

## Luxembourg – Hong Kong double tax treaty is now in force

dated 11 February 2009

As mentioned in our previous Flash News dated 10 December 2008, Luxembourg Parliament voted the Double Tax Treaty (DTT) between Luxembourg and Hong Kong on 19 December 2008.

The ratification process having finally being completed by both countries on 20 January 2009, the DTT has now entered into force (see publication in the Luxembourg Gazette on 5 February 2009).

The provisions of the DTT are effective as follows:

- 1 January 2008 with respect to Luxembourg withholding taxes, and tax years starting on or after 1 January 2008 with respect to corporate taxes and net wealth tax;
- Years of assessment beginning on or after 1 April 2008 with respect to Hong Kong taxes.

The DTT helps create a favourable tax framework for structuring investments between Luxembourg and Hong Kong and will undoubtedly strengthen economic relationships between both countries.

One of the main benefits of this DTT is the possibility for a Luxembourg company to distribute dividends free of withholding tax under certain conditions, which are more favourable than under Luxembourg domestic legislation.

Based on the new provisions introduced into Luxembourg legislation as from 1 January 2009 (further to the 2009 tax reform), dividends paid to treaty country corporate shareholders may be exempt from Luxembourg withholding tax if the following conditions are met:

- parent corporate entity (resident in a DTT country) fully liable to a tax corresponding to the Luxembourg corporate income tax;
- direct participation held in the share capital of a Luxembourg qualifying subsidiary of at least 10%, or with an acquisition price of at least EUR 1.2 million; and
- holding period of at least 12 months.

The conditions for the withholding tax exemption set out in the DTT, although broadly similar to those above, are more favourable as the exemption applies to dividends received by a company resident in Hong Kong which holds directly at least 10% of the share capital of the Luxembourg resident company (or the acquisition cost is at least EUR 1.2 million), but the DTT does not impose such a “subject to tax” condition for Hong Kong companies (i.e. no requirement to have a company “fully liable to a tax corresponding to the Luxembourg corporate income tax”) in order to be considered resident in Hong Kong for the purpose of the DTT. Furthermore, there is no holding period requirement.

If these conditions are not met, a 10% withholding tax will apply (under the DTT).

**Luxembourg now has more than 50 DTTs in force and will continue to extend its treaty network in the future, enhancing its attractiveness and providing excellent opportunities for foreign investors looking to invest in Luxembourg.**

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