AMMC Law

Tax Newsflash

25 March 2014

Luxembourg's New Double Tax Treaties

As of 21 of March 2014, Luxembourg further enlarged its double tax treaty network with the entry into force of the new double tax treaty with **Laos**.

The treaty between Luxembourg and **Laos** entered into force on 21 March 2014, effectively being applicable to the income earned and taxes due for the tax year commencing as from 1 January 2015.

The number of double tax treaties (DTTs) concluded by Luxembourg thus increased to 69[1] as of 21 March 2014:

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

Summary of most important tax treaty provisions for corporations

- The DTT between Luxembourg and **Laos** provides for:

  - 5% 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 (15% WHT in all other cases);
  - 10% WHT on interest (but 0% on interest payments to financial institutions); and,
  - 5% WHT on royalties.

[1] The number of DTTs concluded by Luxembourg is 68 excluding the DTT with Mongolia which was denounced by the latter.

- 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 Laos, Luxembourg exempts such profits pursuant to Article 24 (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 Luxembourg

Concluding a DTT with Laos, along with Luxembourg already existing DTTs with Indonesia, Singapore, Malaysia, Thailand and Vietnam, Luxembourg has positioned itself as a competitive holding and financing jurisdiction for investments into the Southeast Asia 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 Laos (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 state with which Luxembourg has concluded a DTT and which is subject to income tax at a 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 in the capital of the latter is 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 sometimes subject to no minimum holding period and/or no holding threshold condition. Other 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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Xavier is leading the Tax Practice of AMMC Law. After one year at the bar in Belgium, he acquired more than 18 years of experience as a tax advisor in Luxembourg, initially at PWC and thereafter for 11 years at EY Luxembourg, out of which more than 7 years as International Tax Partner. Over his career Xavier focused on international tax structuring for Multinationals, Funds (i.e. Private Equity and Real Estate Funds, Sovereign Wealth Funds and Hedge Funds), and Financial Institutions based in the USA, Canada, the UK, China and the Middle East amongst others. Xavier acquired over those years an in depth expertise in mergers and acquisition transactions, and holding, financing and intellectual property structures, as well as in tax efficiently structuring investments for Funds located across continents.

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James is an American tax lawyer with over 11 years of international tax experience in Luxembourg and 14 years total. James has advised Fortune 500 companies, start-ups, and institutional investors on a broad range of Luxembourg tax planning solutions including IP management, cross-border financing, M&A, and many restructuring projects. Prior to joining AMMC, James was a Director of International Tax at KPMG in Luxembourg. He has multiple published articles on Luxembourg tax aspects.