

Amendments to the Brazil-Spain Bilateral Tax Treaty

In 2002, the Brazilian and Spanish Authorities began dialogue concerning the modification of Article 25 of the income tax treaty maintained between the two since 1974. The purpose of Article 25 is the prevention of both the double imposition of taxes and tax evasion of companies with operations between the two member states.

The modifications, requested by Spain and accepted by Brazil in letters dated 26 February 2003, arose out of the application of a favoured nation clause stipulated in the Agreement's protocol triggered by the signing of subsequent agreements between Brazil and third party nations.

The Brazilian authorities have recently published new rules (Ato Declarativo Normativo n. 27) altering the Agreement in accordance with the changes proposed by Spain which establish new maximum withholding tax rates applicable to profits obtained in the form of dividend and royalty payments originating from Brazil.

Article 10 (Dividends): The applicable withholding tax has been reduced from 15% to 10.5% for corporations with Spanish residence that hold a minimum of 25% of the voting power in the Brazilian company.

Article 12 (Royalties): The maximum withholding tax applicable to royalties has been reduced from 15% to 12.5%, except in cases where the royalties arise out of the use of literary, artistic or scientific works (including cinematographic films, films or tapes for television or radio broadcasting). These remain subject to the current rate of 10%. Similarly, the rate applicable to trademark royalties remains unchanged at 15%.

Defining of Royalties: Technical services are included within the concept of royalties, irregardless of whether a transfer of technology is effected. However, technical services of a professional character realized by qualified person(s) are treated as stipulated in Article 14 (Independent Personal Services). Furthermore, the ruling specifies that technical services may not be deemed "Other Profits" and therefore do not fall under the scope of Article 22, thereby reducing the applicability of such types of income under Article 7 (Business Profits).

An issue not discussed in the ruling, but nevertheless addressed in the exchange of letter published by the Spanish Tax Authorities in the Spanish Official Gazette of 3 October 2003, concerns the limitation on the deductibility of royalty payments to the head office by a permanent establishment. According to the exchange of notes, both countries agree to settle eventual enquiries through the mutual agreement procedure.