

## Luxembourg – UAE double tax treaty voted on by Luxembourg Parliament

dated 29 April 2009

After several years of negotiation, the Luxembourg Government signed a Double Tax Treaty (DTT) with the United Arab Emirates (UAE) on 20 November 2005. Luxembourg Parliament just passed the bill into law on 29 April 2009<sup>1</sup>.

The DTT will enter into force once the ratification process is completed by both States. Then, the DTT's provisions will be effective as from:

- 1 January of the year following the entry into force of the DTT with respect to withholding taxes,
- Tax years starting on or after 1 January of the year following the entry into force of the DTT with respect to corporate taxes and net wealth tax,
- Tax years starting on or after 1 January 2000 for the provisions of the DTT relating to international transport (i.e. retroactive effect).

The DTT's provisions are based on the OECD Model, with some exceptions. The main provisions of the DTT are briefly outlined below.

### Dividends (article 10)

For cross-border dividends (i.e., dividends arising in one Contracting State and paid to a beneficial owner resident of the other Contracting State), taxation by the source country may not exceed:

- 5% if the beneficial owner is a company (other than a partnership) that directly holds at least 10 % of the capital of the company paying the dividends, or
- 10% of the gross dividend amount in all other cases.

However, the withholding tax is reduced to 0% for dividends paid to the State, one of its local authorities or one of its financial institutions which are resident of the other contracting State. For the UAE, this includes certain sovereign funds of the UAE which are specifically listed in the protocol of the DTT (as well as any other institution that may be agreed upon by the Contracting States from time to time).

### Interest (article 11)

Cross-border interest payments should be taxable only in the Contracting State where the recipient is a resident.

### Royalties (article 12)

Cross-border royalty payments should be taxable only in the Contracting State where the beneficial owner is a resident.

<sup>1</sup> subject to confirmation by the Council of State that no second hearing is required

## Capital gains (article 13)

As a general rule, capital gains shall be taxed only by the Contracting State where the alienator is resident. In some limited cases, however, the DTT allows taxation in the other Contracting State (where the asset is located) as follows:

- Immovable property: taxation in the Contracting State where the property is located;
- Movable property allocated to a permanent establishment: taxation in the Contracting State where the permanent establishment is located;
- Ships or aircraft (operated in international traffic): taxation only in the State where the effective management of the company is located.

## Exchange of information (article 26)

The DTT contains a provision relating to the exchange of information between both Contracting States. Based on the parliamentary comments, this clause of the DTT should be amended soon (i.e. most probably before the end of the year 2009) in order to comply with the OECD guidelines on the exchange of information. This was agreed by the Luxembourg tax authorities in March 2009 when banking secrecy was being discussed at international level.

## Treaty shopping (article 28)

The DTT contains a special provision according to which both Contracting States shall co-operate in order to avoid treaty shopping and shall consult each other to try and find a mutual solution in this respect.

**The DTT should create a favourable and competitive environment for cross-border investments between Luxembourg and the UAE. The vote of this DTT by Luxembourg Parliament comes on the back of the economic mission sent by Luxembourg to the UAE in January 2009 and confirms how important it is for Luxembourg to strengthen its economic and financial relationships with the UAE.**

### Contact

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