

Luxembourg signs Protocols amending Double Tax Treaties with the U.S. as well as with other countries

dated July 3, 2009

Provisions for the exchange of information revised

On May 20, Luxembourg Minister for the Treasury and Budget, Luc Frieden, and US Ambassador to Luxembourg, Anne Wagner, signed a protocol amending the April 3, 1996 double tax convention between both countries by introducing a revised article 28 for information sharing in compliance with OECD (Organization for Economic Co-operation and Development) standards. This agreement represents the second - out of nine recent agreements - which abides by OECD standards on international tax cooperation. This is also the first one entered into with an OECD and G-20 member further to the announcement made by Mr. Frieden on March 13, 2009 regarding the commitment by the Luxembourg government in this respect while maintaining compatibility with its bank secrecy rules.

US-Luxembourg Protocol - contents overview

The protocol signed at the US embassy in Luxembourg modifies only article 28 of the US - Luxembourg tax treaty for the avoidance of double taxation and the prevention of fiscal evasion providing for information exchange upon request and in specific cases, in line with the standard provision of the OECD Model Tax Convention. As explained by Mr. Frieden, the agreement does not, however, provide for any automatic sharing of bank information and disallows general ("fishing expeditions") information requests.

The new text will be applicable to requests made on or after the entry into force of the protocol with respect to fiscal years as from 2009 onwards. The protocol will enter into force once the ratification process is completed in both States.

The various changes made to article 28 can be summarized as follows:

Paragraph 1

This paragraph was brought into line with the language of art. 26(1) OECD Model Tax Convention, providing that the information subject to exchange be "foreseeably relevant" (i.e. replacing "necessary") for carrying out the provisions of the Convention or domestic law of the Contracting States concerning taxes of "every kind" imposed by a Contracting State. As a result, the exchange scope was extended to other taxes not covered by the DTT.

Paragraph 2 (formerly part of paragraph 1)

This section was also brought into line with the official language of art. 26(2) OECD Model Tax Convention extending the disclosure exception – to confidentiality obligations by authorities on the information exchanged – to persons or authorities involved in the “oversight” of other functions such as assessment and collection of taxes.

Paragraph 3 (renumbered - formerly paragraph 2)

No changes to this paragraph other than reordering

Paragraph 4 (formerly paragraph 3)

This paragraph now mirrors art. 26(4) OECD Model Tax Convention in providing that the requested State shall gather the requested information even though it may not need it for its own tax purposes, plus clarifying that the limitations of Section 3 shall not be interpreted in such a way so as to permit a State to decline to supply information on grounds that it has no domestic interest in such information.

Paragraph 5 (new paragraph)

Paragraph 5, as in the case of art. 26(5) of OECD Model Tax Convention, provides a restricted interpretation of paragraph 3 limitations in order to avoid refusal of information sharing on grounds that such information is held by a bank, financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interest in a person.

Paragraph 6 (formerly part of paragraph 3)

This paragraph – based on the U.S. Model Tax Convention – has been revised so that the provision of information in the form of deposition of witnesses and authenticated copies or unedited originals shall be made “to the extent allowable” under the domestic laws of the requested State.

Paragraph 7 (formerly paragraph 4)

This paragraph suffered a complete deletion of the former list of formalities and restrictions applicable to a specific request for assistance in *collection* (i.e. document certifying that sums whose collection is requested are finally due and enforceable, enforceability character of such certification under the laws of the requested State, tax debt to be collected not to be regarded as privileged, appeals on the existence or amount of debt only competence of courts of requesting State) thereby simplifying the general obligation and procedure for collection support.

Other conventions

With a view to a final withdrawal of Luxembourg from the OECD “grey list” of jurisdictions that have committed to the internationally agreed tax standard, but have not yet substantially implemented it - published last April 2009 within the framework of the G-20 London Summit – the Luxembourg government moved forward and signed protocols to double tax treaties with The Netherlands (May 29), France (June 3), Denmark (June 4), Finland (July 1st), United Kingdom of Great Britain and Northern Ireland (July 2) – providing for similar exchange of information agreements. Moreover, other recent double tax treaties entered into with India (June 2, 2008), the Kingdom of Bahrain (May 6) and Armenia (June 23) also feature the OECD Model Convention exchange of information provisions.

Luxembourg needs to enter into at least a dozen similar agreements with OECD members to be finally removed from the “grey list”. In this sense, Mr. Frieden has mentioned that the government hopes to enter into about 20 additional conventions before the end of 2009.

The recent U.S.–Luxembourg tax convention on sharing of information cements the strong and close relationship between the governments of both countries. Now that nine double tax treaties complying with the OECD principles on exchange of information were entered into within a very short time-span, the Luxembourg government has shown that it was quick to react and that it remained committed to complying with international tax cooperation standards. This helps boost the confidence of both foreign and domestic investors.

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