

Luther.

Newsflash | 01.2020

Future amendments to the Double Tax Agreement between Singapore and Germany

On 9 December 2019 a protocol was signed by the Republic of Singapore and the Federal Republic of Germany amending the Agreement signed on 28 June 2004 between the Republic of Singapore and the Federal Republic of Germany for the Avoidance of Double Taxation with Respect to Taxes on Income and on Capital (in the following referred to as "DTA").

There are some important changes that may influence companies as well as individuals on cross-border transactions between Singapore and Germany.

We will summarize the main changes below:

Building site/Construction permanent establishment

In the current version of the DTA a permanent establishment is, among other situations, triggered, if a building site or construction or assembly project in one country lasts for more than six months.

This timeframe will be extended to twelve months and will thus, lead to fewer situations in which a permanent establishment is triggered.

Withholding taxes on dividends

Currently the DTA foresees that withholding taxes on dividends paid by a company to its shareholder shall not exceed 15% if the beneficial owner holds less than 10% of the capital of the company paying dividends. In future the maximum withholding tax rate will be limited to 10%.

The reduced tax rates shall not apply if the company paying dividends is a real estate investment company or trust.

If the beneficial owner holds at least 10% of the capital in the company paying the dividends nothing shall change and the maximum withholding tax rate will continue to be at 5%.

As Singapore does not apply withholding taxes on dividend payments (at least in case of tier-one dividend payments), the changes will only trigger the cases in which German companies pay dividends to a beneficial owner resident in Singapore.

Withholding taxes on interest payments

Currently withholding taxes on interest payments may be imposed and the withholding taxes shall not exceed 8% of the gross amount of the interest. In future no withholding taxes on interest payments will be due any more.

As Germany does not impose withholding taxes on interest payments to non-residents, this change will only trigger companies or individuals resident in Singapore that are paying interest to a beneficial owner resident in Germany. They will no longer be obliged to withhold taxes on such interest payments, provided a Certificate of Residency for the recipient of the payment is filed with the tax authorities within three months from the end of the year in which the payment was made or within three months from the date of filing the withholding tax return.

Withholding taxes on royalties

Withholding taxes on royalties may currently not exceed 8% of the gross amount of the royalty. In future the taxes shall not exceed 5% of the gross amount.

Capital gains

Currently, capital gains derived from the alienation of shares and similar rights in a company, the assets of which derive at least 75% of their value directly or indirectly from immovable property situated in a State, may only be taxed in the State in which the immovable property is situated. For all other gains derived from the alienation of shares or similar rights the right of taxation is with the country in which the person deriving the gain is resident.

In future, gains from the alienation of shares, participations, or other rights representing more than 50% of the vote, value or capital stock of a company may be taxed in the State in which the company is resident, provided the alienator has held directly or indirectly such shares, participations, or other rights for a period of less than 12 months preceding such alienation.

In practice this new rules apply for Singapore resident individuals or companies holding shares in German companies if the above conditions apply. In that case Germany will have a right of taxation for such gains. For sales of shares, participations, or other rights of Singaporean companies held by a German tax resident the new rule will only apply if the gain from the sale is treated as revenue and not as capital in nature.

Avoidance of double taxation

The new version of the DTA will explicitly state that, where a resident of Singapore derives income from Germany and remits such income into Singapore, Singapore shall, subject to the conditions of exemption for income received from outside Singapore, exempt such income from income tax in Singapore.

Other changes

The exchange of information article has been redrafted in total. This will lead to an increase in the exchange of information between Singapore and Germany in future.

Further, the Protocol contains a new explicit wording that the benefits of the DTA will not be granted if obtaining such benefits was one of the principal purposes of any arrangement or transaction. This is a new anti-avoidance rule that may affect certain structures that have been implemented to gain treaty benefits.

Please note, the changes are not yet effective but will only come into effect once the Protocol is ratified by both the Parliaments of Singapore and Germany. We will inform you once the ratification process is completed and the changes come into effect.

Please let us know if you have any further questions.

Contact



David Martiny

Luther LLP
4 Battery Road, Bank of China Building
#25-01, Singapore 049908
david.martiny@luther-lawfirm.com

