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German Tax and Legal News

Germany and UK update existing tax treaty and announce plan for further amendments

Protocol will introduce additional anti-abuse provisions

Germany's Ministry of Finance (MOF) published a protocol on 14 January 2021 signed with the UK that will amend the existing Germany-UK tax treaty, as well as a joint declaration with the UK, both dated 12 January 2021. The protocol will introduce additional anti-abuse provisions into the existing Germany-UK tax treaty that are similar to provisions of the [Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting \(MLI\)](#), and the joint declaration announces negotiations beginning in 2021 for further amendments to the treaty.

Based on the explanation provided by the MOF, the protocol is intended to introduce the BEPS minimum standard provisions for tax treaties into the Germany-UK tax treaty. The protocol specifically will add the purpose of "Prevention of Tax Evasion and Tax Avoidance" to the title of the tax treaty, and also indicates this intention in an updated preamble (similar to the wording of article 6 (1) of the MLI). Article 5 of the existing tax treaty, which includes the definition of a permanent establishment (PE), will be supplemented by a new paragraph 4A that includes a provision regarding the artificial avoidance of PE status through a specific activity exemption. The wording of the new paragraph 4A is comparable to the wording of the MLI's article 13 (4) ("Option B"). Article 5 of the Germany-UK tax treaty also will be supplemented by a new paragraph 8, which includes a new definition of a person closely related to an enterprise for purposes of the PE definition (comparable to article 15 (1) of the MLI).

The income-specific anti-abuse provisions in the existing tax treaty (articles 10 (6), 11 (5), 12 (5), and 21 (5)) will be deleted. A comprehensive anti-abuse provision (similar to the wording of article 7 (1) of the MLI) will be introduced in a new article 30A of the treaty.

The current nondiscrimination clause in article 25 (4) of the treaty will be replaced by an updated nondiscrimination clause. The time limitation in the mutual agreement procedure clause of article 26 (2) of the treaty also will be updated.

To enter into force, the protocol must be ratified by both Germany and the UK and the instruments of ratification will need to be exchanged. From a German tax perspective, the protocol will become effective as follows:

- For withholding taxes, for any amounts paid on or after 1 January of the calendar year following the year in which the protocol enters into force; and
- For all other taxes, in respect of taxes levied for periods beginning on or after 1 January of the calendar year following the year in which the protocol enters into force.

In conjunction with the protocol, the governments of Germany and the UK issued a joint declaration indicating that negotiations are intended for a broader amendment of the Germany-UK tax treaty, and should begin in 2021. No further information is provided regarding specific points that will be included in the negotiations.

The protocol and the announcement of further treaty negotiations may be seen as a reaction to the UK leaving the EU. The current Germany-UK tax treaty is relatively new, having been signed in 2010 (and amended in 2014), and the treaty is not listed as a covered tax agreement under Germany's MLI position. However, there seems to be a wish on both sides to update the treaty and to respond to Brexit on a bilateral basis.

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