AMMC Law

Tax Newsflash

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Luxembourg's New Double Tax Treaties

On April 11, 2014, the new double tax treaty between Luxembourg and Sri Lanka entered into force. The new treaty will be applicable to income derived and taxes due for the tax years commencing on or after 1 January 2015.

The number of double tax treaties (DTTs) concluded by Luxembourg thus increased to 70[1] as of 11 April 2014:

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

Summary of most important tax treaty provisions for corporations

- The DTT between Luxembourg and Sri Lanka provides for:
  - 7.5% withholding tax (WHT) on dividends if the beneficial owner is a company holding directly at least 25% of the capital of the company paying the dividends (10% WHT in all other cases);
  - 10% WHT on interest; and,
  - 10% WHT on royalties.
  - Capital gains on shares of a company resident in the other contracting state shall be taxable only in the state of residence of the alienator. The same applies to capital gains on the alienation of shares of a company more than

[1] The number of DTTs concluded by Luxembourg is 69 excluding the DTT with Mongolia which was denounced by the latter.

50% of the value of which is derived directly or indirectly from immovable property situated in the other contracting state, provided that:

- i the shares are quoted on a recognized stock exchange of one of the contracting states; or
- i the shares are alienated or exchanged in the framework of a corporate reorganization, a merger, a demerger or a similar operation; or
- i 75% or more of the value of the shares is deriving from immovable property through which the company is carrying out its activity; or
- i the alienator owns directly less than 75% of the capital of the company the shares of which are alienated.

In all other cases, capital gains on the alienation of shares of a company more than 50% of the value of which is derived directly or indirectly from immovable property situated in the other contracting state are taxable in that other state[2].

- Permanent establishment (PE): Business profits derived through and attributable to a PE situated in one of the contracting states may be taxed in that state. Luxembourg companies deriving such profits through a PE situated in Sri Lanka, are exempt in Luxembourg pursuant to Article 23 (1) a) of the DTT.
- Dividend exemption in Luxembourg: Dividends from Sri Lanka sources are exempt from tax in Luxembourg provided the Luxembourg company holds directly at least 10% of the capital of the company paying the dividend since the beginning of the accounting year and the latter is generally subject in Sri Lanka to income tax. The exemption applies even if the Sri Lanka company is exempt from tax or subject to reduced tax under one of the Sri Lanka tax incentives schemes. The shares in the Sri Lanka company are exempt from Luxembourg Net Wealth Tax under the same conditions.
- Fictitious tax credit: In case the tax paid in the other contracting state is reduced or waived based on a national tax incentives scheme, a fictitious deemed foreign tax shall nevertheless be taken into account for the calculation of the tax credit in the residence state.
- 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.
- Collective Investment Vehicles established in a contracting state and treated as body corporate for tax purposes in this contracting state are considered as resident under the DTT and may thus benefit of the DTT provisions.

Benefits of investing through Luxembourg

The WHT rate on dividends provided for by the new DTT between Luxembourg and Sri Lanka is the lowest amongst the DTTs concluded by Sri Lanka. In addition, according to Luxembourg domestic law, dividends and capital gains derived from a

[2] Sri Lanka does currently however not levy tax on capital gains.

company resident in Sri Lanka subject to an income tax comparable to the Luxembourg corporate income tax, are tax exempt in Luxembourg assuming that the Luxembourg company holds, for at least 12 months, a shareholding representing at least 10% of the capital of the subsidiary for dividend and capital gains exemption (or the acquisition cost of such shareholding is at least, EUR 1.2 million[3] for dividend exemption or EUR 6 million[4] for capital gains exemption).

Luxembourg domestic law allows WHT free distributions under conditions. Amongst other cases, no WHT applies on distributions from Luxembourg: if the parent company is resident in a DTT state, is subject to an income tax comparable to the one in Luxembourg and holds a shareholding representing at least 10% in the capital of the Luxembourg company (or the acquisition cost of such shareholding is at least EUR 1.2 million[5]) for 12 months. Other rules allowing WHT free distribution may apply depending on the type of investor (fund, partnership, etc.) and his country of residence. Luxembourg does not levy WHT 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 over 18 years of experience as a tax advisor in Luxembourg, initially at PWC Luxembourg and thereafter 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, holding, financing and intellectual property structures, as well as in tax efficiently structuring investments for Funds located across continents. He published various articles on Luxembourg tax.

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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 published multiples articles on Luxembourg tax aspects.

[3] Or equivalent in another currency.
[4] Or equivalent in another currency.
[5] Or equivalent in another currency.
[6] http://www.ammclaw.com/