

2023 – 7 Tax Consulting

Protocol amending the Agreement between Mexico and Germany to Avoid Double Taxation and Prevent Tax Evasion related to Income Tax

On June 23, 2023, the Federal Executive published in the Official Gazette of the Federation the “Decree approving the Protocol Amending the Agreement dated July 9, 2008, between the United Mexican States and the Federal Republic of Germany for the Avoidance of Double Taxation and Tax Evasion with respect to Taxes on Income and Capital, executed at Mexico City on the eighth day of October, two thousand twenty one.”

In line with the provisions of the Multilateral Convention to implement measures related to tax treaties aimed to prevent base erosion and profit shifting (MLI), both countries considered it appropriate to incorporate such measures through the aforementioned protocol.

The Protocol amending the Agreement between the United Mexican States and the Federal Republic of Germany for the Avoidance of Double Taxation and Tax Evasion with respect to Taxes on Income and Capital will enter into force 30 days after the date of receipt of the last of the required diplomatic notes.

The following are the modifications that we consider most relevant; however, we recommend reviewing its content individually in order to identify other topics that may be of interest and that are not discussed in this “News Flash”.

Preamble

The text of the Preamble is modified to provide that one of the intentions of the Agreement is to eliminate double taxation with respect to taxes included therein, without creating opportunities for non-taxation or for reduced taxation through tax evasion or avoidance, including the practice of seeking the most favorable treaty to obtain the benefits provided in this Agreement for an indirect benefit of residents of third States.

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Article 10 (“Dividends”)

Article 10, paragraph 2 (a), of the Agreement is amended to provide that the tax which may not exceed 5% of the amount of such income in the State in which the company paying the dividends is resident, shall be applicable provided that the beneficial owner of the dividends is a resident of the other Contracting State and a legal person (excluding partnerships) that directly owns at least 10% of the capital of the company paying the dividends for a period of 365 days including the day of payment of the dividends.

For purposes of calculating the period indicated in the preceding paragraph, changes in ownership that directly result from a corporate reorganization, such as a merger or spin-off of the company that owns the shares or pays dividends, shall not be considered.

Article 13 (“Capital Gains”)

Article 13, paragraph 2, of the Agreement is amended to provide that gains earned by a resident of a Contracting State on the alienation of shares or other comparable participation rights, such as interests in a partnership or trust, may be taxed in the other Contracting State if, at any time within 365 days prior to the alienation, more than 50% of the value of such shares or comparable participation rights derives, directly or indirectly, from immovable property situated in that other State.

Article 28 (“Application of the Agreement in Special Cases”)

The text of Article 28 of the Agreement is amended to provide several assumptions to incorporate specific cases in which competent authorities may consult each other to avoid double taxation or abuse of the Agreement. In each case, it is recommended to review the text of the Protocol amending Article 28.

In addition, stands out the provision that establishes that a benefit granted by the Agreement shall not be applicable with respect to an element of income or capital, when it is reasonable to conclude that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit.

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Mexico City
July 2023

This News Flash contains information of a general nature, and thus it does not address any particular case or facts. The information contained herein is accurate as of the date of issuance; however, we make no representation as to the fact that such information be accurate in the future. Accordingly, we recommend that specific advice addressing your particular circumstances be requested.

Support Information

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