

Global Tax Alert

News from Americas Tax Center

Brazil publishes decree approving Amendment Protocol to Brazil-Denmark Double Tax Treaty

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On 21 February 2019, Brazil published Legislative Decree No. 08, under which the Amendment Protocol to the Brazil-Denmark Double Tax Treaty is approved. Even though the Amendment Protocol was signed on 23 March 2011, it was not sent to the Congress until 2015, and not approved by the Brazilian Senate until 12 December 2018.

Under Article 23, Denmark previously granted Danish tax residents a deduction of 25% (i.e., "tax-sparing" credit) for the tax withheld on interest and royalties in Brazil. The Amendment Protocol replaces Article 23 (Methods for Elimination of Double Taxation) to allow both countries to apply the ordinary tax credit method to eliminate double taxation.

The new wording of Article 23 also sets forth that dividends received by residents of Denmark from Brazilian companies will not be treated less favorably than dividends paid and received between Danish resident companies under similar conditions.

Additionally, the Amendment Protocol removes items 5 and 6 from Article 23. Item 5 prevented a resident of a Contracting State from taxing undistributed profits of a controlled corporation held in the other Contracting State. Item 6 prevented a Contracting State from taxing the value of shares issued by a corporation resident in one Contracting State to a resident in the other Contracting State.

Certain items in the original Protocol, especially those related to the application of items 5 and 6 of Article 23, also were removed or amended.

Brazil and Denmark must notify each other once the constitutional requirements for ratifying the Amendment Protocol have been completed. The Amendment Protocol will enter into force upon the last notification (entry into force) and will be effective 1 January of the calendar

year immediately following the entry into force for taxes withheld at source. For other taxes on income or capital, the Amendment Protocol will apply to taxes due for any tax year beginning on or after 1 January of the calendar year immediately following the entry into force.

To complete the constitutional requirements for ratification of the Protocol, the Brazilian President must publish a decree ratifying the Amendment Protocol.

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