

Protocol amending Latvia–Germany double tax treaty 2/42/22



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Latvia continues to sign protocols amending its treaties by mutual agreement. On 29 September 2022 a protocol was signed to amend Latvia's double tax treaty with Germany. To take effect, it must be ratified by the parliaments of the two countries.

The purpose of the protocol

The protocol aims to amend several provisions of the treaty.

The scope

According to the OECD's recommendations, the treaty's preamble will be amended to state that applying the treaty cannot create an opportunity to escape or reduce taxation through tax avoidance, evasion or non-payment, or to enter into a business relationship that is mainly aimed at securing easier terms. Also, the treaty cannot be applied to help third-country residents take its benefits indirectly.

Counter-adjustment

The protocol will amend the text of the treaty that provides for an opportunity to resolve double taxation where a profit that an enterprise of one state recognises because of a transfer pricing adjustment has already been taxed in the other state as a profit of the other state's taxpayer. In that case the other state will have to make an appropriate counter-adjustment.

This amendment is particularly important for Latvia because its local legislation does not allow a Latvian taxpayer to reduce his income that is subject to corporate tax if the price (value) a controlled transaction is not arm's length.

Capital gains from real estate

The protocol will supplement the treaty's article 13 (Capital Gains) with more criteria that give the contracting states the power to charge their national tax. If a resident of one state disposes of real estate located in the other state, the other state will have the power to tax a capital gain. Also, the other state will have the power to charge a tax where a resident of one state disposes of shares or interests in a partnership or trust if more than 50% of the value of those shares or equivalent interests were directly or indirectly acquired from real estate located in the other state at any time during the 365-day period before the disposal.

Mutual agreement procedure

There was a time limit in the treaty for the mutual agreement procedure already. The treaty will now have provisions requiring the competent authorities to give mutual notices or to secure a consultation process where one of the competent authorities believes a taxpayer's claim is invalid.

Preventing abuse of the treaty

Latvia and Germany will have the power to deny treaty benefits if an assessment of all relevant circumstances shows that one of the main goals of any agreement or transaction was to obtain a benefit.

Latvian taxpayers that are doing business with a German partner or whose group structure includes a German entity might want to consider the implications of these amendments.