Publication of the Amending Protocol to the Treaty to Avoid Double Taxation between Mexico and Germany

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On August 4, 2023, the Promulgation Decree of the Protocol that Modifies the Agreement of July 9, 2008, between the United Mexican States and the Federal Republic of Germany to Avoid Double Taxation and Fiscal Evasion in Matters of Taxes on Income and on Wealth, made in the City of Mexico on October eight, two thousand and twenty-one (the "Protocol") was published on the Federal Official Gazette ("DOF", per its acronym in Spanish).

The Protocol was approved by the Mexican Senate on April 25, 2023, according to the decree published on the DOF on June 23, 2023.

According to its article 7: (i) the Protocol will enter into force 30 days after the date of receipt of the last notification of completion of procedures for its entry in force, such notification was received on July 7, 2023; likewise (ii) the Protocol will be applicable, in the case of withholding taxes, as of January 1st, 2024.

Based on the above, the Treaty to Avoid Double Taxation between Mexico and Germany (the "Treaty") will be modified in accordance with the Protocol. The most relevant modifications are the following:

- The text of the preamble is modified so that, in addition to the intention to avoid double taxation, avoid opportunities for double non-taxation or reduced taxation through tax evasion or avoidance.
- Article 5 of the Treaty (Permanent Establishment) is amended so that the preparatory or auxiliary nature of the activities mentioned therein is required to all cases in which a permanent establishment would not be considered to exist.
- Inclusion of a requirement to apply the 5% withholding on dividends. In addition to a participation of at least 10% of the capital stock of the company paying such dividends, such participation shall have been maintained for a period of 365 days, including the day of in which such dividends are paid.

- Article 13 of the Treaty (Capital Gains) is amended so that gains derived from the sale of shares whose value derives from more than 50% of real estate will be taxable in the source jurisdiction if, at any time within the 365 days prior the sale from which the capital gains derive, the value of the shares or participation rights derives in more than 50% of real property located in such jurisdiction.
- Article 25 of the Treaty (Mutual Agreement Procedure) is amended so that any agreement reached will be applicable regardless of the terms established by the domestic legislation of the Contracting States.
- Article 28 (Application of the Agreement in Special Cases) is amended to limit Treaty benefits in (i) cases of permanent establishments situated in Third States and (ii) cases in which profits arising in the other Contracting State originate or are accidental to the economic activity carried out through a permanent establishment, allowing a contracting party to access treaty benefits upon request to the competent authority.
- Article 28 (Application of the Agreement in Special Cases) is also amended to establish that Treaty benefits will not be granted when it is reasonable to conclude, taking into account all relevant facts and circumstances, that obtaining a benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the Treaty.

It should be noted that the Treaty will not be affected by the entry into force of the Multilateral Instrument since Germany did not consider it as a Covered Tax Agreement. However, these modifications are in line with some of the modifications provided for in the Multilateral Instrument.

Our Firm's tax practice can assist our clients in any matter related to the application of the Protocol.

In case of doubts or comments, please do not hesitate to contact us.

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