

Luxembourg Tax Alert

Amendment to new Luxembourg-France tax treaty expected to apply from 1 January 2020 France clarifies method used in new treaty to avoid double taxation

21 October 2019

On 10 October 2019, Luxembourg's Minister of Finance and the French Minister of Economy and Finance signed an amendment to the new Luxembourg-France Tax Treaty (hereinafter referred to as "the new DTT"), which was finalized on 20 March 2018 (see our previous newsletter: www2.deloitte.com/lu/en/pages/tax/articles/new-tax-treaty-france.html) and which has since been ratified by both states.

Elimination of double taxation

For most French tax residents, the amendment to the new DTT is likely to bring a sigh of relief, as it clarifies how double taxation will be avoided in France.

The amendment better defines the lines of interpretation of the French and Luxembourg tax authorities on how to apply the tax credit method.

This clarification is more than welcome, as the provisions of the new DTT were not entirely clear on how France would mitigate double taxation at the level of its resident taxpayers.

According to the tax credit method, France would calculate the French taxes due on the French resident taxpayer's global taxable income (including, among others, income from Luxembourg), and would then provide a tax credit, i.e., a deduction from the amount of French taxes owed.

To that effect, French resident cross-border workers would benefit from a tax credit corresponding to the French tax on the Luxembourg source income to the extent that the income was already subject to tax in Luxembourg.

Although this application of the tax credit method does not correspond exactly to the tax exemption with progression method provided by the current DTT, it would result in a roughly comparable outcome in many situations, which is good news for most French residents working in Luxembourg.

The amendment also clarifies when France would use a different application of the tax credit method to avoid double taxation. This would be indeed the case for other income derived by French resident individuals, which would not fall within the scope of the application mentioned above.

In line with this second application, the double taxation would be avoided in France through the actual tax credit of the Luxembourg tax on the Luxembourg source income, against and up to the French tax on the same income.

This would have an impact on Luxembourg-sourced dividends, royalties, certain capital gains, directors' fees, certain profits derived from artists-sportsmen-models' performances in Luxembourg, and finally on salaried remuneration derived in respect of an employment exercised aboard a ship, a train or aircraft operated in international traffic and taxed in Luxembourg, with the company's place of effective management situated in Luxembourg.

Next steps

The provisions of the amendment are designed to apply to taxable periods beginning on 1 January 2020 subject to the completion of the ratification by both States.

Any changes for Luxembourg resident taxpayers?

For Luxembourg tax residents, there would be no change and foreign employment income would continue being exempt with progression reserve. For other types of income (e.g., investment income), Luxembourg would continue to apply the tax credit method.

Deloitte's View

As an important result, French resident cross-border workers would not suffer a higher French personal tax on their Luxembourg-sourced salaries to the extent these were subject to tax in Luxembourg. Although this application does not trigger questions in presence of standard salaried benefits fully taxable in Luxembourg, there are still cases where this application needs to be clarified.

This may be the case of in-kind salaried benefits valued based on a Luxembourg tax circular, and other salaried benefits that would be tax exempt in Luxembourg.

As a matter of fact, the main question is whether the Luxembourg tax treatment of such benefits, and the related tax, would be ultimately recognized by France as income effectively subject to tax in Luxembourg, and would get the benefit of the tax credit.

French resident individuals deriving Luxembourg source income for which the double taxation would be avoided in France based on the actual tax credit of the Luxembourg tax against the French tax, would certainly be interested to know if they can anticipate additional tax due in France on this income.

This may be the case of Luxembourg-sourced income recipients (among others, French resident non-executive directors, pilots, train drivers operating in international traffic, etc.).

We are still awaiting further clarifications on the implementation of the practical aspects of this amendment and on the 29 workdays' threshold applicable to French cross-border employees who partially work out of Luxembourg.

You can download the amendment to the new DTT here:

https://impotsdirects.public.lu/fr/archive/newsletter/2019/nl_16102019.html

<https://impotsdirects.public.lu/dam-assets/fr/conventions/conv-neg/Avenant10102019-ST2019065-TEXTE-Version-francaise-signee.pdf>

French State Council has recently confirmed the CSG/CRDS exemption on estate/capital-related income derived by French residents affiliated to another EU/EEA social security system or Switzerland

Following the case law of the European Court of Justice (ECJ) “De Ruyter” judgement on 26 February 2015, the question of the exemption of the “Contribution Sociale Généralisée” (CSG), and of the “Contribution au Remboursement de la Dette Sociale” (CRDS), arose after France was sanctioned by the ECJ on the basis that taxpayers domiciled in France, working in another EU Member State, and affiliated to the social security system of that State, could not be submitted to CSG/CRDS on their estate/capital-related income.

In response to that ECJ decision, France converted the CSG/CRDS into a tax instead of a social security contribution.

Nearly 5 years later, France has ultimately decided to change its legislation in line with the above ECJ case law.

Deloitte’s View

As a matter of consequence, French resident cross-border workers who are affiliated to the Luxembourg social security system can claim the retroactive benefit of this case law, and be exempted from French social contributions on their capital/estate-related income. This may apply to pensioners (under conditions).

Based on the above, French resident taxpayers can claim back the unduly collected CSG/CRDS retroactively, and as from the calendar year 2015.

The corresponding claim should be completed in their 2018 French personal tax return duly filed before 31 December 2019. In case this return has already been submitted, it may be possible to request the relevant adjustments before end of 2019.

As from 1 January 2020, the CSG/CRDS claim is still available but for the calendar year 2016 and following.

Practically speaking, eligible taxpayers should provide the French tax authorities with supporting documents attesting the valid social security affiliation (sickness risk) from an EU/EEA State system or in Switzerland.

See the following newsletters:

<https://taj-strategie.fr/prelevements-sociaux-de-ruyter-dernier-acte/>

<https://taj-strategie.fr/prelevements-sociaux-additionnels-opportunités-de-reclamations>

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