

Current tax information Germany

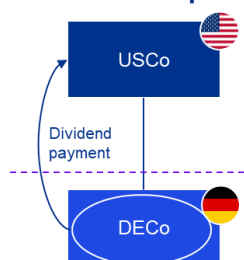
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Recent Developments Regarding Withholding Tax on Dividends Paid by Hybrid Entities

General

Germany generally levies withholding tax ('WHT') at a rate of 26.375% (including solidarity surcharge) on dividend distributions from a German subsidiary to foreign shareholders. Under the provisions of the double tax treaty (DTT) between Germany and the United States, a US shareholder may be entitled to a reduced WHT rate (0%, 5%, or 15%), provided that the requirements set forth in the Germany-US DTT, the German anti-treaty shopping rules, and the limitation on benefits (LOB) provisions of Article 28 DTT are met.

Recent developments



The German Federal Central Tax Office (Bundeszentralamt für Steuern, BZSt) has recently taken the position that dividend payments from a German subsidiary to its US parent company are not eligible for the reduced WHT rate under the Germany-US DTT if the German company is classified as a partnership (so-called "Disregarded Entity," DRE) for US tax purposes. As a result, the German Federal Central Tax Office intends to deny the issuance of exemption certificates to US corporations in such cases.

The basis for this position is art 1 para 7 of the Germany-US DTT, which provides that a reduced WHT rate on dividends and royalties is only available if the payment is treated as income at the level of the US recipient. According to the German Federal Central Tax Office, this is not the case for payments between a German entity treated as a disregarded entity and its US parent.

Within the tax advisory community, this development - which to date has only been communicated orally by the German Federal Central Tax Office - cannot be reconciled. It appears inconsistent with the general development of the German Federal Central Tax Office's approach, especially in light of the guidance issued on 17 March 2025, in which the German Federal Central Tax Office abandoned its previously restrictive view regarding the entitlement of indirect shareholders to treaty benefits.

The interpretation of art 1 para 7 of the Germany-US DTT - which states: "In the case of an item of income, profit or gain derived by or through a person that is fiscally transparent under the laws of either Contracting State, such item shall be considered to be derived by a resident of a State to the extent that the item is treated for the purposes of the taxation law of such State as the income, profit or gain of a resident" - is questionable as a basis for the new position. Doubts regarding the legality of this approach are supported by prevailing German tax literature, which holds that the provision focuses on the perspective of the income recipient, not the German company making the dividend or royalty payment.

At present, we do not expect that existing exemption certificates should be affected by the new position. Nevertheless, we recommend reviewing these certificates, especially if the status of the German entity as a Disregarded Entity was not disclosed during the application process.



Should you encounter any issues in current exemption procedures, please feel free to contact us. In particular, for dividend payments planned in the near future, there are several alternative structuring options available beyond the exemption procedure.

Contact



Ingo Rieke

Partner
International Transaction Tax
Germany/US Corridor Tax Leader

E-Mail: irieke@kpmg.com
Cell: +49 173 5764035

KPMG AG
Wirtschaftsprüfungsgesellschaft
Tersteegenstraße 19 - 23
40474 Düsseldorf
Germany



Maximilian Hummel

Senior Manager
International Transaction Tax
German Tax Desk

E-Mail: mhummel1@KPMG.com
Cell: +1 631 882 2365

KPMG LLP
Two Manhattan West
375 Ninth Avenue
New York, NY 10001
United States of America

www.kpmg.de

www.kpmg.de/socialmedia



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