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Cyprus and Switzerland agree updated double tax treaty



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Introduction

On 20 July 2020 Cyprus agreed an updated double tax treaty (DTT) with Switzerland. The signatory for Cyprus was Foreign Minister Constantinos Petrides, while his counterpart, Pierre-Yves Fux, signed on behalf of the Swiss Federal Council. The revised protocol will update the existing agreement, which has been in force since July 2014. Details of the protocol were published in the *Official Gazette* on the 24 July 2020 and are now undergoing the ratification process.

The protocol introduces, among other things, the mandatory minimum standards of the Organisation for Economic Cooperation and Development's (OECD's) Base Erosion and Profit Shifting (BEPS) actions regarding arrangements on bilateral conventions and verbal amendments agreed bilaterally. The agreement is based on the OECD Model Convention for the Avoidance of Double Taxation on Income and on Capital.

The amendments made to the DTT focus on business profits, associated enterprises, mutual agreement procedures and benefit entitlement.

Business profits

An addition to Article 7 of the DTT provides that neither contracting state will adjust profits attributable to a permanent establishment of an enterprise from either contracting state after six tax years provided that such profits would have been attributable to said permanent establishment. Typically, any instances of fraud, gross negligence or wilful default will mean that the above provisions of this article will not apply.

Associated enterprises

With regard to associated enterprises, Article 9(2) of the DTT has been replaced to ensure that, in certain cases, appropriate adjustments to the amount of tax charged on profits can be made. For instance, where a contracting state (eg, Cyprus) taxes the profits of a Cyprus-based enterprise on which an enterprise in the other contracting state (eg, Switzerland) has also been taxed, the profits taxed under the DTT will be those which would have accrued to the Cyprus-based enterprise if the conditions between the two enterprises were the same as those between two independent enterprises – the other state (Switzerland) will adjust the amount of tax charged on said profits.

Mutual agreement procedures

For mutual agreement procedures, Article 26(1) has been replaced to provide parties with an opportunity to present disputes before the competent authority of either contracting state (irrespective of the remedies available) should said parties consider that the tax imposed does not agree with the amended provisions of the DTT.

The last amendment made to the DTT concerns Article 28A on the entitlement to benefits. The amendment was added to exclude the possibility of benefiting from the DTT in respect of income or capital if it is reasonable to conclude that:

- the primary reason for a transaction was to obtain said benefit; and
- this was the principal purpose of any arrangement or transaction that resulted directly or indirectly in receipt of said benefit.

An exception to this rule is where it can be established that the allocation of said benefit agrees with the object and purpose of the DTT's applicable provisions.

Comment

As the DTT with the Swiss Federation has not yet been covered by BEPS, the aim of which was the automatic and rapid introduction of actions to reduce the tax base and the transfer of profits, the main amendments to the DTT concern the articles on benefit entitlement and mutual agreement procedures.

The protocol will enter into force on the date of receipt of the last notification and will therefore have effect in respect of:

- taxes withheld at source for amounts paid or credited on or after the first day of January of the year following the date on which the protocol enters into force; and
- other taxes for taxation years beginning on or after the first day of January of the year following the date on which the protocol enters into force.

Notwithstanding the abovementioned provisions, the amendments made in relation to business profits, associated enterprises, mutual agreement procedures and entitlement to benefits will have effect from the date of entry into force of this protocol, irrespective of the taxable period to which the matter relates.

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