Legislative Decree No. 170

Approves Protocol to Brazil-China Double Taxation Treaty

Original treaty

Agreement for the **avoidance of double taxation and the prevention of fiscal evasion** with respect to taxes on income (with protocol). Signed on April 5, 1991.

Protocol

Signed on May 23, 2022, this protocol updates the original treaty to **align with modern international tax standards** and **foster enhanced economic cooperation between Brazil and China**.

Legislative Decree

On May 6, 2025, Legislative Decree No. 170 was enacted, **approving the protocol** to the Brazil-China Double Taxation Treaty (DTT).

The protocol introduces significant amendments to the Brazil-China DTT, focusing on withholding tax rates, permanent establishment rules, residency, anti-abuse measures, and tax transparency.

Primary changes:

Withholding Tax Rates

- **Dividends**: Reduced from 15% to 10% generally; further lowered to 5% if the beneficial owner holds at least 10% of the paying company's capital for 365 days (including the payment day). A 0% rate applies to dividends paid to Contracting States, their Central Banks, or specific listed institutions (e.g., BNDES in Brazil or wholly-owned Chinese government entities).
- **Interest**: Reduced from 15% to 10% for loans with a term of at least 5 years related to public works, equipment, or industrial/scientific installations; a 0% rate applies to interest paid to Contracting States, Central Banks, BNDES, or listed Chinese institutions.
- **Royalties**: Lowered from 15% to 10% for most categories, but remains at 15% for trademark-related payments.

Residency and Anti-Abuse Measures

- Clarified residency rules for non-individuals (e.g., companies), with competent authorities resolving dual residency cases. If unresolved, treaty benefits may be restricted.
- Introduced a Principal Purpose Test (PPT) to prevent treaty abuse, ensuring benefits are granted only if the transaction aligns with the treaty's objectives (e.g., preventing treaty shopping).

Permanent Establishment (PE)

- Extended the construction PE period from 6 months to 9 months, meaning a construction site must operate for more than 9 months to constitute a PE.
- Updated rules for dependent agents and introduced provisions to address tax avoidance by related parties, ensuring fragmented activities do not circumvent PE status.

Exchange of Information

- Enhanced provisions to align with OECD standards, improving tax transparency and cooperation between Brazilian and Chinese tax authorities.

Elimination of Double Taxation:

- Both countries will apply the credit method to eliminate double taxation. China offers an additional indirect credit for underlying taxes on dividends if a Chinese company holds at least 10% of a Brazilian company's capital.

Most Favored Nation Clause (MFN)

- A specific provision adjusts withholding tax rates (dividends ≥5%, interest ≥10%, royalties ≥10%) if Brazil grants lower rates to another state after May 23, 2022.

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The table below summarizes the changes to withholding tax rates under the Brazil-China DTT:

Income Type	Before Protocol	After Protocol
Dividends	15%	» 15% (general rate); » 10% (if ≥10% capital held for 365 days); » 5% (for specific entities)
Interest	15%	» 15% (general rate); » 10% (for loans ≥5 years for public works/equipment); » 0% (for specific entities)
Royalties (including technical services)	15%	» 10% (general rate); » 15% (for trademarks)

For the protocol to take effect in Brazil:

- a presidential decree must be issued, followed by the exchange of ratification instruments with China;
- once ratified, the protocol will apply from January 1 of the following year.

We will monitor and provide updates on the presidential decree and the protocol's implementation timeline.

We are available if you have any questions or need additional information.

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