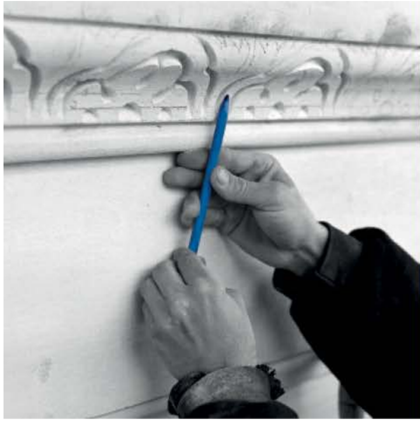

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Ratification of the Luxembourg - Ukraine Double Tax Treaty and its Protocol

The Convention between Ukraine and Luxembourg for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital and its Protocol have been ratified by the Government of Ukraine.

Background

On 6 September 1997 Luxembourg and Ukraine signed a first treaty (“**Treaty**”), which has been amended by a protocol signed on 30 September 2016 (“**Protocol**”).

Both have been ratified by Luxembourg, on 1 August 2001 and 23 December 2016 respectively. Ukraine ratified the Treaty and the Protocol on 14 March 2017.

The Treaty and Protocol will enter into force once the parties have notified each other on completion of the procedures required by their domestic law and shall directly apply:

> a) in respect of taxes withheld at source, to income derived on or after 1 January of the calendar year following the year in which the Treaty and the Protocol enters into force;
>
> b) in respect of other taxes on income and taxes on capital, to taxes chargeable for any taxable year beginning on or after 1 January of the next calendar year following the year in which the Treaty and the Protocol enters into force.

It is expected that the exchange of notifications will be completed this year so that the Treaty and Protocol will have effect as from 1 January 2018.

Withholding tax rates

The Treaty as amended by the Protocol sets out the following withholding tax rates:

	Dividends (art. 10)	Interest (art. 11)	Royalties (art. 12)
Basic rate	15%	10%	10% for the use of, or the right to use, any copyright of literacy, artistic or scientific work (including cinematograph films and films or tapes for radio or television broadcasting)
Reduced rate	5% (for participations of 20% or more of the capital of the dividend paying company (other than partnership))	5% on interests paid on a loan granted by a bank or any other financial institution, including investment banks and saving banks	5% for the use of, or the right to use, any patent, trade mark, design or model, plan, secret formula or process, or for information (know-how) concerning industrial, commercial or scientific experience
Exemption	n/a	0% on interest paid (i) on a loan made, guaranteed or insured by, or (ii) on any other debt claim or credit guaranteed or insured by an authorised public body of the State	n/a

It is worth mentioning that under the Luxembourg domestic tax legislation currently in force (i) a full exemption from the withholding tax on dividends paid by a Luxembourg resident fully taxable company to a qualifying Ukrainian parent company is available under the participation exemption, and (ii) no withholding tax is applicable on arm's length interest and royalty payments.

Capital gains

According to the provisions of the Treaty, capital gains from the alienation of property should be taxable only in the Contracting State of which the alienator is a resident except if such gains derive from:

a) the alienation of immovable property situated in the other Contracting State;

b) the alienation of shares in a company, other than shares quoted on an approved Stock Exchange, deriving their value or the greater part of their value directly or indirectly from immovable property;

c) the alienation of an interest in a partnership the assets of which consist principally of immovable property situated in other Contracting State or of shares referred to in (b) above;

d) the alienation of movable property forming part of the business property of a permanent establishment ("**PE**") situated in the other Contracting State;

e) the alienation of ships, boats or aircraft operated by an enterprise of the other Contracting State.

Real estate income

According to the provisions of the Treaty income from immovable property may be taxed in the Contracting State in which the property producing such income is situated.

In addition, the Treaty also extends the scope of the taxation right attributed to the above mentioned Contracting State to income from immovable property used for the performance of independent personal services in that Contracting State.

Permanent establishment

The definition of the PE corresponds to the current OECD standards.

In addition the scope of the PE is extended by the Protocol to include the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only if activities of that nature continue (for the same or a connected project) within Luxembourg or Ukraine for a period or periods aggregating more than six months within any twelve-month period.

Finally the definition of the PE includes the below undertakings (not foreseen by the OECD Model Convention):

a) an installation or structure for the exploration of natural resources; and

b) a warehouse or other structure used as a sales outlet.

Elimination of double taxation

Double taxation should be eliminated (i) by the credit method as regards Ukrainian taxes, and (ii) by the exemption method as regards Luxembourg taxes.

In addition, the Treaty provides for the extension of the participation exemption on dividend income derived by a Luxembourg company from a Ukrainian company, provided that:

a) the Luxembourg resident company holds directly at least 10 per cent of the capital of the Ukrainian company paying the dividend since the beginning of its accounting year; and

b) the Ukrainian company paying the dividend is subject to tax corresponding to the Luxembourg corporation tax.

Shares in the above-mentioned Ukrainian company should be exempt from the Luxembourg net worth tax under the same conditions.

Exchange of information

The Treaty as amended by the Protocol includes an exchange of tax information provision corresponding to the current OECD standards.

Our View

The renegotiation of the Treaty with Luxembourg has occurred within the broader context of the renegotiation by Ukraine of a series of treaties with important economic partners, such as the UK, the Netherlands, Belgium and Cyprus.

The new Luxembourg/Ukraine Treaty now puts Luxembourg on a level playing field, in particular as regards the reduced 5% withholding tax rate on dividends. As a result, it is expected that the treaty may bring the Ukrainian economy closer to the international investor community operating from Luxembourg, although the Treaty may also enhance Ukrainian outbound investments.

Additional clarification (*e.g.* exchange of explanatory notes by both governments) is furthermore expected in order to provide certain details on the terms of the Treaty, in particular the “approved Stock Exchange” in the context of the capital gain exemption.

For further guidance, please do not hesitate to contact our Tax team: Eric Fort, Alain Goebel, Thierry Lesage and Jan Neugebauer or your usual contact within the team.

Eric Fort, Partner
eric.fort@arendt.com

Alain Goebel, Partner
alain.goebel@arendt.com

Thierry Lesage, Partner
thierry.lesage@arendt.com

Jan Neugebauer, Partner
jan.neugebauer@arendt.com