Tax
Bulletin

Singapore-Germany tax treaty

May 2021

In brief

The protocol amending the 2004 tax treaty between Singapore and Germany entered into force on 29 March 2021 and its provisions will generally take effect from 1 January 2022.

Among other changes, the protocol introduces:

- lower withholding tax rates on dividends, interest and royalties;
- a longer time test for determining permanent establishment (PE) threshold for construction-related activities;
- an arbitration mechanism for eligible Mutual Agreement Procedure cases;
- the internationally agreed minimum standards to counter treaty abuse;
- amendments to the Exchange of Information article to be in line with the internationally agreed standard.

In detail

A summary of the key changes to the tax rates in the amending protocol is as follows:

Type of income	2004 tax treaty	Protocol
Dividends	5% (if shareholding ≥ 10%); 15% (all other cases)	5% (if shareholding ≥ 10%); 10% (for all other cases); 15% (if the company paying the dividend is a real estate investment company or trust, notwithstanding the above)
Interest	8%	0%
Royalties	8%	5%*

*The definition of royalties is narrowed to exclude “the use of or the right to use, industrial, commercial or scientific equipment”.

Other key changes in the amending protocol include:

PE

A building site, construction, installation or assembly project will constitute a PE only if they last longer than 12 months. This is an increase of the threshold by six months and the change is in line with the OECD model tax convention.

Capital gains

The protocol broadens the scope of capital gains taxing rights for the source state - gains derived by a resident of one state (A) from alienation of shares (or similar rights) representing more than 50 per cent of the vote, value or capital stock in a company resident in the other state (B) may be taxed in that other state (B) if the shares (or similar rights) have been held, directly or indirectly, for less than 12 months prior to the alienation .

Remittance clause

Foreign sourced income is taxable in Singapore only when received in Singapore. Article 22 limits the application of treaty relief (i.e. any exemption or reduction of source country tax) to the amount of such income that is received in Singapore.

The protocol amends Article 22 to clarify that in the case of a Singapore resident, this limitation will not apply to, among others, foreign sourced income that is received in Singapore and exempt under specific provisions of Singapore tax law (see comments on Article 24 below). In such a case, the exemption or reduction of tax under the treaty shall apply in Germany to the full amount that is exempted from tax in Singapore.

Avoidance of double taxation

The protocol amends Article 24 on Avoidance of Double Taxation in the residence state with additional provisions that explicitly state Singapore will exempt certain income that is exempt under the Income Tax Act (for example, exemption under section 13(8) for foreign sourced income received in Singapore subject to the relevant conditions.).

Introduction of arbitration

The protocol introduces a mechanism under Article 26 on Mutual Agreement Procedure (MAP) that allows taxpayers to request the arbitration of eligible MAP cases that have remained unresolved between the competent authorities of Singapore and Germany after three years of all requisite information being provided.

Arbitration is not available in a number of specified scenarios, including cases that involve items that are tax exempt under domestic law, where a taxpayer has been found guilty for a tax offence or subject to the imposition of a serious penalty, and where the anti-avoidance rules apply .

Exchange of information

Article 27 has been replaced with the internationally agreed standard on exchange of information, which adopts the 'foreseeably relevant' standard as the basis for a competent authority to initiate information requests from its counterpart in the other contracting state. The amended article will apply in respect of requests made on or after 29 March 2021 (the date of entry into force) concerning information that relates to any taxable period or chargeable event in accordance with the law of the requesting contracting state.

Principal purpose test

The protocol introduces the principal purpose test (PPT) in Article 29 on Application of the Agreement in Special Cases. The PPT provides that the benefits of the tax treaty will not be granted if obtaining such benefits was one of the principal purposes of any arrangement or transaction, unless it is established that granting the benefits in those circumstances would be in accordance with the object and purpose of the treaty. This amendment is consistent with the anti-treaty abuse position adopted by Singapore in its covered tax agreements as modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI).

The Inland Revenue Authority of Singapore (IRAS) has indicated in the circular entitled "Income Tax: Avoidance of Double Taxation Agreements (Second edition)" (https://www.iras.gov.sg/irashome/uploadedFiles/IRASHome/eTax_Guides/etaxguide_Income%20Tax_Avoidance%20of%20Double%20Taxation%20Agreements%20(DTAs)_2n d.pdf) that it must be reasonable to conclude that one of the main purposes of an arrangement or transaction was to obtain the benefits of the tax treaty in an improper and abusive manner before the principal purpose test is invoked to deny the treaty benefits. This is a question of fact and must be determined by carrying out an objective analysis of the aims of all persons involved, taking into account all facts and circumstances surrounding the arrangement or transaction. Taxpayers and investors with bona fide commercial transactions or operations should not be unduly concerned with the principal purpose test, which seeks to address abusive arrangements.

PwC's comments

The protocol reduces the withholding tax rates that may be charged and introduces various changes to bring the tax treaty in line with international standards, such as the updated exchange of information provisions, prevention of treaty abuse, and arbitration of tax disputes. It is worth noting that although the tax treaty is not a covered tax agreement that is modified by the MLI, these changes introduced by the protocol are consistent with Singapore's positions adopted for tax treaties covered by the MLI. Germany is one of Singapore's largest trading partners in Europe, and Singapore has been ranked as Germany's fifth largest exports trade partner from Asia[1]. Together with the bilateral investment treaty and the European Union-Singapore Free Trade Agreement, the protocol will benefit businesses in both Singapore and Germany and continue to promote bilateral trade and investment flows between the two countries.

For a deeper discussion of how the above might affect your business, please feel free to contact:

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[1] Statistisches Bundesamt (Destatis), Ranking of Germany's trading partners in foreign trade 2020, https://www.destatis.de/EN/Themes/Economy/Foreign-Trade/Tables/order-rank-germany-trading-partners.html?__blob=publicationFile, published 19 April 2021.

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