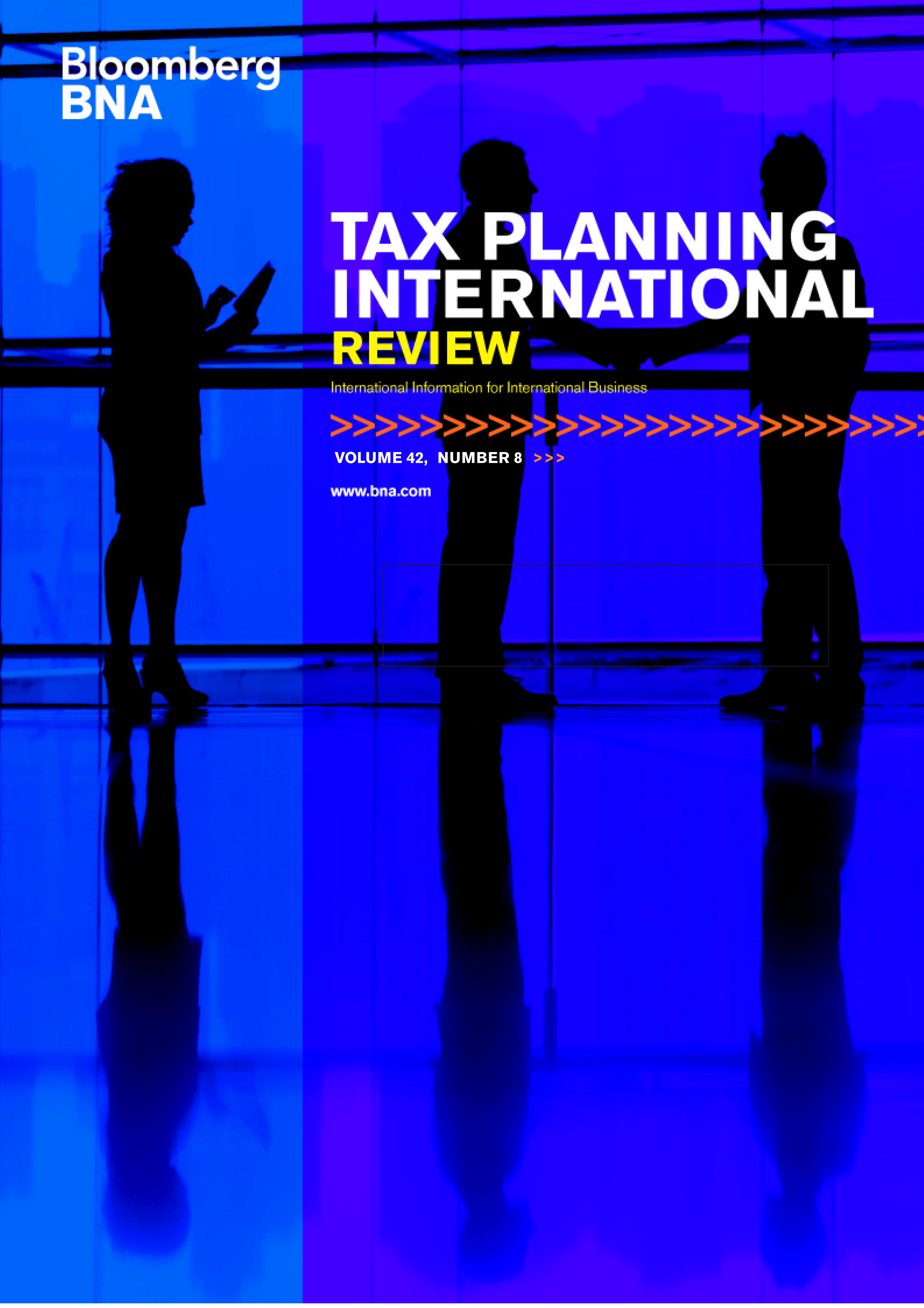

Bloomberg BNA

TAX PLANNING INTERNATIONAL REVIEW

International Information for International Business

VOLUME 42, NUMBER 8

www.bna.com

Luxembourg Expands its Tax Treaty Network

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The Luxembourg Government has taken steps to expand its tax treaty network by presenting a draft law to ratify agreements with numerous countries. The agreements include a number of protocols amending existing treaties to ensure the exchange of information provisions are in line with OECD standards.

The Luxembourg Government recently presented a draft law to parliament ratifying four Double Tax Treaties ("DTTs") concluded by Luxembourg with Andorra, Croatia, Estonia and Singapore and six Protocols to existing DTTs concluded with the United Arab Emirates ("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 amends the rules dealing with the taxation of capital gains on the sale of shares in property companies.

I. Andorra–Luxembourg DTT

The Andorra–Luxembourg DTT was signed on June 2, 2014. It generally follows the OECD Model Tax Convention. Its main provisions are listed below.

A. Residence

An Undertaking for Collective Investment ("UCI") or a pension fund which is treated as a legal body for tax purposes in its country of establishment is considered as a resident for DTT purposes. A UCI or a pension fund which is not treated as a legal body for tax purposes in its country of establishment is considered both as an individual resident in its country of establishment and as the beneficial owner of the income it receives.

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Applied to Luxembourg UCIs, this means that investment companies with a separate legal personality and a variable capital (*sociétés d'investissement à capital variable*) ("SICAVs") and fixed capital investment companies (*sociétés d'investissement à capital fixe*) ("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 (e.g. 0%, 5% or 15% on dividends). The same will apply to Luxembourg pension funds set up as an *association d'épargne-pension* ("ASSEP") or a *société d'épargne-pension à capital variable* ("SEPCAV").

Investment funds without a separate legal personality (*fonds communs de placement*) ("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 (e.g. 15% on dividends).

B. Withholding Tax Rates

As far as dividends are concerned, the DTT provides for a WHT exemption if the beneficial owner is a company which has held a shareholding of at least 10% or 1.2 million euros during a period of at least 12 months. A maximum of 5% WHT rate applies if the beneficial owner is a company with a minimum 10% shareholding and a 15% WHT rate applies in all other situations. As far as interest income is concerned, the DTT provides a 0% rate. Similarly, the DTT provides for a WHT exemption on royalties.

C. Capital Gains

Capital gains arising from the sale of shares, interest or similar rights in an immovable property company are taxable in the country in which the immovable property is located.

II. Croatia–Luxembourg DTT

The Croatia–Luxembourg DTT was signed on June 20, 2014. It generally follows the OECD Model Tax Convention. Its main provisions are listed below.

A. Residence

A UCI which is treated as a legal body for tax purposes in its country of establishment is considered as a resident for DTT purposes and as the beneficial owner of the income received. A UCI which is not treated as a legal body for tax purposes in its country of establishment is considered as an individual resident in its country of establishment and as the beneficial owner of the income it receives.

Applied to Luxembourg UCIs, this means that SICAVs and SICAFs will be treated as resident under the DTT and will benefit from the same WHT rates as any other Luxembourg fully taxable company (e.g. 5% or 15% on dividends). 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 (e.g. 15% on dividends).

B. Withholding Tax Rates

As far as dividends are concerned, the DTT provides for a WHT rate of a maximum of 5% if the beneficial owner is a company which holds a shareholding of at least 10%. A 15% WHT applies in all other situations. As far as interest income is concerned, the DTT provides for a maximum 10% WHT rate. Finally, the DTT provides for a maximum 5% WHT rate on royalties.

C. Capital Gains

Capital gains arising from the sale of shares in an immovable property company are taxable in the country in which the immovable property is located. Notwithstanding, certain exceptions may render the gain taxable in the country of the seller instead of being taxed in the country of source.

III. Estonia-Luxembourg DTT

The Estonia-Luxembourg DTT was signed on July 7, 2014. It generally follows the OECD Model Tax Convention. Its main provisions are listed below.

A. Residence

As far as the determination of the tax residence of a company is concerned, the DTT states that if a company is considered as resident in the two contracting states according to the internal tax rules of these countries, the contracting states shall settle the question by mutual agreement. Settling the question of the tax residence by mutual agreement is currently not the established practice under the existing OECD Model Tax Convention, but it is one of the options available in the commentaries, and is also what is currently suggested under the ongoing BEPS work on Action 6.

The Protocol to the DTT provides that a UCI is considered as a resident for DTT purposes and as the beneficial owner of the income received. The Protocol states further that the term "UCI" covers SICAVs, SICAFs, venture capital holding companies (*sociétés d'investissement en capital à risque*) ("SICARs") and FCPs, as well as any other UCI which the contracting states agree to consider as such. This means that the DTT does not make any kind of distinction between a UCI which is treated as a legal body for tax purposes in its country of establishment (such as a SICAV or a SICAF) and a UCI which is not (such as an FCP). Both will be treated as any other Luxembourg fully taxable company.

B. Withholding Tax Rates

As far as dividends are concerned, the DTT provides for a WHT exemption if the beneficial owner is a company which holds a shareholding of at least 10%. A 10% WHT rate applies in all other situations. As far as interest income is concerned, the DTT provides for a WHT exemption. Similarly, the DTT provides for a WHT exemption on royalties.

C. Capital Gains

Capital gains arising from the sale of shares in an immovable property company are taxable in the country in which the immovable property is located. Notwithstanding, certain exceptions may render the gain taxable in the country of the seller instead of being taxed in the country of source.

IV. Singapore–Luxembourg DTT

The Singapore–Luxembourg DTT was signed on October 9, 2013. It generally follows the OECD Model Tax Convention. Its main provisions are listed below:

A. Residence

A UCI is a resident of a contracting state if, under the domestic laws of that state, it is liable for tax by reason of its domicile, residence, place of management or any other similar criteria. A UCI is also considered liable for tax if it is subject to the tax laws of that contracting state but is exempt from tax only if it meets all the requirements for exemption specified in the tax laws of that contracting state.

B. Withholding Tax Rates

As far as dividends are concerned, the DTT provides for a WHT exemption. As far as interest income is concerned, the DTT provides for a WHT exemption. As far as royalties are concerned, the DTT provides for a WHT rate of a maximum 7%.

C. Capital Gains

There is no specific clause regarding the sale of shares and similar rights in immovable property companies, meaning that the sale of shares in this type of com-

   ISSN 0309-7900

pany is treated in the same way as any sale of shares and is accordingly only taxable in the country of the seller.

V. United Arab Emirates–Luxembourg Protocol

The Protocol to the UAE–Luxembourg DTT was signed on October 26, 2014. It amends the provisions of the DTT dealing with capital gains (Article 13), the provisions on the methods to avoid double taxation, and those which deal with exchange of information, bringing these provisions in line with the OECD standard on exchange of information upon request.

A. Capital Gains

As far as capital gains are concerned, according to the new Protocol, gains derived from the alienation of shares, bonds and other securities or similar instruments which are listed on a recognized stock market of a contractual state are only taxable in the country of the seller. In addition, all other gains derived from the alienation of other securities such as bonds or similar securities, shall also be only taxable in the country of the seller.

B. Method to Avoid Double Taxation

Under the amended DTT, depending on the type of income, Luxembourg applies either the exemption or the credit method.

As far as dividends are concerned, they are exempt in Luxembourg if they are received by a Luxembourg company which has held directly, since the beginning of the accounting year, a minimum 10% shareholding in the UAE company, provided that the UAE company is subject in the UAE to a tax corresponding to the CIT.

The shares in the UAE company are exempt from net wealth tax ("NWT") under the same conditions.

If the UAE Company is either exempt from tax or subject to a reduced tax, the exemption remains applicable if the income received by the Luxembourg Company arises from profits realized in the UAE on agricultural, industrial or touristic activities.

VI. France–Luxembourg Protocol

The Protocol to the France–Luxembourg DTT was signed on September 5, 2014. It amends the rules applicable to capital gains realized upon the sale of shares or other rights in real estate companies and allocates the right to tax these gains to the source country (i.e. the country in which the real estate is located). The ratification process of this Protocol is being 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.

VII. Ireland–Luxembourg Protocol

The Protocol to the Ireland–Luxembourg DTT was signed on May 27, 2014. It amends the exchange of information provisions of the DTT to bring them in line with the OECD standards on exchange of information upon request.

VIII. Lithuania–Luxembourg Protocol

The Protocol to the Lithuania–Luxembourg DTT was signed on June 20, 2014. It amends the exchange of information provisions of the DTT to bring them in line with the OECD standards on exchange of information upon request.

IX. Mauritius–Luxembourg Protocol

The Protocol to the Mauritius–Luxembourg DTT was signed on January 28, 2014. It amends the mutual agreement procedure rules as well as the exchange of information provisions of the DTT to bring them in line with the OECD standards on exchange of information upon request.

X. Tunisia–Luxembourg Protocol

The Protocol to the Tunisia–Luxembourg DTT was signed on July 8, 2014. It amends the exchange of information provisions of the DTT to bring them in line with the OECD standards on exchange of information upon request.

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