



New Amendment Protocol to update the Tax Treaty between Mexico and Belgium

On 26 August 2013, the Mexican Senate approved the Protocol amending the Tax Treaty signed between Mexico and Belgium to avoid double taxation and prevent tax evasion for purposes of income tax ("Amendment Protocol").

By the same token, the Parliament of Belgium approved the Amendment Protocol on 10 November 2016, and is subject to the final approval of the King, for its subsequent publication in the Official Gazette and enactment in this country.

The most relevant amendments to the Treaty and Protocol are outlined below:

Taxes covered

The Business Flat Tax is included as a tax covered, and it is noted that it was repealed by Presidential Executive Order on 6 December 2013.

General definitions

It is clarified that those terms not defined for the application of the Treaty will be given the meaning attributed to them at that time by the Federal Law of the State in which it is applied, taking

preference over the meaning given in other local laws.

Permanent establishment

The definition contained in this article is widened in the following cases:

- a) The provision of services through employees or other personnel, when such activities continue for a period or periods which together exceed 183 days in any 12-month period, without limiting it to one fiscal year.
- b) In the case of individuals, the provision of services when their presence is for a period or periods which together exceed

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183 days within any 12-month period, without limiting it to one fiscal year.

Dividends

- The withholding rate is modified from 5% (applicable when the recipient of the dividends held at least 25% of the equity of the company paying them) and 15% (applicable in all other cases), to a general rate of 10%.
- An exception to the 10% tax is included in the following cases:
 - a) A company which is resident in the other Contracting State and holds for an uninterrupted period of at least 12 months, shares representing directly at least 10% of the equity of the company paying the dividends.
 - b) A pension fund which is resident in the other Contracting State, provided that the shares or other rights in relation to which such dividends are paid, are held to administer pension schemes or provide retirement benefits, or receive income on behalf of one or more persons intended to administer pension schemes or provide retirement benefits.

Interests

- The withholding rate is modified from 15% (general rate) and 10% (for banks) to a rate of 5% for interests paid to banks and insurance companies, as well as bonds and securities in a recognized stock market, and 10% in all other cases.
- In the case of interests not subject to taxation in the Contracting State from which it comes, the following are added:
 - a) The beneficial owner of the interests is a pension fund resident in the other Contracting State, provided that the purpose is to administer pension schemes or provide retirement benefits, or receive income on behalf of one or more persons intended to administer pension schemes or provide retirement benefits.
 - b) The beneficial owner is a Contracting State, a political subdivision or a public entity thereof.
 - c) The interests come from Mexico and are paid in relation to a loan granted by Belgium, by one of its subdivisions, by the Delcredere National Agency within the framework of export promotion.
 - d) The interests come from Belgium and are paid in relation a loan granted by NAFINSA, Financiera Rural, Bancomext and Banobras.

- The short definition of interests is replaced by a long definition, subject to the same tax treatment for income which the tax law of the State from which the interests come, treats as yields on loans granted.

Capital gains

- The tax on gains derived from the sale of shares that forms part of a participation of more than 25% in a company resident in one Contracting State is eliminated. Instead, a tax of 10% is established on taxable profits, regardless of the ownership.
- A tax is established on the gains of a resident from one Contracting State derived from the sale of shares in which more than 50% of their value comes directly or indirectly from real estate located in the other Contracting State.
- An exemption is established for corporate reorganizations subject to certain requirements, such as exchange of shares and that the States have entered into a broad information exchange agreement.

Contact

Luis Liñero

Knowledge Management

Taxes and Legal Services

Tel: 5080-6000

llinero@deloittemx.com

www.deloitte.com/mx

www.deloitte.com/mx/impuestos



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Aguascalientes

Universidad 1001, piso 12-1
Bosques del Prado
20127 Aguascalientes, Ags.
Tel: +52 (449) 910 8600
Fax: +52 (449) 910 8601

Cancún

Avenida Bonampak SM 6, M 1, lote 1, piso
1077500 Cancún, Q. Roo
Tel: +52 (998) 872 9230
Fax: +52 (998) 892 3677

Chihuahua

Av. Valle Escondido 5500
Fracc. Des. El Saucito E-2, piso 1,
31125 Chihuahua, Chih.
Tel: +52 (614) 180 1100
Fax: +52 (614) 180 1110

Ciudad Juárez

Baudelio Pelayo No. 8450
Parque Industrial Antonio J. Bermúdez
32400 Ciudad Juárez, Chih.
Tel: +52 (656) 688 6500
Fax: +52 (656) 688 6536

Culiacán

Calz. Insurgentes 847 Sur, Local 103
Colonia Centro Sinaloa
80128 Culiacán, Sin.
Tel: +52 (667) 761 4339
Fax: +52 (667) 761 4338

Guadalajara

Avenida Américas 1685, piso 10
Colonia Jardines Providencia
44638 Guadalajara, Jal.
Tel: +52 (33) 3669 0404
Fax: +52 (33) 3669 0469

Hermosillo

Bldv. Francisco E. Kino 309-9
Colonia Country Club
83010 Hermosillo, Son.
Tel: +52 (662) 109 1400
Fax: +52 (662) 109 1414

León

Paseo de los Insurgentes 303, piso 1
Colonia Los Paraísos
37320 León, Gto.
Tel: +52 (477) 214 1400
Fax: +52 (477) 214 1405

Mazatlán

Avenida Camarón Sábalo 133
Fraccionamiento Lomas de Mazatlán
82110 Mazatlán, Sin.
Tel: +52 (669) 989 2100
Fax: +52 (669) 989 2120

Mérida

Calle 56 B 485 Prol. Montejo Piso 2
Colonia Itzimna
97100 Mérida, Yuc.
Tel: +52 (999) 920 7916
Fax: +52 (999) 927 2895

Mexicali

Calzada Francisco López Montejano 1342
Piso 7 Torre Sur
Fraccionamiento Esteban Cantú
21320 Mexicali, B.C.
Tel: +52 (686) 905 5200
Fax: +52 (686) 905 5232

Mexico City

Río Lerma 232, piso 9
Colonia Cuauhtémoc
06500 Mexico City
Tel: +52 (55) 5080 6000
Fax: +52 (55) 5080 6001

Monclova

Bldv. Ejército Nacional 505
Colonia Los Pinos
25720 Monclova, Coah.
Tel: +52 (866) 635 0075
Fax: +52 (866) 635 1761

Monterrey

Lázaro Cárdenas 2321 Poniente, PB,
Residencial San Agustín
66260 Garza García, N.L.
Tel: +52 (81) 8133 7300
Fax: +52 (81) 8133 7383

Carr. Nacional 85, 5000, local S-6
Colonia La Rioja
64988, monterrey, N.L.
Tel: +52 (631) 320 1673
Fax: +52 (631) 320 1673

Nogales

Apartado Postal 384-2
Sucursal de Correos "A"
84081 Nogales, Son.
Tel: +52 (631) 320 1673
Fax: +52 (631) 320 1673

Puebla

Edificio Deloitte, Vía Atlixcayotl 5506, piso
5 Zona Angelópolis
72190 Puebla, Pue.
Tel: +52 (222) 303 1000
Fax: +52 (222) 303 1001

Querétaro

Avenida Tecnológico 100-901
Colonia San Ángel
76030 Querétaro, Qro.
Tel: +52 (442) 238 2900
Fax: +52 (442) 238 2975, 238 2968

Reynosa

Carr. Monterrey-Reynosa 210-B, PA
Fracc. Portal San Miguel
88730 Reynosa, Tamps.
Tel: +52 (899) 921 2460
Fax: +52 (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: +52 (444) 1025300
Fax: +52 (444) 1025301

Tijuana

Misión de San Javier 10643, Piso 8
Zona Urbana Rio Tijuana.
Tijuana B.C., 22010
Tel: +52 (664) 622 7878
Fax: +52 (664) 681 7813

Torreón

Independencia 1819-B Oriente
Colonia San Isidro
27100 Torreón, Coah.
Tel: +52 (871) 747 4400
Fax: +52 (871) 747 4409

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