

Protocol amending the Cyprus-Switzerland Double Tax Treaty (DTT)

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In brief

In July 2020 an amending Protocol to the DTT between the Swiss Confederation and the Republic of Cyprus was signed and has since been going through the ratification procedures of the two countries.

The Protocol introduces, among others, minimum standards of the Base Erosion and Profit Shifting (BEPS) actions of the Organization for Economic Co-operation and Development (OECD).

The main amendments introduced by the Protocol include:

- the incorporation of specific wording in the Preamble of the DTT,
- the introduction of a Principal Purpose Test (PPT) through the 'Entitlement to Benefits' Article of the DTT
- the introduction of specific wording in the 'Mutual Agreement Procedure' Article.

In detail

1. Overview of the amendments introduced by the Protocol

(i) Preamble of the DTT

The newly introduced preamble specifies that the intention of the DTT is to eliminate double taxation with respect to taxes on income and on capital, without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this convention for the indirect benefit of residents of third states).

This is in line with the OECD minimum standard in BEPS Action 6.

(ii) Entitlement to Benefits

A benefit under this DTT shall not be granted in respect of an item of income or capital should this benefit be one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it can be established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provision of this DTT.

This provision is in accordance with the Principal Purpose Test (PPT) of BEPS Action 6 and complies with the OECD minimum standard in this respect.

(iii) Mutual Agreement Procedure

The Mutual Agreement Procedure Article is extended so that, should a person consider that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this DTT, he may present his case to the competent authority of either Contracting State as opposed to the competent authority of the State in which he is resident (as per the current provision).

This is in line with the OECD minimum standard in BEPS Action 14.

(iv) Other main amendments

A six-year limitation has been introduced in relation to the right of the Competent Authorities of the two Countries to adjust Business Profits attributable to a Permanent Establishment and profits from transactions between Associated Enterprises.

2. Applicable date for the amendments introduced by the Protocol

The Protocol, which has already been ratified by Cyprus (i.e. gazetted on 24 July 2020), shall enter into force upon its ratification by the Swiss Confederation.

The amendments mentioned in points (i) and (ii) above shall have effect from the first day of January of the year following the year in which the Protocol will enter into force.

The amendments mentioned in points (iii) and (iv) above shall have effect from the date of entry into force of this Protocol.

The takeaway

The purpose of this Protocol is the introduction of minimum standards of BEPS actions.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

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