

Operational Tax News

DTT Luxembourg-Spain

Application to Luxembourg Investment Funds

The new Circular

On the 21st July 2015, the Luxembourg Tax Administration issued the [Circular L.G. – Conv. D.I. n. 52 / 2015](#), whereby it states that - as per exchange of letters with the Spanish Tax Authorities - it was decided that, as from that date, the following entities/income would NOT be granted access to the benefits of the [Double Tax Treaty of 3 June 1986 \(DTT\)](#):

- "*Société de Gestion de Patrimoine Familial*" (SPF) ;
- "*Société d'Investissement à Capital Fixe*" (SICAF) and the "*Société d'Investissement à Capital Variable*" (SICAV) regulated under Section II of the "*loi du 17 décembre 2010 concernant les organismes de placement collectif*" (Luxembourg official Gazette 24th December 2010) and by the "*loi du 13 février 2007 relative aux fonds d'investissement spécialisés*" (Luxembourg official Gazette 13th February 2007),
- and to income derived by Spanish residents from shares or other rights in the above-mentioned companies and to capital represented by shares or other rights in the capital of these companies owned by Spanish residents.

What is new?

The novelty introduced by this Circular relates to the fact that it was now made clear that SPFs do not have access to the DTT Luxembourg-Spain.

On what concerns the Luxembourg SICAVs/SICAFs funds, the Circular merely stated what was already public information (please refer to footnote 1, of page 13, of [Circular L.G. – A. n. 61](#) and [Circular L.G. – Conv. D.I. n. 52 / 2000](#) from the Luxembourg Tax Authorities) – Non UCITS Luxembourg SICAVs/SICAFs and Luxembourg SIFs do not have access to the DTT Luxembourg-Spain.

Regarding Luxembourg UCITS SICAVs/SICAFs, access to the DTT remains applicable.

For Luxembourg FCPs (either UCITS or non UCITS), there is no change neither as these fund types did not access the benefits of the DTT.

Impact for Luxembourg Funds

As mentioned, other than the clarification regarding the SPFs, there is no real change for the Luxembourg investment funds from what the previous understanding of both Contracting Countries – **UCITS SICAVs/SICAFs** continue to benefit from access to the DTT, whilst **NON UCITS and SIF SICAVs/SICAFs** continue not to have access to the referred Treaty.

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