



BDO Seidman, LLP  
Accountants and Consultants

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## Issue:

### New Protocol to US-German Income Tax Treaty

# International Tax Alert

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**For more information about the new Protocol, and how it may affect you, please contact:**

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## Issue:

The U.S. Treasury Department and the German Ministry of Finance on June 1 signed a new Protocol to the 1989 Income Tax Treaty between the two nations. The Protocol amends the treaty in key aspects, in particular with respect to inter-company dividends.

## Affecting:

All taxpayers doing business in Germany

## Details:

The new Protocol will bring the existing tax treaty with Germany in line with some of the more recent treaties entered into by the United States. Most importantly, it will eliminate withholding tax on cross-border dividends paid to qualifying corporations. In general, a U.S. corporation owning at least 80 percent (directly) of the voting power of a German subsidiary for a period of at least 12 months should be able to benefit from this rule, provided, however, it can meet the relevant provisions of the treaty's new limitation on benefits (LOB) article. For instance, the LOB article may require that the shareholder be a publicly traded company, or (if owned by resident individuals) be engaged in a trade or business. Correspondingly, the U.S. branch profits tax is reduced to zero for qualifying German corporations.

The effective date for these rules will be January 1 of the year in which the Protocol enters into force.

Other provisions of the new Protocol include a mandatory arbitration procedure where the competent authorities are unable to resolve a case of double taxation and new provisions to combat treaty shopping.

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