

Luxembourg Tax Department

The Tax department is a dedicated team of highly skilled tax professionals providing comprehensive consultancy and compliance services.

Our solid knowledge of local and international regulations, combined with our wide experience, allow us to serve our clients in a tailored, responsive and value-added manner.

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Luxembourg Tax Alert

9 September 2014



Luxembourg and France sign a fourth amendment to the Tax Treaty

On 5 September 2014, Luxembourg's Minister of Finance (Pierre Gramegna) and France's Minister of Finance (Michel Sapin) signed a fourth amendment to the Luxembourg-France Convention for the avoidance of double taxation and the establishment of rules of reciprocal administrative assistance with respect to taxes on income and fortune (the "Tax Treaty"). The main objective of the new covenant is to introduce a capital gain provision for real estate companies so called "land-rich provision".

A new paragraph 4 is inserted in article 3 of the Tax Treaty, under which the taxation right on gains derived by a resident of a Contracting State from the alienation of stocks, shares or other similar rights in a company, a trust or any other institution or entity, whose asset or goods are composed for more than 50 per cent of their value or derive more than 50 per cent of their value directly or indirectly from immovable property situated in the other Contracting State is given to that other State.

Taxation of capital gains derived from real estate companies

- The existing treaty provides that capital gains derived by a Luxembourg company from the disposal of shares held, directly or indirectly, in a company holding real estate located in France shall be taxable only in Luxembourg. Such capital gains generally could be exempt in Luxembourg upon satisfaction of the various conditions of the Luxembourg participation exemption regime.
- With the introduction of the land-rich provision, France shall be allowed to tax capital gains realised by a Luxembourg resident (any individual, body corporate or unincorporated body of individuals) upon the alienation of stocks, shares or other similar rights in a "French land-rich company".
- A French land-rich company is to be understood as any entity (either tax resident in France or not) whose asset or goods are composed for / or derive

more than 50 per cent of their value directly or indirectly from immovable property situated in France. Nevertheless, it remains several cases whereby taxpayers will not be impacted by this new covenant.

- For the application of such provision, shall not be taken into consideration immovable properties allocated by such an entity to its own business activity (this applies, for instance, to entities owning a hotel property and running the hotel business at the same time).
- In addition this provision shall not contravene the application of Council Directive 2009/133/EC on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States and to the transfer of the registered office of an SE or SCE between Member States.

Entry into force

The Contracting States shall notify each other that all legal procedures for the entry into force of the present covenant have been completed. Such covenant shall enter into force on the first day of the month following the day of receipt of the later of the notifications.

Its provisions shall have effect, as respects taxes on income not deducted at the source, to the taxation of income pertaining to any calendar year or to any financial year starting after the calendar year during which the covenant entered into force (i.e. at the earliest on 1st January 2015).

This limited timeframe is an opportunity for taxpayers to review whether they will fall within the scope of this new land rich provision or not and to take appropriate actions in this respect.

Should you have any questions or wish to discuss the implications of the new covenant on your business, please do not hesitate to contact us.

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