

US SENATE APPROVES THE PROTOCOL AMENDING THE INCOME TAX TREATY WITH SPAIN

On 16 July 2019, the US Senate finally approved the new protocol amending the existing Spain–US income tax treaty (the "**Protocol**").

The Protocol was signed by the Spanish Minister of Finance and the US Ambassador in Spain on 14 January 2013 but its approval was stalled at the US Senate due to the objections of Senator Rand Paul in relation to the information-sharing provision. As we further explained in our previous [briefing](#), the Protocol makes significant improvements to the tax treaty in relation to the taxation of dividends, royalties, interest payments and capital gains.

The instrument of ratification must now be drafted by the State Department and will then be signed by the President of the United States. Once signed, the US and Spain will notify each other that all domestic procedures have been followed and the instruments of ratification will also be exchanged. After this exchange, the Protocol will then enter into force within three months. Thus, given the date, the new rules on the taxation of payments between tax residents in these two jurisdictions may be in force prior to year-end.

The Protocol should have immediate effects in connection with withholding taxes accrued for amounts paid or credited on or after the entry into force of the tax treaty (e.g. with respect to dividends, interest, royalties and capital gains). Otherwise, regarding taxes determined by reference to a taxable period, the new provisions will take effect in tax periods beginning once the Protocol enters into force.

Considering the new provisions, it would be advisable to review both inbound and outbound structures in both jurisdictions (even in case the investment has been made through any other jurisdiction), to verify if the new favourable tax benefits could apply. Such review will also serve, in turn, to rule out any risk of non-application of the currently available tax benefits as a consequence of the new comprehensive limitation on benefits provision or the new provisions for fiscally transparent entities under the Protocol.

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28046 Madrid, Spain

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