

Luxembourg

Recent tax treaties and protocols ratified by Luxembourg



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Luxembourg continues to expand its double tax treaty (DTT) network with the ratification of five new DTTs (with Saudi Arabia, Jersey, Guernsey, the Isle of Man and the Czech Republic), two protocols to existing DTTs (with Denmark and Slovenia) and a double taxation agreement entered into with Taiwan. These new DTTs share some common features with the alignment of these DTTs and protocols with the OECD standards on exchange of information and the granting of treaty benefits to collective investment vehicles (CIVs). We present the main features.

DTT with Saudi Arabia

The protocol to the new Saudi Arabia-Luxembourg DTT provides that CIVs are considered as residents and beneficial owners of the income they earn. No distinction is made between CIVs in corporate form (SICAVs/SICAFs) and in contractual form (FCPs).

In line with the OECD Model Tax Convention (MTC) in its current form, the DTT with Saudi Arabia provides that capital gains derived by a resident of Luxembourg/Saudi Arabia from the alienation of shares in real estate companies are taxable in the country in which the real estate is located.

The DTT with Saudi Arabia deviates from the OECD MTC and provides that capital gains derived from the alienation of shares belonging to a participation of at least 25% in a company are taxable in the source country (that is, in the state where the company is established).

DTTs with Guernsey, Jersey & Isle of Man

Under these three DTTs, body corporate CIVs are considered as residents and beneficial owners of the income received while CIVs in other forms are considered as individual residents and beneficial owners of the income received. This means that SICAVs/SICAFs will be able to benefit from the same reduced withholding tax rates as ordinary fully taxable Luxembourg companies, while FCPs, since they are tax transparent, will be subject to the maximum rate applicable to individuals (which is higher).

As far as capital gains derived from the disposal of shares in real estate companies are concerned, they are treated as gains on

the sale of movable property, meaning that they are only taxable in the country of the seller. If the seller is a Luxembourg company, the gains can benefit, under certain conditions, from the domestic exemption regime.

DTT with the Czech Republic

The protocol states that the term “resident of a contracting state” also includes a fiscally non-transparent person (including a CIV) that is established in that state according to its laws, even in the case where the income of that person is taxed at a zero rate in that state or is exempt from tax there. This provision means that Luxembourg SICAVs and SICAFs benefit from the DTT provisions. FCPs, since they are fiscally tax transparent, are not entitled to the benefits of the DTT.

As far as capital gains derived from the disposal of shares in real estate companies are concerned, they are treated as gains on the sale of movable property, meaning that they are only taxable in the country of the seller.

Agreement with Taiwan

As far as persons other than individuals are concerned, the resolution of conflicts of residence follows the terms of the alternative provisions suggested by the commentaries to the OECD MTC: in case of conflict of residence a mutual agreement procedure is necessary to determine the place of effective management.

The protocol to the agreement provides that a CIV in corporate form for tax purposes shall be considered as a resident of the territory in which it is established and as the beneficial owner of the income it receives. Luxembourg SICAVs/SICAFs will therefore be able to obtain treaty benefits. However, dividends and interest received by CIVs suffer a higher withholding tax rate than the one applicable to other recipients (15% WHT as opposed to 10%).

The DTT deviates from the OECD MTC: capital gains derived from real estate companies are only taxable in the country of the seller, so there is no taxation at source.

The agreement includes an anti-abuse rule: a resident of a territory shall not be granted the benefits of the agreement if it is established that the conduct of operations by such resident has for the main purpose or one of the main purposes to obtain the benefits of this agreement. The application of the clause is, however, dependent upon an agreement of both Luxembourg and Taiwan, meaning that no unilateral application of these rules can be made.

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