The Netherlands and Germany Amend Tax Treaty

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Introduction

On March 24, 2021, the Netherlands and Germany signed a protocol to amend the tax treaty between the two states (the **Protocol**). The tax treaty prevents, on the one hand, double taxation by companies or citizens and, on the other hand, non-taxation. The Protocol contains agreements on the right to levy taxes on (short-term) social security benefits and clauses to prevent tax avoidance.

The Protocol has not yet entered into force, but it will take effect once parliamentary ratification and the exchange of ratification instruments between the contracting states occurs. This GT Alert summarizes the content of the Protocol.

Social Security Benefits

The Protocol amends the distribution of taxing rights over certain social security benefits, which include the so-called “Krankengeld” (sickness benefit) and “Elterngeld” (benefit for parents of young children). This ensures that in all cases the country providing the social security benefit may also tax it. Amongst other things, this provision ensures that German net social security benefits are not taxed in the Netherlands if they would be exempt in Germany.

Tax Avoidance

The Protocol contains agreements between the states that prevent the benefits of the treaty from being used solely to avoid taxation. These anti-abuse provisions are in-line with the base erosion and profit shifting (BEPS) project. The treaty now meets the minimum standards of the BEPS project.

Conclusion

The provisions of the Protocol will enter into force once both contracting states have ratified it in accordance with national constitutional procedures. Subsequently, the provisions of the Protocol will take effect on the first day of January in the following calendar year.

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