KPMG

TaxNewsFlash

United States

No. 2019-365
July 17, 2019

Tax treaty update: U.S. Senate approves Protocols with Switzerland, Luxembourg, Japan

The U.S. Senate today approved Protocols amending the existing income tax treaties with Switzerland, Luxembourg, and Japan.

Summary of provisions in Protocols

- **Switzerland:** The Protocol to amend the income tax treaty with Switzerland was signed in September 2009. The Protocol provides for:
    - Exemption from source-country withholding tax cross-border dividends beneficially owned by certain pension funds or other retirement arrangements (or individual retirement savings plans) that are approved by the competent authorities of both countries
    - Broad exchange of information between competent authorities for tax purposes
    - Mandatory binding arbitration of unresolved competent authority cases

- **Luxembourg:** The Protocol to amend the income tax treaty with Luxembourg was signed in May 2009, and provides for broad exchange of information between competent authorities for tax purposes.

- **Japan:** The Protocol to amend the income tax treaty with Japan was signed in January 2013. The Protocol provides for:
    - Exemption from withholding taxes on interest (subject to certain exceptions)
    - Expansion of the scope of dividends eligible for exemption from withholding tax (allowing 50%-owned companies to qualify, and reducing the required holding period from 12 months to six (6) months)
    - Amendments to the capital gains article for consistency with the Foreign Investment in Real Property Tax Act (FIRPTA)
    - Mandatory binding arbitration of unresolved competent authority cases
    - Provisions to enable the competent authorities to assist each other in the collection of taxes
    - Broad exchange of information between the competent authorities for tax purposes

- **Spain:** Last evening, the Senate approved a Protocol to amend the income tax treaty with Spain. Read ***TaxNewsFlash***. The Protocol 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

KPMG observation

Now that the Protocols have been 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 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, however, to modify provisions of the respective treaties that would arguably be relevant to the TCJA.

New income tax treaties with Hungary, Poland, and Chile are still pending. There is no Senate action scheduled on these treaties at this time. Provisions of these full treaties could arguably conflict provisions of the TCJA, and in the case of any conflict, the treaties would prevail because they would be later in time.

Direct comments, including requests for subscriptions, to Washington National Tax. For more information, contact KPMG's Federal Tax Legislative and Regulatory Services Group at + 1 202.533.4366, 1801 K Street NW, Washington, DC 20006-1301.