majority shareholders. The Awards were issued under the Energy Charter Treaty.

The Tribunal's conclusions are in direct conflict with the findings made by two Chambers of the European Court of Human Rights. That Court has twice ruled that Yukos engaged in a massive tax fraud, that the company's senior officials were aware of that wrongdoing, that virtually all of the taxes assessed against Yukos were lawful and appropriate, that Yukos was not the subject of discrimination, and that the actions taken by the Russian authorities were not politically motivated.

The Russian Federation also noticed other serious flaws in the Tribunal's decisions, including:

- its one-sided marshaling of the evidence;
- its inappropriate review of complex Russian court rulings as if the Tribunal were sitting as an appellate Russian court;
- its speculative and unsupported assumptions as to the reasons for the Russian authorities' actions, and its reliance on those assumptions to reach conclusions that are not supported by the actual record;
- its rejection of Yukos' corporate profit tax assessments, based on the Tribunal's effective over-ruling of numerous Russian court decisions, including decisions of the Russian Supreme Arbitrazh Court, that predate this dispute by many years;
- its failure to take adequate account of its own acknowledgement that several of Yukos' sham trading companies engaged in a similar tax evasion scheme, and were subsequently restructured and then reincorporated thousands of miles away, several times over, in an attempt to avoid discovery and prosecution by the Russian authorities;
- its failure to draw obvious conclusions - that Yukos' senior officials were aware of the tax violations and acknowledged that Yukos' trading companies' tax evasion scheme would, if discovered, have "significant" financial consequences for Yukos itself; Yukos' senior officials also realized that they were engaged in a tax evasion scheme and that the untaxed income of its trading companies would be attributed to Yukos itself;
- its rejection of Yukos' VAT assessments based on what the Tribunal believes Russia's tax law should be, and not on what, the Tribunal acknowledges, Russia's tax law actually provides;

- its failure to refer certain issues in dispute to the competent tax authorities in the United Kingdom, Cyprus and the Russian Federation, a reference required under the Energy Charter Treaty whenever an issue arises as to whether a tax is expropriatory;
- its misguided and highly speculative attempt to assess the hypothetical value of Yukos almost ten years after the date of its alleged expropriation.

More fundamentally, the Tribunal did not have jurisdiction to decide the matters it addressed. The Russian Federation never ratified the Energy Charter Treaty. Pursuant to Article 45(1) of the Treaty, the Russian Federation did not provisionally apply any provision of the Treaty to the extent its provisional application was inconsistent with the Russian Federation's Constitution, laws and regulations.

In addition, the Russian Federation has never agreed, prior to ratification, to investor-State arbitration in any of the more than 50 bilateral investment treaties signed by the Russian Federation, because to do so would be inconsistent with Russian law.

Finally, the Russian Federation is troubled by the unprecedented size of the Awards, issued on the basis of a treaty not ratified by the Russian Federation and in direct conflict with prior rulings of the European Court of Human Rights.

All of the aforementioned circumstances confirm the Tribunal's failure to bring to this dispute the judicial discipline required in matters like this one. Instead of objective and unbiased consideration of the case, the Tribunal acted in reliance on opportunistic considerations and eventually adopted politically motivated decisions.

Such an approach undermines the authority of the Tribunal and the Energy Charter Treaty, the application of which is increasingly politicized and abused, as is the case here, by domestic investors engaged in tax evasion schemes.

For this reason, and because of the many other substantive defects in the Awards, the Russian Federation will seek to annul them in the Dutch courts, and expects there to achieve a just result.

