Luxembourg

Luxembourg starts ratification process of four new tax treaties and six amending protocols

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The Luxembourg Government recently presented to parliament a draft law ratifying four double tax treaties (DTTs) concluded by Luxembourg with Andorra, Croatia, Estonia and Singapore and six protocols to existing DTTs concluded with the UAE, France, Ireland, Lithuania, Mauritius and Tunisia. While most of the protocols only aim to bring the exchange of information provisions of existing DTTs in line with OECD standards, the protocol to the Luxembourg-France DTT, the ratification process of which has been closely followed, amends the rules dealing with the taxation of capital gains on the sale of shares in property companies. The new DTTs generally follow the OECD Model Tax Convention. We present the main provisions.

Residence

As far as residence is concerned, according to the DTTs concluded with Andorra, Croatia and Singapore, companies are, in case of conflict, considered as resident in the country in which their place of effective management is located, which is in line with the current version of the OECD Model Tax Convention. However, under the DTT with Estonia, conflicts of residence of companies have to be settled by the contracting states by mutual agreement, meaning that the two countries will have to agree on the country in which the company will be considered as resident for DTT purposes. Even though solving conflicts of tax residence by the mutual agreement of the competent authorities is in accordance with the latest draft recommendations under the OECD's work to counter base erosion and profit shifting (BEPS), leaving it to the contracting states to solve these issues is an approach which runs the risk of being impractical and which means a lot of legal uncertainty for taxpayers.

As far as investment funds are concerned, the four new DTTs include specific provisions granting express treaty benefits to Undertakings for Collective Investment (UCI), which is good news. Under the new Andorra DTT, as well as under the new Croatia DTT, SICAVs and SICAFs will be treated as resident under the DTT and will benefit from the same withholding tax (WHT) rates as any other Luxembourg fully taxable company. FCPs on the other hand, since they have no legal personality, will be considered as resident for DTT purposes but will only benefit from the rates applicable to Luxembourg individuals, which are generally higher. According to the new Estonia DTT, a UCI will be considered as a resident for DTT purposes and as the beneficial owner of the income received. The protocol states further that UCI covers SICAVs, SICAFs, SICARs and FCPs as well as any other UCI which the contracting states agree to consider as such. Finally, under the Singapore DTT, a collective investment vehicle is a resident of a contracting state if, under the domestic laws of that state, it is liable to tax, even if it is exempt from tax if it meets all the requirements for exemption specified in the tax laws of that contracting state. This means that SICAVs and SICAFs will be treated as resident under the new Luxembourg-Singapore DTT.

Withholding tax rates

As far as withholding tax rates are concerned, the table below presents the maximum rates that countries may levy, under certain conditions, under the new DTTs with Andorra, Croatia, Estonia and Singapore:

	Dividend	Interest	Royalties
Andorra DTT	0% / 5% / 15%	0%	0%
Croatia DTT	5% / 15%	10%	5%
Estonia DTT	0% / 10%	0%	0%
Singapore DTT	0%	0%	7%

Capital gains taxation

As far as the tax treatment of capital gains is concerned, the DTTs with Andorra, Croatia and Estonia include a provision according to which gains arising from the sale of shares in an immovable property company are taxable in the country in which the immovable property is located. Under the Luxembourg-Singapore DTT, these gains are taxable as any other gains realised upon the sale of shares, meaning that they are only taxable in the country of the seller.

Changes introduced by amending protocols

The United Arab Emirates – Luxembourg protocol amends the provisions of the DTT dealing with capital gains, the provisions on the methods to avoid double taxation, and finally the ones on exchange of information, in line with the OECD standard on exchange of information upon request.

The protocol to the France-Luxembourg DTT amends the rules applicable to capital gains realised upon the sale of shares or other rights in real estate companies and allocates the right to tax these gains to the source country (that is, country in which the real estate is situated). The ratification process of this protocol has been followed closely, given its impact on existing and future investments in French real estate. Now that the ratification process has started, it can be expected that the new rules will become applicable in 2016.

The protocols to the DTTs concluded with Ireland, Lithuania, Mauritius and Tunisia amend mainly the exchange of information provisions of the DTTs to bring them in line with the OECD standards on exchange of information upon request.

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