29 July 2011

Mexico double tax agreement – frequently asked questions

Lower non-resident withholding tax rates for dividends

Question:

Has the Most Favoured Nation obligation contained in Article 9 of the Protocol to the double tax agreement between New Zealand and Mexico ("the Mexican DTA"), that relates to the treaty withholding rate for dividends, been triggered?

Answer:

Yes, the Most Favoured Nation obligation was triggered on 1 May 2010. From that date, the following provisions shall apply as if they had been specified in paragraph 2 of Article 10 of the Mexican DTA.

i. The dividends shall not be taxed in the Contracting State of which the company paying the dividends is a resident at a rate exceeding 5 per cent of the gross amount of the dividends if the beneficial owner of those dividends is a company which holds directly at least 10 per cent of the voting power in the company paying the dividends.

ii. The dividends shall not be taxed in the Contracting State of which the company paying the dividends is a resident if the beneficial owner of the dividends is a company that is a resident of the other Contracting State that has owned, directly or indirectly through one or more residents of either Contracting State, shares representing 80 per cent or more of the voting power of the company paying the dividends for a 12 month period ending on the date the dividend is declared and the company that is the beneficial owner of the dividends meets one or more of the following criteria:

    (a) The company has its principal class of shares listed on a recognised stock exchange specified in subparagraph (iv)(a) and (b) of the definition below and is regularly traded on one or more recognised stock exchanges specified in paragraph (iv).

    (b) The company is owned directly or indirectly by one or more companies:

        (I) whose principal class of shares is listed on a recognised stock exchange specified in subparagraph (iv)(a) and (b) of the definition below and is regularly traded on one or more recognised stock exchanges specified in paragraph (iv); or

(II) which, if that company or each of those companies owned directly the holding in respect of which the dividends are paid, would be entitled to equivalent benefits in respect of such dividends under a tax treaty between the State of which that company is a resident and the Contracting State of which the company paying the dividends is a resident.

(c) The company does not meet the requirements of subparagraphs (a) or (b) but the competent authority of the first-mentioned Contracting State determines that the first sentence of the following paragraph does not apply. The competent authority of the first-mentioned Contracting State shall consult the competent authority of the other Contracting State before refusing to grant benefits under this subparagraph.

iii. The new, lower rates shall not apply if it is the main purpose or one of the main purposes of any person concerned with an assignment of the dividends, or with the creation or assignment of the shares or other rights in respect of which the dividend is paid, or the establishment, acquisition or maintenance of the company that is the beneficial owner of the dividends and the conduct of its operations, to take advantage of those new rates. In any case where a Contracting State intends to apply this paragraph, the competent authority of that State shall consult with the competent authority of the other Contracting State.

iv. The term “recognised stock exchange” means:

(a) the Mexican Stock Exchange (Bolsa Mexicana de Valores, BMV);
(b) the securities markets (other than the New Zealand Debt Market) operated by New Zealand Exchange Limited; and
(c) any other stock exchange agreed upon by the competent authorities.

Competent Authority Determinations

Question:

With respect to the previous question, how do I apply for a competent authority determination that a zero-rate of withholding tax will apply to the payment of a particular dividend?

Answer:

You will need to apply in writing to the relevant taxation authority requesting competent authority consideration of the matters by setting out in some detail the relevant facts and circumstances of your case, before payment of the relevant dividend.

For New Zealand subsidiaries of Mexican parent companies, please direct your correspondence to:

New Zealand Competent Authority
International Audit Unit
Large Enterprises
P O Box 2198
Wellington 6140
New Zealand

Your letter to the New Zealand Competent Authority should include the following:

- background details as to corporate structure since 1 January 2008;
- any material changes in capital structure since 1 January 2008;
- recent trading history (including why the dividend is unimputed);
- confirmation that the 80% voting power requirement has been met; and
- why it is considered the first sentence of the third paragraph of the criteria set out above does not apply.