

# Tax Treaty Between Brazil and Uruguay – Details

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Report from our correspondent Doris Canen, International Tax Researcher in Brazil

Details of the [Brazil - Uruguay Income and Capital Tax Treaty \(2019\)](#), signed on 7 June 2019, have become available. The treaty was concluded in the Portuguese and Spanish languages, each text having equal authenticity. The treaty generally follows the [OECD Model \(2017\)](#).

The maximum rates of withholding tax are:

- 15% on dividends, in general, and 10% if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends for at least 365 days preceding the day of the payment of the dividend;
- 15% on interest, and taxation only in the other State if the beneficiary of the interest is its government or one of its agencies;
- 10% on royalties and 15% on trademark royalties; and
- 10% on fees for technical services.

Deviations from the OECD Model are as follows:

- article 5 (Permanent Establishment): article 5(3)(a) refers to a building site or an assembly or installation project with activities lasting for more than six months;
- article 5 (Permanent Establishment): article 5(3)(b) provides that the furnishing of services by an enterprise through employees or other personnel engaged by the enterprise for such purpose constitutes a permanent establishment, but only if activities of that nature continue within a contracting state for a period or periods aggregating more than 183 days in any 12-month period;
- article 5 (Permanent Establishment): article 5(3) establishes that the duration of the activities referred to in article 5(3) must be determined by aggregating the periods during which activities are carried on in a contracting state by closely related enterprises, provided that the activities of the enterprise in that state are connected or substantially similar to the activities carried on in that state by its closely related enterprises. In any case the period during which two or more closely related enterprises carry on concurrent activities shall be counted only once;
- article 9 (Transfer Pricing): absence of a clause providing for an obligation to make an appropriate corresponding adjustment;
- article 13 (Fees for Technical Services): inclusion of article 13 where fees for technical services are defined and a specific tax treatment is determined. The article follows the [UN Model \(2017\)](#);
- article 26 (Non-Discrimination): limited to the taxes covered by the treaty; and
- article 27 (MAP): absence of arbitration clause (in line with all other Brazilian treaties) and states that this Treaty is applicable for tax issues independently of General Agreement on Trade in Services or any other international agreements.

Specific clauses with BEPS recommendations:

- Preamble: clarification that the treaty does not intend to create opportunities for non-taxation or reduced taxation through tax evasion or avoidance;
- article 1: application of the treaty to income derived by or through an entity or arrangement treated as wholly or partly fiscally transparent under the tax law of either contracting state to the extent that the income is treated, for purposes of taxation by that state, as the income of a resident of that state; and
- article 29: inclusion of an "entitlement to benefits" clause with the principal purpose test (PPT) and the limitation on benefits (LOB) provisions in line with BEPS Action 6.

Protocol:

- defines "fiscally transparent" (item 1);
  - in cases where the first contracting state does not tax a company even being allowed to do so, the other contracting state can tax according to its domestic legislation (item 2);
  - definition of "interest" includes commissions and similar charges paid by a resident of a contracting state for services rendered by a bank or other financial institution (item 3); and
  - clarification that the provisions of the treaty shall not prevent a contracting state from applying its domestic legislation to counter tax evasion and avoidance, including thin capitalisation, deferral of income tax payment, CFC legislation or any similar legislation (item 6).
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