Tax Newsflash

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Luxembourg's New Double Tax Treaties

On 5 August 2014, Luxembourg further enlarged its double tax treaty (DTT) network with the entry into force of the new DTTs with **Jersey, Guernsey and Isle of Man**.

The treaty between Luxembourg and **Jersey, Guernsey and Isle of Man** entered into force on 5 August 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 73 as of 5 August 2014:

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

Summary of most important tax treaty provisions for corporations

- Each DTT between (i) Luxembourg and **Jersey**, (ii) Luxembourg and **Guernsey** and (iii) Luxembourg and **Isle of Man** 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);
  - ***0% WHT on interest***; and,
  - ***0% 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 (including shares of a company the assets of which consist principally of immovable property).

- ***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 the other contracting state are ***exempt in Luxembourg*** pursuant to Article 22 (1) b) of the DTT but only to the extent that such business profits are derived from activities in agriculture, industry, infrastructure and tourism in Jersey, Guernsey or Isle of Man.
- ***Dividend exemption in Luxembourg:*** Dividends derived from a participation in a company resident in the other contracting state 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 subject in the other contracting state to income tax comparable to the Luxembourg income tax. The exemption also applies even if the company resident in the other contracting state is exempt from tax or subject to a reduce tax rate but only to the extent that the dividends are paid out of profits derived from activities in agriculture, industry, infrastructure or tourism in the other contracting state. The shares in the company resident in the other contracting state are exempt from Luxembourg Net Wealth Tax under the same conditions.
- ***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 as the beneficial owner of the income it receives.
- **Collective Investment Vehicles** established in a contracting state and **not treated as body corporate for tax purposes** in this contracting state are considered as an individual resident in such contracting state and as the beneficial owner of the income it receives. The Protocol to the DTTs between Luxembourg and respectively Jersey, Guernsey and Isle of Man clarifies that the other Contracting Party may still tax its residents if they receive income from such a collective investment vehicle.

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Xavier is leading the Tax Practice of AMMC Law. After one year at the bar in Belgium, he acquired over 19 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.

[1] http://www.ammclaw.com/