



TaxNewsFlash

United States



No. 2019-364
July 16, 2019

Tax treaty update: U.S. Senate approves Protocol with Spain

The U.S. Senate this evening, July 16, 2019, approved a Protocol to amend the income tax treaty with Spain.

The Protocol to amend the income tax treaty with Spain was signed in January 2013, and provides for:

- Exemption from withholding taxes for interest (subject to certain exceptions), royalties, and capital gains
- Exemption from withholding tax for dividends paid to certain pension funds, or to companies holding shares representing 80% or more of voting power in the subsidiary and meeting certain other requirements (and a parallel exemption from branch profits tax)
- A new comprehensive limitation on benefits (LOB) article
- A new provision addressing income earned through fiscally transparent entities
- Mandatory binding arbitration of unresolved competent authority cases
- Broad exchange of information between competent authorities for tax purposes

Senate Majority Leader Mitch McConnell (R-KY) has announced his intention to hold votes tomorrow, July 17, 2019, on the remaining three Protocols with Switzerland, Luxembourg, and Japan.

- The Protocol to amend the income tax treaty with Switzerland was signed in September 2009.
- The Protocol to amend the income tax treaty with Luxembourg was signed in May 2009.
- The Protocol amending the income tax treaty with Japan was signed in January 2013.

KPMG observation

Once the Protocols are approved by the Senate, there are certain ministerial actions required (such as preparation and exchange of articles of ratification) before ratification is completed in the United States and before the Protocols can enter into force.

These Protocols were all negotiated and signed long before the December 2017 enactment of the U.S. tax law (Pub. L. No. 115-97) that is often referred to as the "Tax Cuts and Jobs Act" (TCJA).

The Protocols do not appear to modify the provisions of the respective treaties arguably relevant to the TCJA. The treaties, on the other hand, might arguably do so and, in the case of any conflict, would supersede the TCJA because the treaties would be later in time.

Still pending ratification are the income tax treaties with Hungary, Poland, and Chile. There is no Senate action scheduled on these treaties at this time.

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