New Double Tax Treaty with Germany signed

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In brief

On 17 December 2015, Japan and Germany have signed a new double tax treaty ("New Treaty").

The New Treaty should foster mutual investment by reducing or eliminating withholding taxes on dividends, royalties and interest. The New Treaty will also implement some of the changes envisioned in the OECD's BEPS project and thus contains anti-tax avoidance and anti-tax evasion clauses. The New Treaty enhances cross-border information exchange between the tax authorities and contains extensive limitation of benefits and anti-avoidance rules.

The New Treaty text still needs to be approved by the legislative bodies of both countries. If the approval procedures are duly completed in both countries without delay in 2016, the New Treaty should become applicable from 1 January 2017.

In detail

1. Major changes

It has been announced that a new double tax treaty between Japan and Germany ("New Treaty") was signed on 17 December 2015. The major changes are as follows:

- The withholding tax rate for royalties and interest payments in the New Treaty is reduced to zero percent.
- The New Treaty provides for the following withholding tax rates for dividends depending on the share of voting rights held:
  - 0% withholding tax rate in the case where the corporate shareholder owns at least 25% of the voting shares for the period of 18 months or more;
  - 5% withholding tax rate in the case where the corporate shareholder owns at least 10% of the voting shares for the period of 6 months or more;
  - 15% withholding tax rate in other cases.
- The New Treaty introduces a mandatory arbitration clause upon application by the taxpayer and contains specific deadlines to achieve a settlement of potential disputes between the involved tax authorities. The clause provides for an arbitration tribunal that will suggest a solution if the discussions between the tax authorities fail to reach agreement within certain time frames.
- The New Treaty rules regarding the attribution of income to permanent establishments in essence follow the new Article 7 of the OECD Model Convention.
- The New Treaty contains extensive limitation of benefits clauses which limit certain preferential treatment to taxpayers under certain conditions.
- In addition, there are "subject-to-tax"/"switch-over" clauses which apply to cases where Germany exempts income received by a German resident according to the New Treaty. If a qualification conflict leads to a reduced or non-taxation or if Japanese national legislation

exempts income over which Japan has a “taxation right”, Germany agrees to tax such income under domestic legislation subject to a credit for any Japanese taxes paid.

- The New Treaty regulations on information exchange in tax matters and the cooperation of the tax administrations are extended.
- The New Treaty contains residency tie-breaker rules for the determination of residency in line with OECD principles.

Provided that the New Treaty goes through the ratification process in 2016 without delay, it will become applicable from 1 January 2017.

2. Significant impacts of the New Treaty

The New Treaty should have significant impacts on German - Japanese business transactions and may cause taxpayers to reconsider their European holding structures and the timing of the declaration of dividends and other payments. In addition, taxpayers may consider restructuring their transactions in order to take advantage of the new arbitration procedures contained in the New Treaty.

Will you be able to benefit? Our PwC tax experts can advise you how the New Treaty will impact your business in Japan and Germany and help you to find the most efficient structure for your business.

Let’s talk

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

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