

RATIFICATION OF THE PROTOCOL SIGNED BETWEEN SPAIN AND THE UNITED STATES IN 2013 TO MODIFY THE DOUBLE TAXATION AGREEMENT

(I) Introduction

The ratification of the new Protocol has been completed on July 16th.

The main changes included in the new Protocol are the following:

(II) Permanent Establishment

- (i) The content contemplated in article 19.2 of the Non-Resident Income Tax Law is included in the Agreement. It provides that in the event that the income of permanent establishments of non-resident entities is transferred abroad, a complementary tax of 19% on the amount transferred shall be payable.

Prior to the update to the protocol agreed, the Double Taxation Avoidance Convention established that the complementary tax was 10%, and now will be 5%.

- (ii) The minimum time required to consider a permanent establishment, with respect to construction works, installation or assembly, will be extended to twelve months in relation to the previous six months. This modification determines that the agreement meets the 12-month temporary requirement, regulated in the OECD Model Convention.

(III) Dividends

- (i) No withholding tax applies for recipient parent companies that hold 80% or more of the voting shares, in the paying entity for at least the 12 previous months.
- (ii) Dividend withholding tax is eliminated, when the beneficiary is a pension fund exempt from corporation tax, as long as the dividends are not the result of a business in which the pension fund or an associated entity of the same has intervened.
- (iii) The withholding rate on dividend payments is reduced from 10% to 5%, when the recipient company participates in at least 10% of the capital stock of the paying entity.



(IV) Interest

Withholding tax on interest paid by the source state is eliminated, when the recipient or beneficiary resides in the other contracting state.

(V) Royalties

(i) Withholding tax on royalties paid by the source state is eliminated, when the recipient or beneficiary resides in the other contracting state.

(ii) The remuneration for technical assistance services relating to any good or right was removed from the royalties' concept, by protocol in 2013.

(VI) Capital Gains

Both countries resign to their right to tax at source capital gains on shares, with the sole exception of shares in real estate holding companies. This when they derive directly from:

- Disposal (transmission) of real estate property.
- Transfer of shares or holdings in companies whose main assets are real estate located in that paying state.
- Transfer of rights that grant the holders of these, the possibility of receiving benefits derived from real estate.
- Transfer of rights that grant the owners of these, the possibility of receiving benefits derived from real estate that form part of the assets of permanent establishments located in such states.

(VII) Pensions

Where a person resident in a contracting state is a participant in or beneficiary of a fund or pension scheme in another contracting state, the state of residence of the participant or beneficiary may not tax benefits derived from that fund or pension scheme, until they are distributed or actually paid to the beneficiary.

(VIII) Limitation on benefits clause

A person resident in a Contracting State who obtains income derived from the other Contracting State, shall be entitled to receive the tax benefits regulated in this Convention in that other Contracting State, only when certain objective circumstances are met and therefore a case by case analysis shall be carried out.

(IX) Disputes between the contracting states are submitted to arbitration if the amicable procedure is not successful

In the case of disputes concerning the State which has the power to tax a certain income or profit, as long as more than two years have elapsed since the start of the



friendly procedure and the authorities have not been able to find an effective solution, the dispute shall be submitted to arbitration.

However, it is important to point out the following two exceptions. If the tax authorities of each contracting state consider that the dispute is not subject to arbitration, or when there are no precedents in the form of administrative rulings or court judgments providing criteria on how to resolve the dispute, the dispute will not be submitted to arbitration.

In general terms, the submission of controversies to arbitration when the amicable procedure does not prosper, will contribute to facilitate and speed up the resolution of conflicts. This will provide legal certainty to the taxpayer, and speed in the daily work of the Tax Administration.

(X) Information exchange system

The information exchange system between the Tax Administrations of the contracting states is expanded and made more effective and precise, to the extent that the scope of application reaches taxes not originally contemplated in the Information Exchange System.

ECIJA Tax Area