

Expected amendments to the Double Taxation Treaty with Switzerland via the new Protocol from 1 January 2025

Tax Alert

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The Protocol between the Government of the Republic of Serbia and the Swiss Federal Council on the amendments to the Double Taxation Treaty between Council of Ministers of Serbia and Montenegro and Swiss Federal Council (Protocol) was signed in Belgrade on 19 September 2023.

Serbian Parliament adopted the Law on Confirmation of the Protocol on 27 October 2023 which was published on 31 October 2023 in the Official Gazette of the Republic of Serbia – International Treaty no. 6/2023

Note that the implementation of these amendments is expected from 1 January 2025, if the Republic of Serbia receives a diplomatic note by Switzerland authorities that the procedures provided by Swiss law for entrance into force of the Protocol are completed.

Provisions of the Protocol shall have effect with respect to:

- Income taxes levied in the tax year starting on 1 January 2025 or after 1 January 2025, and
- Property taxes for properties owned in the tax year starting on 1 January 2025 or after 1 January 2025.

Exceptionally, the provisions of the Protocol relating to the international exchange of information shall apply to the information relating to the tax year starting on 1 January 2025 or after 1 January 2025.

Purpose of concluding the Protocol is:

- harmonization with the concepts provided by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting, primarily in the part of the minimum standards that refer to the preamble of the double taxation treaties and prevention of the treaty abuse,
- regulation of new rules for the international exchange of information,
- explanation and specification of certain solutions and concepts from the Double Taxation Treaty.

An overview of significant changes is provided below.

New rules for easier international exchange of information for tax purposes

The subject of information exchange between tax authorities may be information related to any type of tax introduced and administered by Serbia and Switzerland.

Exchanged information must be required for a specific tax purpose, i.e. it must be relevant for a specific tax procedure (e.g. the procedure for determining undeclared income) or be important for preventing or detecting international tax evasion.

Exchange of information representing bank secrecy enabled

Competent tax authority to which a request for the delivering of information is sent cannot refuse to provide specific information solely because the requested information is owned by a bank or other financial institution. Therefore, information that the bank possesses, for example, information on current account transactions, can be the subject of information exchange without restrictions. These amendments abolish the restriction on the exchange of information representing bank secrets (as it was foreseen in the primary text of the Double Taxation Treaty).

Deprivation of contractual benefits – application of the Principle Purpose Test

The tax authority can deny tax benefits from the Double Taxation Treaty, if it can be reasonably concluded that achieving of tax benefits from the Double Taxation Treaty has been one of the main reasons for a certain transaction or arrangement.

Essentially, it is a measure against the abuse of tax treaties aimed at preventing the behavior of taxpayers, which is primarily motivated by the achieving of tax benefits provided by the network of tax treaties of a specific jurisdiction when planning and implementing a certain transaction.

Application of Swiss rules on minimum taxation of groups of large multinational companies

If Swiss resident generates taxable income in Serbia, the rules on tax exemption do not apply to the extent that the Swiss rules on minimum taxation of groups of large multinational companies impose an additional tax in relation to a permanent establishment located in Serbia.

Alienation of shares in limited liability companies subject to capital gain taxation

The subject of capital gains taxation is the alienation of shares in limited liability companies established in accordance with Serbian laws, which generate more than 50% of their value directly or indirectly from real estates located in Serbia.

The Protocol includes limited liability companies In addition to joint stock companies.

Deadline for a tax audit of profit attributed to permanent establishment

Correction of profit attributed to a permanent establishment of a company of another contracting state would not be performed after five years from the end of the tax year in which the profit could be attributed to the permanent business unit.

Exceptionally, this provision does not apply in the case of tax evasion or the existence of an intention not to fulfill tax obligation.

If you have any questions or need the support of our experts, feel free to contact us at tax@kpmg.rs.

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