Tax Newsflash

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Luxembourg's New Double Tax Treaties

As of 1 January 2014, Luxembourg further enlarged its double tax treaty network with the entry into force of the new double tax treaties concluded, amongst others, with:

- Seychelles
- Kazakhstan
- Tajikistan

The number of double tax treaties (DTTs) concluded by Luxembourg thus increased to 68[1] as of 1 January 2014:

Armenia	France	Latvia	Panama	Sweden
Austria	Georgian Republic	Liechtenstein	Poland	Switzerland
Azerbaijan	Germany	Lithuania	Portugal	Tajikistan
Bahrain	Greece	Macedonia	Qatar	Thailand
Barbados	Hong Kong	Malaysia	Romania	Trinidad and Tobago
Belgium	Hungary	Malta	Russia	Tunisia
Brazil	Iceland	Mauritius	San Marino	Turkey
Bulgaria	India	Mexico	Seychelles	United Arab Emirates
Canada	Indonesia	Moldova	Singapore	United Kingdom
China	Ireland	Monaco	Slovakia	United States of America
Czech Republic	Israel	(Mongolia)	Slovenia	Uzbekistan
Denmark	Italy	Morocco	South Africa	Vietnam
Estonia	Japan	Netherlands	South Korea	
Finland	Kazakhstan	Norway	Spain	

Summary of most important tax treaty provisions for corporations

1) Seychelles

➢ The DTT between Luxembourg and **Seychelles** provides for:

[1] The number of DTTs concluded by Luxembourg is 67 excluding the DTT with Mongolia which was denounced by the latter.

- 0% withholding tax (WHT) on dividends if the beneficial owner is a company holding directly at least 10% of the capital of the company paying the dividends (10% WHT in all other cases);
- 5% WHT on interest (but 0% on interest payments to financial institutions); and
- 5% WHT on royalties.
- Capital gains on shares of a company resident in the other contracting state (including shares of a company the assets of which consist principally of immovable property) shall be taxable only in the state of residence of the alienator.
- Business profits derived through and attributable to a permanent establishment (PE) situated in one of the contracting states may be taxed in that state. If such profits are derived through a PE situated in Seychelles, Luxembourg exempts such profits pursuant to Article 22 (1) a) of the DTT.
- Other items of income, wherever arising, that are not expressly mentioned in the DTT derived by a resident of one contracting state, are only taxable in this contracting state.

Benefits of structuring business involving Seychelles

Considering the beneficial tax regime of Seychelles, the new DTT supplements the list of Luxembourg's DTTs with jurisdictions which can be efficiently used to structure the business of multinational companies. In addition, Seychelles' DTTs with certain African countries may serve as a good path to route foreign investments via Luxembourg and Seychelles into Africa (e.g. Botswana, Zambia, Zimbabwe). Compared to Mauritius (which also has DTTs with Luxembourg and with these African countries), Seychelles' DTTs with these African countries may in certain cases provide for better WHT rates on dividends, interest or royalties.

2) Kazakhstan

➢ The DTT between Luxembourg and **Kazakhstan** provides for:

- 5% WHT on dividends if the beneficial owner is a company holding directly at least 15% of the capital of the company paying the dividend[2] (15% WHT in all other cases);

[2] The Protocols to some DTTs concluded by Kazakhstan provide for a 0% WHT on dividend, but only to the extent the company receiving the dividends holds directly or indirectly at least 50% of the capital of the company paying the dividends and the company receiving the dividends has made an investment in the company paying the dividends of at least one million US Dollars, which investment is guaranteed in full or insured in full by the Government of the other Contracting State, the central bank of that Contracting State or any agency or instrumentality (including a financial institution) owned or controlled by that Government, and has been approved by the Government of the first Contracting State. Therefore, in practice, the 5% WHT on dividends is amongst the lowest provided in the DTTs concluded by Kazakhstan.

- 10% WHT on interest; and
- 10% WHT on royalties.
- Capital gains on shares of a company resident in the other contracting state (other than shares of a company the assets of which consist principally of immovable property located in said other contracting state) shall be taxable only in the state of residence of the alienator.
- Income derived from immovable property, whether from the direct use or letting or use in any other form of immovable property, shall be taxable in the contracting state in which such immovable property is located. Immovable property includes not just physical property but also, for example, rights to variable or fixed payments for the working of, or the right to work, mineral deposits, sources and other natural resources.
- Business profits derived through and attributable to a permanent establishment (PE) situated in one of the contracting states may be taxed in that state. If such profits are derived through a PE situated in Kazakhstan, Luxembourg exempts such profits pursuant to Article 22 (1) a) of the DTT.
- Other items of income, wherever arising, that are not expressly mentioned in the DTT derived by a resident of one contracting state, are only taxable in this contracting state.

3) Tajikistan

➢ The DTT between Luxembourg and **Tajikistan** provides for:

- 0% withholding tax (WHT) on dividends if the beneficial owner is a company holding directly at least 10% of the capital of the company paying the dividend for an uninterrupted period of 12 months (15% WHT in all other cases);
- 12% WHT on interest (but 0% to banks and undertakings for collective investments); and
- 10% WHT on royalties.
- Capital gains on shares of a company resident in the other contracting state (including shares of a company the assets of which consist principally of immovable property) shall be taxable only in the state of residence of the alienator.
- Income derived from immovable property, whether from the direct use or letting or use in any other form of immovable property, shall be taxable in the contracting state in which such immovable property is located. Immovable property includes not just physical property but also, for example, rights to variable or fixed payments for the working of, or the right to work, mineral deposits, sources and other natural resources.

- Business profits derived through and attributable to a permanent establishment (PE) situated in one of the contracting states may be taxed in that state. If such profits are derived through a PE situated in Tajikistan, Luxembourg exempts such profits pursuant to Article 23 (2) a) of the DTT.
- Other items of income, wherever arising, that are not expressly mentioned in the DTT derived by a resident of one contracting state, are only taxable in this contracting state.

Benefits of investing through a Luxembourg holding and/or financing company

Further to the entry into force of the DTTs with Kazakhstan and Tajikistan and taking into account the DTT with Uzbekistan[3], which has already been in force since 1997, Luxembourg has positioned itself as a very competitive holding and financing company jurisdiction for investments into the Central Asian region.

Based on Luxembourg's domestic participation exemption regime, dividends and capital gains derived by a Luxembourg company from a fully taxable subsidiary resident in Kazakhstan, Tajikistan or Uzbekistan (subject to a corporate income tax rate of at least 10.5% applied on a tax basis computed in a similar manner as in Luxembourg) are exempt in Luxembourg provided the Luxembourg company holds at least 10% of the capital of the subsidiary for dividend and capital gains exemption (or the acquisition cost of the shares in the capital of the subsidiary is of at least EUR 1.2 million (or equivalent in another currency) for dividend exemption, or EUR 6 million (or equivalent in another currency) for capital gains exemption), for an uninterrupted period of at least 12 months.

Moreover, investors structuring their investments through a Luxembourg holding company may benefit from withholding tax free distributions under very flexible conditions. As an illustrative example of one of the routes for withholding tax free distributions of profits under Luxembourg domestic tax law, amongst others: a parent company resident in a tax treaty state subject to an income tax rate of at least 10.5% applied on a tax basis computed in a similar way as it would be computed in Luxembourg and holding at least 10% in the capital of the Luxembourg company (or the acquisition cost of the latter is of at least EUR 1.2 million (or equivalent in another currency)) for an uninterrupted period of 12 months may receive dividends free of withholding tax. In addition, several double tax treaties concluded by Luxembourg provide for a treaty based withholding tax exemption subject to no conditions or only a minimum holding threshold condition. Other

[3] The DTT with Uzbekistan provides for a 5% WHT on dividends if the beneficial owner is a company holding directly at least 25% of the capital of the company paying the dividend (15% WHT in all other cases), a 10% WHT on interest and a 5% WHT on royalties and capital gains on shares of a company (including immovable property rich companies) is taxable only in the state of residence of the alienator.

alternatives apply depending on the type of investor (individual, fund, partnership, etc.) and the country of residence of the investor (resident in a double tax treaty state or not, offshore or onshore jurisdiction, etc.).

Luxembourg does not levy withholding tax on interest or royalties under its domestic tax law.

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