

# Kuwait: Amending Protocol to Tax Treaty between Kuwait and Luxembourg

November 2021



## In brief

On 16 November 2021, the Luxembourg Chamber of Deputies approved the amending protocol to the 2007 income and capital tax treaty between Kuwait and Luxembourg signed on 25 March 2021.

The government of the State of Kuwait and the Grand Duchy of Luxembourg first signed an income tax treaty and protocol on 11 December 2007 in Luxembourg.

## In detail

The new protocol amends the treaty to bring it in line with the base erosion and profit-shifting (BEPS) minimum standards.

It replaces the preamble so that, in addition to covering the intention to avoid double taxation, it includes the intention not to create opportunities for non taxation or reduced taxation through tax evasion or avoidance.

It also amends the articles on taxes covered and mutual agreement procedure, and replaces the articles on exchange of information and limitation of benefits.

The protocol will enter into force once ratification instruments are exchanged and will apply from 1 January of the year following its entry into force.

Comparison between the Kuwait-Luxembourg Income and Capital Tax Treaty (2007) and amending Protocol signed 25 March 2021:

Preamble		
Tax Treaty	Amending Protocol	Comments
<p>"The Government of the State of Kuwait and the Government of the Grand Duchy of Luxembourg desiring to promote their mutual economic relations through the conclusion between them of a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, have agreed to the following:</p> <p>[...]"</p>	<p>The preamble of the Convention shall be deleted and replaced by the following:</p> <p>"The Government of the Grand Duchy of Luxembourg and the Government of the State of Kuwait desiring to further develop their economic relationship and to enhance their cooperation in tax matters, intending to conclude a Convention for the elimination of double taxation with respect to taxes on income and on capital without creating opportunities for non taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Convention for the indirect benefit of residents of third States), have agreed as follows:"</p>	<p>The preamble is replaced in alignment with the BEPS standards.</p>



## Article 2 - Taxes Covered

Tax Treaty	Amending Protocol	Comments
<p>“3. The existing taxes to which this Convention shall apply are in particular:</p> <p>(a) In the case of Kuwait:</p> <ol style="list-style-type: none"> <li>1. the corporate income tax;</li> <li>2. the contribution from the net profits of Kuwaiti shareholding companies payable to the Kuwait Foundation for Advancement of Science (KFAS);</li> <li>3. the contribution from the net profits of Kuwaiti shareholding companies payable to support the National Budget;</li> <li>4. the Zakat;</li> <li>5. the tax imposed to support national employees;</li> </ol> <p>(hereinafter referred to as "Kuwaiti tax").</p> <p>(b) In the case of the Grand Duchy of Luxembourg;</p> <ol style="list-style-type: none"> <li>1. the income tax on individuals (l'impôt sur le revenu des personnes physiques);</li> <li>2. the corporation tax (l'impôt sur le revenu des collectivités);</li> <li>3. the capital tax (l'impôt sur la fortune); and</li> <li>4. the communal trade tax (l'impôt commercial communal);</li> </ol> <p>(hereinafter referred to as "Luxembourg tax").”</p>	<p>Paragraph 3 of Article 2 (Taxes Covered) of the Convention shall be deleted and replaced by the following:</p> <p>“The existing taxes to which this Convention shall apply are in particular:</p> <p>(a) in the case of the Grand Duchy of Luxembourg:</p> <ol style="list-style-type: none"> <li>1. the income tax on individuals (l'impôt sur le revenu des personnes physiques);</li> <li>2. the corporation tax (l'impôt sur le revenu des collectivités);</li> <li>3. the capital tax (l'impôt sur la fortune); and</li> <li>4. the communal trade tax (l'impôt commercial communal);</li> </ol> <p>(hereinafter referred to as "Luxembourg tax").</p> <p>(b) In the case of Kuwait:</p> <ol style="list-style-type: none"> <li>1. Decree No. 3 of 1955 as amended by Law No 2 of 2008;</li> <li>2. Law No. 23 of 1961 of the Neutral Zone;</li> <li>3. Law No. 19 of 2000 of Supporting of National Employees</li> </ol> <p>(hereinafter referred to as "Kuwaiti tax").”</p>	<p>The amending protocol sets the tax to be covered for each Contracting State as follows:</p> <ul style="list-style-type: none"> <li>➤ Luxembourg income tax on individuals, corporation tax, capital tax, and communal trade tax; and</li> <li>➤ Kuwait income taxes as per Decree No.3 of 1955 as amended by Law No 2 of 2008, Law No. 23 of 1961 of the Neutral Zone, and Law No. 19 of 2000 of Supporting of National Employees.</li> </ul>



## Article 25 - Mutual Agreement Procedure

Tax Treaty	Amending Protocol	Comments
<p>“1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.”</p>	<p>Paragraph 1 of Article 25 (Mutual Agreement Procedure) of the Convention shall be deleted and replaced by the following:</p> <p>“Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of either Contracting State. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.”</p>	<p>The amending protocol provides that where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of either Contracting State.</p>





## Article 26 - Exchange of Information

Tax Treaty	Amending Protocol	Comments
<p>“1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that Contracting State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.</p>	<p>Article 26 (Exchange Of Information) of the Convention shall be deleted and replaced by the following:</p> <p>“1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States or their local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.</p> <p>2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.</p>	<p>Article 26 is replaced in line with OECD standards for information exchange.</p>



## Article 26 - Exchange of Information (Cont.)

Tax Treaty	Amending Protocol	Comments
<p>2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:</p> <ul style="list-style-type: none"> <li>a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;</li> <li>b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;</li> <li>c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (ordre public)."</li> </ul>	<p>Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.</p> <p>3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:</p> <ul style="list-style-type: none"> <li>(a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;</li> <li>(b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;</li> <li>(c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (ordre public).</li> </ul> <p>4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.</p> <p>5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person."</p>	



## Article 29 - Limitation of Benefits

Tax Treaty	Amending Protocol	Comments
<p>“A resident of a Contracting State shall not be entitled to the benefits of this Convention if its affairs were arranged with the main purpose to take benefits of this Convention. The case of legal entities not having bona fide business activities shall be covered by the provisions of this Article.”</p>	<p>Article 29 shall be deleted and be replaced by the following:</p> <p>“Notwithstanding the other provisions of this Convention, a benefit under this Convention shall not be granted in respect of an item of income or capital if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Convention.”</p>	<p>The amending protocol provides that a benefit under the treaty shall not be granted in respect of an item of income or capital if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of the treaty.</p>

## Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

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# Thank you