



Tax & Legal Services

Tax Flash 17/2023

August 10, 2023

New Protocol of the Agreement to Avoid Double Taxation and of Tax Evasion with respect to Taxes on Income and on Capital between the Government of Mexico and the Federal Republic of Germany

On August 4, 2023, a decree was published in the Official Gazette of the Federation approving the Protocol that amends the **July 9, 2008, Agreement** between the United Mexican States, and the Federal Republic of Germany to **Avoid Double Taxation and of Tax Evasion with respect to Taxes on Income and on Capital**.

On October 8, 2021, in Mexico City, the Protocol amending the Agreement between the Government of Mexico and the Federal Republic

of Germany for the Avoidance of Double Taxation was signed. It should be recalled that the Double Taxation Avoidance Treaty between Mexico and Germany is not a Covered Treaty for purposes of the Multilateral Instrument that entered into force on July 1, 2021.

The purpose of the Amending Protocol is to adopt the measures to prevent tax base erosion and profit shifting embodied in the Multilateral Instrument. Thus, the main changes included in the Amending Protocol are:

Preamble.

The preamble is amended by stating that the purpose of the Convention is to prevent double taxation, without creating opportunities for non-taxation or reduced taxation through tax evasion or tax avoidance, including the abuse of treaties for the indirect benefit of third states.

Permanent establishment.

It is expressly established as a requirement that all exceptions for “permanent establishment”

must be considered as preparatory or auxiliary activities.

Dividends.

The requirement of ownership of shares within the previous 365 days is incorporated in order to be entitled to apply the reduced rate of 5% on dividends if the beneficial owner is a company (excluding partnerships) that directly owns at least 10% of the capital of the company.

Capital Gains.

In order to address indirect sales that will not be taxed under the Double Tax Treaty, the Amending Protocol includes that the value of comparable shares or rights may be subject to taxation in the source jurisdiction if, at any time within 365 days preceding the disposition, the shares or participation rights derive more than 50% of their value, directly or indirectly, from real estate located in that other jurisdiction.

Mutual Agreement Procedure.

In relation to the procedure and in order to provide legal certainty with respect to the dispute resolution mechanism, it is specified that any agreement reached within the same shall be applicable regardless of the time limits provided by the domestic legislation of the Contracting States. The limitation of 10 years to implement the agreements reached by the competent authorities is eliminated regardless of the limitations that may apply in terms of the respective domestic legislation.

Application of the Agreement in special cases.

Among the modifications contained in the Amending Protocol is the implementation of anti-abuse treaty measures in the case of income attributable to permanent establishments in third jurisdictions.

In this sense, the Protocol adopts a measure whereby the benefits of the treaty are denied in those cases in which the State of Residence

considers exempt the income attributable to permanent establishments located in third jurisdictions, provided that the tax in the third jurisdiction is less than 60% of the tax that would apply if it were resident in the State of Residence. An exception to such limitation of benefits is provided for, to the extent that it exercises an effective economic activity in the third jurisdiction.

It should also be noted that the Amending Protocol includes the Principal Purpose Test (“PPT”) Rule, which addresses the misuse of treaties.

This rule is a key element of the Multilateral Instrument, therefore, although the Agreement between Mexico and Germany is not a Convention covered by said Instrument, the Amending Protocol follows the same objectives and purposes.

Effective date.

The Protocol shall enter into force 30 days after the date on which the Contracting States notify

Tax Flash 17/2023 | August 10, 2023

each other that the domestic requirements have been satisfied and shall be applicable:

For taxes withheld in the source country, January 1, 2024.

For other taxes, January 1, 2024.

At Deloitte we keep track of the measures promoted to address the constant changes in the international tax paradigm, so we invite you to contact our specialists to advise you on your international operations, which are constantly evolving.

Contact:

Eduardo Barrón

Socio de Impuestos Internacionales
edbarron@deloittemx.com
Tel. +52 55 5080 6452

Eduardo Peralta

Socio de Impuestos Internacionales
edperalta@deloittemx.com
Tel. +52 55 5080 6699

Laura Rodríguez

Socia de Impuestos Internacionales
lrodrigue@deloittemx.com
Tel. +52 55 5080 7219

Josemaría Cabanillas

Socio de Impuestos Internacionales
jcabanillas@deloittemx.com
Tel. +52 55 5080 7625

Laura Acevedo

Socia de Impuestos Internacionales
lacedo@deloittemx.com
Tel. +52 55 5900 2411

Hugo Sánchez

Socio de Impuestos Internacionales
hugosanchez@deloittemx.com
Tel. +52 55 5900 3748 Ext. 3748

Herminia Diaz

Socia de Impuestos Internacionales
hdiaz@deloittemx.com
Tel. +52 81 8133 7339 Ext. 7339

Alejandra Grostieta

Gerente Senior de Impuestos Internacionales
Nueva York, Estados Unidos
algrostieta@deloitte.com
Tel. +1 212 436 5782



tax@hand App

Download our tax@hand application and check tax news both from Mexico and from different countries.

www.taxathand.com

Available for IOS and Android.



Aguascalientes

Universidad 1001, piso 12-1
Bosques del Prado
20127 Aguascalientes, Ags.
Tel: (449) 910 8600
Fax: (449) 910 8601

Cancún

Avenida Bonampak SM 6, M 1, lote 1,
piso 10, 77500 Cancún, Q. Roo
Tel: (998) 872 9230
Fax: (998) 892 3677

Chihuahua

Av. Valle Escondido 5500
Fracc. Des. El Saucito E-2, piso 1,
31125 Chihuahua, Chih.
Tel: (614) 180 1100
Fax: (614) 180 1110

Ciudad Juárez

Baudelio Pelayo No. 8450
Parque Industrial Antonio J. Bermúdez
32400 Ciudad Juárez, Chih.
Tel: (656) 688 6500
Fax: (656) 688 6536

Culiacán

Insurgentes 847 Sur, Local 103
Colonia Centro Sinaloa
80128 Culiacán, Sin.
Tel: (33) 1454 2000

Guadalajara

Avenida López Mateos Norte 2405, piso 29
Colonia Italia Providencia
44648 Guadalajara, Jal.
Tel: (33) 3669 0404
Fax: (33) 3669 0469

Hermosillo

Blvd. Eusebio Francisco Kino No. 315
Piso 8, Suite 804, Colonia Lomas del Pitic
83010 Hermosillo, Son.
Tel: (662) 109 1400
Fax: (662) 109 1414

León

Paseo de los Insurgentes 303, piso 1
Colonia Los Paraísos
37320 León, Gto.
Tel: (477) 214 1400
Fax: (477) 214 1405 y 1407

Mérida

Calle 56 B 485 Prol. Montejo Piso 2
Colonia Itzimna
97100 Mérida, Yuc.
Tel: (999) 913 4032
Fax: (999) 913 4052

Mexicali

Calzada Francisco López Montejano 1342
Piso 7 Torre Sur
Fracc. Esteban Cantú
21320 Mexicali, B.C.
Tel: (686) 905 5200
Fax: (686) 905 5231 y 5232

Ciudad de México

Paseo de la Reforma 505, piso 28
Colonia Cuauhtémoc
06500 México, D.F.
Tel: (55) 5080 6000

Monclova

Blvd. Harold R. Pape # 307-C
Colonia Guadalupe
25750 Monclova, Coah.
Tel: (866) 190 9550
Fax: (866) 190 9553

Monterrey

Av. Juárez 1102, piso 40
Centro
64000 Monterrey, N.L.
Tel: (81) 8133 7300

Puebla

Edificio Deloitte, Vía Atlixcayotl 5506, piso 4 Zona
Angelópolis
72190 Puebla, Pue.
Tel: (222) 303 1000
Fax: (222) 303 1001

Querétaro

Avenida Tecnológico 100-901
Colonia San Ángel
76030 Querétaro, Qro.
Tel: (442) 238 2900
Fax: (442) 238 2975 y 2968

Reynosa

Carr. Monterrey-Reynosa 210-B, PA
Fracc. Portal San Miguel
88730 Reynosa, Tamps.
Tel: (899) 921 2460
Fax: (899) 921 2462

San Luis Potosí

Av. Salvador Nava Martínez 3125, 3-A
Fracc. Colinas del Parque
78294 San Luis Potosí, S.L.P.
Tel: (444) 102 5300
Fax: (444) 102 5301

Tijuana

Misión de San Javier 10643, Piso 8
Zona Urbana Río Tijuana.
Tijuana B.C., 22010
Tel: (664) 622 7878
Fax: (664) 681 7813

Torreón

Independencia 1819-B Oriente
Colonia San Isidro
27100 Torreón, Coah.
Tel: (871) 747 4400
Fax: (871) 747 4409



Deloitte refers to Deloitte Touche Tohmatsu Limited, a UK private limited liability company, its network of member firms and their related entities, each of which is a single and independent legal entity.

Please see www.deloitte.com/mx/aboutus for a detailed description of the legal structure of Deloitte Touche Tohmatsu Limited and its member firms.

Deloitte provides professional auditing and assurance, consulting, financial advisory, risk advisory, tax and legal services related to our public and private clients from various industries. With a global network of member firms in more than 150 countries, Deloitte provides world-class capabilities and high-quality service to its clients, bringing the expertise necessary to meet the most complex business challenges. Deloitte's more than 415,000 professionals are committed to making significant impacts.

As used in this document, Galaz, Yamazaki, Ruiz Urquiza, S.C. , which has the exclusive legal right to get involved in, and limit its business to, the provision of auditing services, tax consulting, legal, risk and financial advice respectively, as well as other professional services under the name "Deloitte".

This presentation contains general information only and Deloitte is not, by means of this document, rendering accounting, commercial, financial, investment, legal, tax or other advice or services.

This presentation is not a substitute for such professional advice or services, nor should it be used as the basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor. No representation, warranty or promise (either explicit or implicit) is provided regarding the accuracy or completeness of the information in this communication and Deloitte will not be responsible for any loss suffered by anyone who relies on this presentation.