Tax Insight

Uruguay - Brazil

Double Tax Treaty

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In Brasilia, on June 7th the Authorities of the Brazilian and Uruguayan Government signed a tax treaty to avoid double taxation and prevent fiscal evasion with respect to taxes on income and on capital (DTT) which substantially follows the OECD Model Tax Convention.

This is a second step after the Agreement for the Exchange of Information (AEoI) that these countries signed back in 2012, which is still waiting ratification of the Brazilian Congress.

The DTT is expected to enter into force in January 2020, provided Congress approval in both countries and the exchange of ratifying notes occur before the end of this calendar year.

The DTT signed by Brazil and Uruguay follows in general terms, the OECD Model Tax Convention. Below we include a summary of the most relevant provisions that the DTT contains.

Permanent Establishment (PE)

It is included in PE definition building sites, constructions, and related activities when such work lasts for a period exceeding six months. According to Uruguayan domestic tax law, a construction PE is deemed to exist if the activities carried out exceed three months. As such, the treaty provides a lengthier period for constituting a PE regarding construction and related activities. This is the minimum period established by the same provision in the UN Model Convention.

In addition, the treaty defines that a Services PE will exist when the activities exceed 183 days in any twelve-month period. This definition is complemented with two specific articles dealing with freelance workers and technical services fees, to which we will refer to below.

As regards fees for technical services, when they are paid to a resident of the other Contracting State, the DTT grants the tax authority to that State. On the other hand, it is established that the income obtained by freelance workers will be only taxed in the State in which they are residents, except certain situations foreseen in the Treaty, that may be subject to taxes in the other Contracting State.

Business profits

Profits of a company of a Contracting State are taxable only in the State of residence, except when a PE in the country of source exists. If that case, its benefits may be taxed in the latter but only if they are attributable to that PE.

Nevertheless, the protocol provides for a clause referring to business profits, which establishes that in the event that the State to which the tax authority is granted does not effectively levy taxes on said profits obtained by the company, those may be subject to taxes in the other Contracting State.

Associated enterprises

Regarding associated enterprises, the article does not have a second clause since the Brazilian DTT practice has been not to include a corresponding adjustment clause for Associated Enterprises (the Uruguayan DTT practice, on the other hand, is welcoming to this clause, as for example, it is included in the DTTs with Belgium, Finland, India, Korea and Chile, all of them members of the Brazilian Tax Treaty network).

Dividends

It is provided that the dividends may be subject to taxes in the State of residence of the beneficiary of said income.

However, dividends may also be taxable in the State in which the entity that pays the dividends is resident, with certain limits established by the DTT. In this regard, taxes levied on dividends shall not exceed 10% of the gross amount of the dividends if the beneficial owner is a company that holds at least 25% of the capital of the payer of such dividends, and 15% in all other cases.

Also, within this article, it has been specified that PE distributions of profits by both countries will be considered as dividend income for the purposes of the application of the DTT.

Interests

The tax authority is granted to the State in which the beneficiary of the interest is resident. However, the DTT establishes that interest may also be taxed in the source country up to 15% of the gross amount of interest.

Royalties

The CDI grants the right to tax royalties to the State in which the beneficiary of said rents is resident. It also States that royalties may also be subject to taxation in the country of the source up to 10% or 15%, the latter percentage being applicable only for royalties arising from the use or concession of the use of trademarks.

Pensions, annuities and social security

When these are paid to a resident of a Contracting State, they shall be taxable only in that State. In addition, pensions paid and other related payments made under a public system of a Contracting State may be taxed in that State.

Methods for the elimination of double taxation

As to provisions to eliminate double taxation, this Treaty defines which taxes and persons are in its scope, and foresees the mechanism to avoid double taxation, taking the option of the concession of credit (with the limitation of the tax that the source country applied on such income or assets).

Exchange of information

The treaty includes specific clauses in this regard. This is complemented with the already existent AEoI signed between the two Governments on October 2012, which is still waiting ratification of the Brazilian Congress.

Limitation of benefits (LoB clause)

This provision is aimed at preventing persons who are not resident of the Contracting States from accessing its benefits (i.e. through the use of an entity that would otherwise qualify as a resident of one of the States). This article follows the guidelines of the OECD to avoid “treaty shopping”.

Final reflections

This new DTT is another step in the path of adherence to the international standards in taxation. Today Uruguay has subscribed more than 30 international agreements.

Among them we find the AEoIs with France, Island, Denmark, Greenland, Argentina, Norway, Canada, Australia, the Feroe Islands, Sweden, The Netherlands, The United Kingdom and Guernsey.

As to DTTs, nowadays the ones with Hungary, Mexico, Spain, Germany, Switzerland, Liechtenstein, Portugal, Equator, Malta, South Korea, Finland, India, Rumania, Luxembourg, Belgium, Vietnam, United Arab Emirates, Singapore, the United Kingdom, Chile and Paraguay are in force.

Finally, it should be noted that on June 17th, it was submitted to Congress consideration the bill of law to ratify the DTT subscribed with Italy in March of this year.

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