

Newsalert

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Luxembourg Tax Credit

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For issues relating to this news alert please contact your local international tax services advisor or the specialists listed at the end of this article.

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TAX CREDIT AND MUNICIPAL BUSINESS TAX

Further to the Luxembourg tax authorities interpretation of double tax treaties, foreign taxes paid on income derived by Luxembourg companies were only creditable on Luxembourg Corporate Income Tax (excluding Municipal Business Tax). Consequently, on determining tax credit limits, only Corporate Income Tax was taken into account.

On July 11, 2005 the Luxembourg Administrative Court stated that according to the Luxembourg-Spain tax treaty, Spanish tax is creditable against Luxembourg Corporate Income Tax and Municipal Business Tax.

Court Decision

The rationale of the Court decision is based on the wording of the Luxembourg-Spain double tax treaty that defines income tax as "all taxes imposed on total income (...) or on elements of income" and specifically lists Municipal Business Tax as falling within its scope. As the Luxembourg-Spain treaty allows "as a deduction from the tax on the income an amount equal to the tax paid in Spain", the Court induces that tax credit may be granted in respect of Corporate and Municipal Business Tax whereas the Luxembourg tax authorities generally restricted "tax on the income" to Corporate Income Tax.

Implication for Luxembourg taxpayers

In this respect, the Luxembourg-Spain treaty wording of the article defining taxes is similar in the treaties signed with Belgium, Bulgaria, Denmark, Finland, Hungary, Iceland, Italy, Norway, Uzbekistan, the Netherlands, Romania, Switzerland, Czech Republic, Slovakia, China, Greece, Morocco, Singapore, Thailand, Tunisia. Consequently, the Court decision should be applicable *in extenso* to income derived from these countries.

Additionally, insofar as the Court has defined Municipal Business Tax as tax on the income, many other tax treaties may also benefit from this decision. However, the Luxembourg-France and Luxembourg-Brazil tax treaties expressly exclude the credit on Municipal Business Tax. Besides, as the Luxembourg-Korea treaty does not list Municipal Business tax among the taxes covered, the application of the Court's decision may be questionable.

The Luxembourg tax authorities may still file appeal against this decision. However in the mean time, Luxembourg companies should carefully monitor their tax credit position in order to take advantage of this newly issued Court decision.

For more detailed information, please do not hesitate to contact your international tax services team

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