

PROTOCOL

AMENDING THE AGREEMENT OF 22 JULY 1997

BETWEEN

THE REPUBLIC OF LITHUANIA

AND

THE FEDERAL REPUBLIC OF GERMANY

FOR THE AVOIDANCE OF DOUBLE TAXATION

WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

The Republic of Lithuania

and

the Federal Republic of Germany,

Desiring to conclude a Protocol amending the Agreement of 22 July 1997 between the Republic of Lithuania and the Federal Republic of Germany for the Avoidance of Double Taxation with respect to Taxes on Income and on Capital,

Have agreed as follows:

Article 1

The Preamble shall read as follows:

“The Republic of Lithuania
and
the Federal Republic of Germany,

Desiring to further develop their economic relationship and to enhance their cooperation in tax matters,

Intending to eliminate double taxation with respect to the taxes covered by this Agreement without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Agreement for the indirect benefit of residents of third States),

Have agreed as follows:”.

Article 2

(1) A new paragraph 4a shall be inserted after paragraph 4 of Article 5 as follows:

“(4a) Paragraph 4 shall not apply to a fixed place of business that is used or maintained by an enterprise if the same enterprise or a closely related enterprise carries on business activities at the same place or at another place in the same Contracting State and

- a) that place or other place constitutes a permanent establishment for the enterprise or the closely related enterprise under the provisions of this Article, or
- b) the overall activity resulting from the combination of the activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, is not of a preparatory or auxiliary character,

provided that the business activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, constitute complementary functions that are part of a cohesive business operation.”

(2) A new paragraph 8 shall be inserted after paragraph 7 of Article 5 as follows:

“(8) For the purposes of this Article, a person or enterprise is closely related to an enterprise if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same persons or enterprises. In any case, a person or enterprise shall be considered to be closely related to an enterprise if one possesses directly or indirectly more than 50 per cent of the beneficial interest in the other (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company’s shares or of the beneficial equity interest in the company) or if another person or enterprise possesses directly or indirectly more than 50 per cent of the beneficial interest (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company’s shares or of the beneficial equity interest in the company) in the person and the enterprise or in the two enterprises.”

Article 3

The wording of Article 9 shall be paragraph 1 of Article 9. After this paragraph, a new paragraph 2 shall be inserted as follows:

“(2) Where a Contracting State includes in the profits of an enterprise of that State— and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall if necessary consult each other.”

Article 4

A new Article 26A shall be inserted after Article 26 as follows:

“Article 26A Prevention of Treaty Abuse

Notwithstanding the other provisions of this Agreement, a benefit under this Agreement shall not be granted in respect of an item of income or capital if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Agreement.”

Article 5

Paragraph 8 of the Protocol to the Agreement shall be deleted.

Article 6

(1) This Amending Protocol shall be ratified and the instruments of ratification shall be exchanged as soon as possible.

(2) This Amending Protocol shall enter into force on the day of the exchange of the instruments of ratification. The Agreement as amended by this Amending Protocol shall thereupon have effect in both Contracting States:

- a) in the case of taxes withheld at source, in respect of amounts paid on or after the first day of January in the calendar year next following the year in which this Amending Protocol enters into force;
- b) in the case of taxes on income and on capital, in respect of taxes levied for periods beginning on or after the first day of January in the calendar year next following the year in which this Amending Protocol enters into force.

Done at Vilnius on 30 September 2022 in two originals, each in the Lithuanian, German and English languages, all three texts being authentic. In case of divergent interpretations of the Lithuanian and German texts, the English text shall prevail.

For the Republic of Lithuania

For the Federal Republic of Germany