

Luxembourg Tax Alert

Updated Circular on the issuance by the Luxembourg tax authorities of certificates of tax residence for investment funds

13 December 2017

On 8 December 2017, the Luxembourg Tax Authorities (“LTA”) issued the updated Circular L.G.- A. n°61 which replaces the existing version of 12 February 2015 and provides an update on guidance rules on the issuance of certificates of tax residence for the benefit of Luxembourg investment funds as defined by the circular.

The scope of the circular concerning UCITS funds (established under the Law of 17 December 2010) and Specialized Investment Funds (established under the Law of 13 February 2007), has now been extended to cover also the Reserved Alternative Investment Funds [RAIFs]—established under the Law of 23 July 2016—other than those qualifying as RAIF-SICARs.¹

The circular also updates the list of DTAs granting access to investment funds and provides additional guidelines on how to request the certificate of tax residence from the LTA.

¹ The circular covers funds subject to subscription tax and, as such, RAIF SICARs that are subject to corporate income taxes are not included.

Updated list of double tax treaties

The updated list now covers 55 double tax treaties—46 of which allow collective investment undertakings to benefit from the DTT provisions due to the specific treaty wording,² 5 due to the special agreement between the two countries,³ and ⁴ others, based on the interpretation of the LTA.⁴

² Germany, Andorra, Saudi Arabia, Armenia, Austria, Azerbaijan, Bahrein, Barbados, Brunei, China, Croatia, United Arab Emirates, Estonia, Georgia, Guernsey, Hong Kong, Isle of Man, Israel, Jersey, Laos, Liechtenstein, Macedonia, Malaysia, Malta, Moldavia, Monaco, Uzbekistan, Panama, Poland, Portugal, Qatar, Czech republic, Romania, Saint-Martin, Serbia, Seychelles, Singapore, Slovenia, Sri Lanka, Tajikistan, Taiwan, Trinidad and Tobago, Tunisia, Turkey, Uruguay and Vietnam

³ Denmark, Spain, Indonesia, Ireland and Morocco

⁴ Finland, Kazakhstan, Slovak Republic and Thailand

Issuance of certificates of tax residence

A Certificate of tax residence may be issued:

- For the treaty jurisdictions that have accepted to grant the treaty benefits to Luxembourg SICAV-SICAF Funds (including RAIFs created under this form) and to Luxembourg FCPs (including RAIFs created under this form)
- Under domestic law, certificate of tax residence may also be issued for SICAV-SICAF Funds (including RAIFs created under this form) having their statutory seat or central administration in Luxembourg.

Practical modalities to obtain a certificate of tax residence

The request for a certificate needs to mention the tax number of the company.

A regulatory attestation from the Commission de Surveillance du Secteur Financier (CSSF) must be attached to the certificate request submitted to the LTA. This attestation will confirm the legal form of the fund and its current supervision by the CSSF.

For RAIFs not subject to the CSSF supervision, the request has to be introduced by the company or its depositary and must contain the tax number of the company, its formation date, and its registered office.

The tax office can request additional information or documentation that it considers necessary for the issuance of the certificate of tax residence. The circular specifies that such documents could include for example a certificate of non-liability to the AED (Administration de l'Enregistrement et des Domaines) or a revenue statement.

For a certificate of tax residence to be issued under Luxembourg domestic law, the reason justifying the request for this certificate must be described in the request to the LTA and details of income received by the SICAV-SICAF Fund must also be attached to this request.

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