

Germany; Mexico

Protocol to Tax Treaty Between Germany and Mexico – Details

29 August 2023

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Details of the [amending protocol](#), signed on 8 October 2021, to the [Germany - Mexico Income and Capital Tax Treaty \(2008\)](#), have become available. The protocol was signed in the Spanish, German and English languages. The amending protocol entered into force on 6 August 2023 and generally applies from 1 January 2024.

Details of the main amendments are summarized below, which reflect some of the measures proposed under the OECD's BEPS Action 15:

- the text of the preamble is modified to add the intention to eliminate double taxation without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance;
- the definition of "permanent establishment" is amended to state that it shall be deemed not to include the activities mentioned in paragraph 4 of article 5 of the treaty provided that the activity is of a preparatory or auxiliary nature;
- the requirement under article 10 (Dividends) to apply the 5% withholding rate on dividends is amended to state that the 5% withholding rate applies if the beneficial owner is a company holding at least 10% of the capital stock of the company paying such dividends throughout a period of 365 days, including the day on which such dividends are paid;
- article 13 of the treaty (Capital Gains) is amended to state that gains derived from the sale of shares shall be taxable in the other contracting state if at any time during the 365 days preceding the alienation, the shares or comparable interests derived more than 50% of their value, directly or indirectly, from real estate situated in the other contracting state;
- article 25 of the treaty (Mutual Agreement Procedure) is amended to establish that any agreement reached under a mutual agreement procedure shall be implemented notwithstanding any time limits in the domestic law of the contracting states;
- article 28 (Application of the Agreement in Special Cases) is amended to limit treaty benefits in cases where an enterprise of a contracting state derives income from the other contracting state and the first-mentioned state treats such income as attributable to a permanent establishment of the enterprise situated in a third jurisdiction, and the profits attributable to that permanent establishment are exempt from tax in the first-mentioned state; and
- article 28 (Application of the Agreement in Special Cases) is also amended to establish that treaty benefits will not be granted when it is reasonable to conclude, taking into account all relevant facts and circumstances, that obtaining a benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the treaty.

Germany did not consider the treaty within its covered tax agreements under the Multilateral Instrument to implement BEPS Action 15, however, the protocol addresses several of the most relevant issues covered under such Action.

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