

## Investment Funds

### Luxembourg Tax Alert

#### New Circular on Double Tax Treaty Access and Issuance of Certificate of Tax Residence

On 12 February 2015, the Luxembourg Tax Authorities (“LTA”) issued **Circular** L.G.- A. n°61 that provides an update on the Double Tax Treaty (“DTT”) access for Luxembourg investment funds and new guidance rules on the issuance of Certificates of Tax Residence (“CoTR”). This Circular will be regularly updated to take into account new DTTs (or amendments to existing tax treaties) entering into force in Luxembourg.

The scope of the Circular concerns both UCITS Funds (established under the Law of 17 December 2010) and Specialized Investment Funds (established under the Law of 13 February 2007).

#### **Certificate of Tax Residence for SICAV-SICAF Funds**

In section 4.A of the Circular (page 6), the LTA have confirmed that, on what concerns the treaty jurisdictions that have accepted to grant the benefits of the treaties to the Luxembourg SICAV-SICAF Funds, a CoTR (Type 1 Certificate) will be issued. The template of such CoTR is attached in appendix to the Circular.

#### **Specificities applicable to FCP Funds**

While FCPs do not, in general, have access to the DTT benefits due to their lack of legal personality, the LTA has, nevertheless, confirmed that FCPs can benefit from some DTTs due to their special wording (e.g. Germany, Saudi Arabia, etc.). Depending on the DTT, the access may be subject to specific requirements such as the existence of Luxembourg resident investors into the FCP - this is the case in respect of the DTT between Germany and Luxembourg. Where the DTT is applicable, the FCPs are entitled to obtain a CoTR, an example of which is attached in appendix to the Circular (Type 2 Certificate).

#### **Certificate of Tax Residence based on Luxembourg tax legislation**

Finally, the LTA have confirmed that SICAV-SICAF Funds can obtain a CoTR based on the Luxembourg domestic tax legislation (Type 3 Certificate). Such a Certificate may be of assistance when the funds need to confirm their Luxembourg tax residence for reasons other than the access to the DTT provisions (e.g. EU tax reclaims under the ‘Santander’ and ‘Aberdeen’ European Court of Justice jurisprudence). The template of such CoTR is attached in appendix to the Circular.

The reason justifying the request for a CoTR must be described in the request to the LTA.

#### **Practical modalities to obtain a Certificate of tax Residence**

Irrespective of the type of CoTR requested to the LTA, a regulatory attestation from the *Commission de Surveillance du Secteur Financier* (“CSSF”) must be attached to the request. This attestation will confirm the legal form of the fund and its current supervision by the CSSF.

In respect of Type 3 Certificates (CoTR based on Luxembourg tax legislation), the details on the income received by the SICAV-SICAF Funds must also be attached to the request to the LTA. In case a request is introduced in relation to a future income, a description of the investment policy of the fund must be provided with the request to the LTA and the details of the income for which the Certificate is requested, must be provided to the LTA no later than 30 June Y+1.

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