

TAX NEWS:

LUXEMBOURG EXPANDS ITS DOUBLE TAX TREATY NETWORK

Luxembourg is rapidly expanding its double tax treaty network. Within the last 6 months Luxembourg started negotiations with Bahrain, Kazakhstan, Cyprus and Qatar. On December 11, 2007, Luxembourg signed the double tax treaty with Kuwait. Both the bill approving the double tax treaty with the United Arab Emirates (on September 4, 2007) and the bill approving the double tax treaty with Azerbaijan (November 5, 2007) have been put before Luxembourg Parliament.

Luxembourg-Hong-Kong double tax treaty

On November 2, 2007, Hong Kong and Luxembourg signed an agreement for the avoidance of double taxation, the fourth such agreement concluded by Hong Kong (Thailand, Mainland of China, Belgium and Luxembourg) and the second with a non-Asian country. The agreement was signed by Professor KC Chan, Secretary for Financial Services and the Treasury, and Mr. Jeannot Krécké, Luxembourg's Minister for Economy and Foreign Trade.

The new treaty largely follows the OECD Model Convention with some exceptions (e.g., the provisions for income from shipping activities and air transport). The salient provisions of the new tax treaty are the following:

- The new tax treaty provides for 0% withholding tax on dividends paid by a company of a contracting state to a company of the other contracting state in case the latter holds directly at least 10 percent of the capital of the paying company or a participation with an acquisition cost of at least EUR 1.2 million in the paying company. In all other cases, the withholding tax may not exceed 10% withholding tax.
- Interest income is taxable in the contracting country of which the beneficial owner is a resident, without any withholding tax applying on such income in the other state.
- Withholding tax on royalties is limited to 3% under the new treaty (whereby it is noted that Luxembourg no longer levies a withholding tax on royalties).
- Capital gains derived from the alienation of immovable property or from the alienation of shares of a company deriving more than 50 percent of its asset value directly or indirectly from immovable property ("**Real Estate Company (ies)**") are only taxable in the country where the immovable property is located (with exception however for Real Estate Companies (i) the shares of which are quoted on such stock exchange as may be agreed between the parties, (ii) the shares of which are alienated or exchanged in the framework of a reorganization of a company, a merger, a division or a similar operation, or (iii) that carries on a business in the immovable property from which it derives more than 50 per cent of its asset value).
- No specific provision of the new treaty excludes Luxembourg investment funds (SICAF/SICAV) from the benefits of the treaty.

Subject to the completion of the necessary ratification formalities on both sides, the tax treaty will come into force as for Hong-Kong for any year of assessment beginning on or after April 1, 2008 and for Luxembourg to income derived on or after January 1, 2008 as regards

withholding taxes and for any taxable year beginning on or after January 1, 2008 for all other taxes.

With this new tax treaty, the Luxembourg tax treaty network in Asia continues to expand. Luxembourg has presently double taxation treaties with China, Indonesia, Japan, Malaysia, Mongolia, Singapore, South Korea, Thailand, Turkey, Uzbekistan, Vietnam and is currently negotiating a treaty with India).

The tax treaty with Hong Kong will help stimulate further trade and investment between the two countries, substantially improve the efficiency of capital markets in the both countries and provide added incentives for Luxembourg enterprises to do business or invest in Hong Kong.

Luxembourg – France double tax treaty

Following its ratification by the Luxembourg Parliament (October 9, 2007), the second protocol to the Luxembourg-France double tax treaty signed in Luxembourg on November 24, 2006 (the “**Protocol**”) has been published on November 21, 2007. As both France and Luxembourg have ratified the Protocol before year end of 2007, the Protocol entered into force and applies as of January 1, 2008.

The Protocol deals largely with the tax treatment of real estate income. It provides for taxation of any income or capital gain deriving from immovable property in the State in which the immovable property is situated, irrespective of the status of the owner: individual, corporate entity or transparent entity. The Protocol effectively abolishes the double exemption of income from French real estate directly held by a Luxembourg company: rental income and capital gains derived by a Luxembourg company from French real estate will therefore become taxable in France.

Contrary to what was initially expected, the Protocol does not deal with capital gains realised by a Luxembourg resident tax payer on the disposition of a shareholding in a French company, the assets of which mainly consist of French real estates. Capital gains realised by a Luxembourg resident tax payer on the disposition of the shares in such a French company will be taxable only in Luxembourg, even if the French company holds predominantly French real estate.

The above is for information purposes only and does not constitute nor can it be relied upon as binding legal advice. Before implementing a transaction on the basis of the above it is highly recommended to seek detailed advice.