

Tax Newsflash

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Luxembourg's New Double Tax Treaty

On 25 July 2014, Luxembourg further enlarged its double tax treaty (DTT) network with the entry into force of the new DTT with **Taiwan**.

The treaty between Luxembourg and **Taiwan** entered into force on 25 July 2014, effectively being applicable to the income earned and taxes due for the tax year commencing as from 1 January 2015.

The number of DTTs concluded by Luxembourg thus increased to 70 as of 25 July 2014:

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

Summary of most important tax treaty provisions for corporations

- The DTT between Luxembourg and **Taiwan** provides for:
 - **10% withholding tax (WHT) on dividends** (15% WHT if the beneficial owner is a collective investment vehicle and treated as a body corporate for tax purposes in that other territory);
 - **10% WHT on interest** (0% WHT on loans between bank and 15% WHT if the beneficial owner of the interest is a collective investment vehicle and treated as a body corporate for tax purposes in that other territory);
 - **10% WHT on royalties** if the recipient is the beneficial owner;
 - **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 (including

- shares of a company the assets of which consist principally of immovable property);
- Business profits derived through and attributable to a **Permanent Establishment** (PE) situated in one of the contracting states may be taxed in that state (article 7 (1)). If such profits are derived through a PE situated in Taiwan, Luxembourg exempts such profits pursuant to Article 23 (1) a) of the DTT;
 - **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;
 - **The DTT also contains a limitation on benefits** (LoB) provision. Based on the LoB provision, a company resident in one country should not benefit of the DTT's provisions if it has been determined based on consultations between the Luxembourg and Taiwan tax authorities that one of the main purposes to incorporate the company in such country was to benefit from the DTT's provisions.

Benefits of investing through Luxembourg

Concluding a DTT with Taiwan, along with Luxembourg already existing DTTs with China, Japan and South Korea, Luxembourg has positioned itself as a competitive holding and financing jurisdiction for investments into the Eastern 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 Taiwan may be tax exempt under some conditions.

Investors structuring their investments through a Luxembourg holding company may benefit from withholding tax free distributions under flexible conditions. As an illustrative example 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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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.