New Double Tax Treaty between France and Luxembourg: to come into effect as from 1 January 2020

France/Luxembourg: July 2019

In Brief

On 2 July 2019, the Luxembourg Parliament voted to approve Bill n° 7390, ratifying four double tax treaties or protocols amending treaties. Included in this package was the ratification of the entirely new double tax treaty and accompanying protocol between Luxembourg and France (the "DTT"), signed in March 2018.

This new DTT with France is fully "post-BEPS". It implements the new approaches developed at international level during the OECD/G20 BEPS project, and since reflected in the 2017 version of the OECD Model Tax Convention, and in the Multilateral Convention to Implement Tax Treaty Related Measures ("the MLI"), signed by both Luxembourg and France in June 2017, and also since ratified by both countries.

France has already ratified this DTT, with the approving vote in France's *Assemblée nationale* having taken place on 14 February 2019. Hence, assuming that the exchange of the instruments of ratification between Luxembourg and France takes place during 2019 (as is now highly likely), this new DTT will largely enter into effect on **1 January 2020**.

More particularly, several provisions of the DTT are likely to affect many French real estate investments held from Luxembourg, notably those involving French OPCIs.

Details

Provisions of the new DTT and their likely consequences for real estate investment

The DTT as ratified on 2 July 2019 is unchanged in its wording since the treaty was signed in March 2018.

Our Real Estate Tax Services NewsAlert issued in March 2018, entitled "***New Double Tax Treaty between France and Luxembourg: impact on real estate structures***", set out a full analysis of the issues which appear to arise. Please find this NewsAlert here**.**

Entry into force

On the basis that Luxembourg and France will now proceed to exchange instruments of ratification (and thus cause the new DTT to come **into force** on the date of such exchange) **before 31 December 2019**, the provisions of this new DTT will become **effective** as follows.

In France

For withholding taxes, where the date on which the flow giving rise to the withholding obligation occurs on or after 1 January 2020.

For sources subject to income taxes but not to withholding at source, for the 2020 civil year or for tax year starting on or after 1 January 2020.

For other taxes, for when the triggering event for the tax occurs on or after 1 January 2020.

In Luxembourg

For withholding taxes, for amounts taxable on or after 1 January 2020.

For income taxes and net wealth tax, for tax years starting on or after 1 January 2020.

Our view

The main provision of the new DTT as it affects real estate investment clearly targets a very typical form of investment, whereby a Luxembourg company holds most of the shares in a French OPCI/SPPICAV or a SIIC.

Under the provisions of the new DTT, dividends distributed by a French OPCI or SIIC to a normally taxed Luxembourg holding company will be subject to a 28% in 2020 (to be reduced to 26.5% in 2021 and to 25% in 2022) withholding tax (as opposed to 5% under the current DTT). Furthermore, on receipt, the dividend will be fully subject to Luxembourg corporate income taxes. The 28% withholding tax should only be partially creditable (e.g. not against municipal business taxes), and under specific conditions.

The direct holding of a French OPCI or SIIC by an appropriate form of Luxembourg UCI might be considered as a suitable alternative, in order potentially to mitigate this significant increase of the tax leakage. Indeed, in such a situation, the dividends distributed by the French OPCI or SIIC would only be subject to the 15% French withholding tax under domestic law.

The ratification by Luxembourg's Parliament has now in effect confirmed the timetable for the new DTT to come into effect. **Implementation of changes** in arrangements for holding French real estate will generally need to have been completed on or **before 31 December 2019**, in order for any less favourable tax treatments resulting from the new DTT provisions not to have practical effects.

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