

Baza wiedzy: Delegowanie w Europie

Methods for elimination of double taxation
in double taxation treaties in Europe
(Posting of Workers in Europe)

Lithuania - Germany

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Convention

Article 23

RELIEF FROM DOUBLE TAXATION

1. Tax shall be determined in the case of a resident of the Federal Republic of Germany as follows:

- a) Unless foreign tax credit is to be allowed under sub-paragraph b), there shall be exempted from German tax any item of income arising in the Republic of Lithuania and any item of capital situated within the Republic of Lithuania which, according to this Agreement, may be taxed in the Republic of Lithuania. The Federal Republic of Germany, however, retains the right to take into account in the determination of its rate of tax the items of income and capital so exempted.

In the case of dividends exemption shall apply only to such dividends as are paid to a company (not including partnerships) being a resident of the Federal Republic of Germany by a company being a resident of the Republic of Lithuania at least 25 per cent of the capital of which is owned directly by the German company.

There shall be exempted from taxes on capital any shareholding the dividends of which are exempted or, if paid, would be exempted, according to the immediately foregoing sentence.

- b) Subject to the provisions of German tax law regarding credit for foreign tax, there shall be allowed as a credit against German income, corporation and capital tax payable in respect of the following items of income arising in the Republic of Lithuania and the items of capital situated there the Lithuanian tax paid under the laws of the Republic of Lithuania and in accordance with this Agreement on:

- i) dividends not dealt with in sub-paragraph a);
- ii) interest;
- iii) royalties;
- iv) directors' fees;
- v) income of artistes and sportsmen.

- c) The provisions of sub-paragraph a) shall not apply to the profits of, and to the capital represented by movable and immovable property forming part of the business property of a permanent establishment and to the gains from the alienation of such property; to dividends paid by, and to the shareholding in, a company; provided that the resident of the Federal Republic of Germany concerned does not prove that the gross receipts of the permanent establishment or company are derived exclusively or almost exclusively from activities within the meaning of section 8, paragraph 1, sub-paragraphs 1 to 6 or from participation in the meaning of section 8, paragraph 2 of the Aussensteuergesetz (German Foreign Tax Law).

In such case the tax paid under the laws of the Republic of Lithuania and in accordance with this Agreement on the above-mentioned items of income and capital shall, subject to the provisions of German tax law regarding credit for foreign tax, be allowed as a credit against German income or corporation tax payable on such items of income or against German capital tax payable on such items of capital.

In the case of items of income dealt with in Article 10 and the items of capital underlying such income the exemption shall apply even if the dividends are derived from holdings in other companies being residents of the Republic of Lithuania which carry on active operations and in which the company which last made a distribution has a holding of 25 per cent or more.

2. Tax shall be determined in the case of a resident of the Republic of Lithuania as follows:

- a) Where a resident of the Republic of Lithuania derives income or owns capital which, in accordance with this Agreement, may be taxed in the Federal Republic of Germany, unless a more favorable treatment is provided in its domestic law, the Republic of Lithuania shall allow:

- i) as a deduction from the tax on the income of that resident, an amount equal to the income tax paid thereon in the Federal Republic of Germany;
- ii) as a deduction from the tax on the capital of that resident, an amount equal to the capital tax paid thereon in the Federal Republic of Germany.

Such deduction in either case shall not, however, exceed that part of the income or capital tax in the Republic of Lithuania as computed before the deduction is given, which is attributable, as the case may be, to the income or the capital which may be taxed in the Federal Republic of Germany.

- b) For the purpose of sub-paragraph a), where a company that is a resident of the Republic of Lithuania receives a dividend from a company that is a resident of the Federal Republic of Germany in which it owns at least 10 per cent of its shares having full voting rights, the tax paid in the Federal Republic of Germany shall include not only the tax paid on the dividend, but also the tax paid on the underlying profits of the company out of which the dividend was paid.

Protocol

7. With reference to Article 23:

- a) Where a company being a resident of the Federal Republic of Germany distributes income derived from sources within the Republic of Lithuania paragraph 1 shall not preclude the compensatory imposition of corporation tax on such distributions in accordance with the provisions of German tax law.
- b) The Federal Republic of Germany shall avoid double taxation by a tax credit as provided for in paragraph 1 b) of Article 23, and not by a tax exemption under paragraph 1 a) of Article 23,
 - i) if in the Contracting States income is placed under differing provisions of the Agreement or attributed to different persons - other than under Article 9 (Associated Enterprises) - and this conflict cannot be settled by a procedure pursuant to Article 25 and
 - if as a result of such placement or attribution the relevant income would be subject to double taxation; or
 - if as a result of such placement or attribution the relevant income would remain untaxed or be subject only to inappropriately reduced taxation in the Republic of Lithuania and would (but for the application of this paragraph) remain exempt from tax in the Federal Republic of Germany; or
 - ii) if the Federal Republic of Germany has, after due consultation and subject to the limitations of its internal law, notified the Republic of Lithuania through diplomatic channels of other items of income to which it intends to apply this paragraph in order to prevent the exemption of income from taxation in both Contracting States or other arrangements for the improper use of the Agreement.

In the case of a notification under sub-paragraph (bb) the Republic of Lithuania may, subject to notification through diplomatic channels, characterise such income under the Agreement consistently with the characterisation of that income by the Federal Republic of Germany. A notification made under this paragraph shall have effect only from the first day of the calendar year following the year in which it was transmitted and any legal prerequisites under the domestic law of the notifying State for giving it effect have been fulfilled.

Kadry i płace dla firm delegujących ELYSIUM.

ELYSIUM zapewnia firmom delegującym pełne wsparcie w zakresie prawidłowego naliczania płac dla pracowników, zleceniobiorców i pracowników tymczasowych delegowanych za granicę.

- ✓ ELYSIUM – to jedyny system płacowy uwzględniający zmiany w przepisach o delegowaniu
- ✓ ELYSIUM umożliwia firmie samodzielne i elastyczne dopasowanie zasad wyliczeń oraz dokumentów generowanych przez system płacowy
- ✓ ELYSIUM liczy płace zgodnie z przepisami polskimi oraz zgodnie z przepisami wszystkich państw członkowskich UE
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- ✓ ELYSIUM nalicza płace uwzględniając wszystkie składniki wynagrodzeń i dodatki obowiązujące w państwach, do których delegowani są pracownicy
- ✓ ELYSIUM jako jedyny system płacowy w Europie korzysta z permanentnego wsparcia Kancelarii Brighton&Wood: www.BrightonWood.com
- ✓ Dokumentację oraz pełną obsługę użytkowników ELYSIUM w postępowaniach kontrolnych w Europie zapewnia Kancelaria Brighton&Wood: www.BrightonWood.com



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KANCELARIA BRIGHTON&WOOD zapewnia firmom delegującym:

- ✓ legalne i zyskowe modele delegowania za granicę,
- ✓ optymalizację kosztów związanych z delegowaniem,
- ✓ sprawdzoną w wielu postępowaniach kontrolnych i sądowych dokumentację dla pracowników, zleceniobiorców i pracowników tymczasowych delegowanych za granicę,
- ✓ dokumentację kontraktową,
- ✓ konsultacje na temat prawidłowego i zyskowego delegowania pracowników za granicę,
- ✓ dostęp do wiedzy na temat regulacji w państwach, do których delegowani są pracownicy,
- ✓ dostęp do regulacji państw przyjmujących w zakresie stawek minimalnych, czasu pracy, dodatków i innych przepisów, do których stosowania zobligowani są polscy przedsiębiorcy,
- ✓ audyty dla firm delegujących w zakresie prawidłowości i opłacalności delegowania,
- ✓ audyty dla kontrahentów n/t poprawności delegowania przez polską firmę,
- ✓ certyfikację w zakresie zgodności z normą [CBE-2020 [Cross-Border Employment] Construction, Infrastructure & Energy]

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