

Amendment of the Russia-Luxembourg double tax treaty

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On 21 November 2011, Luxembourg and Russia signed the Protocol, that introduces the amendments of the double tax treaty (i.e. "DTT") in force between both countries.

The key changes are the following:

- Reduction of the withholding tax on dividend distribution from 10% to 5% for qualifying entities. To be considered as a qualifying entity, the recipient must hold a direct shareholding in the entity (distributing the dividend) of at least 10% and for a minimum acquisition price of EUR 80.000. This change makes Luxembourg as attractive as the Netherland or Cyprus, jurisdiction often used so far for Russian investments. You will find below a comparison chart between Luxembourg, Cyprus and the Netherlands;
- Application of the dividend definition based on the source country;
- Allocation of the right to tax capital gain realized upon the disposal of shares held in a real estate company (i.e. deriving more than 50% of its value directly or indirectly from immovable properties) in the country where the immovable properties are located;
- Access of the DTT for Luxembourg SICAVs and SICAFs (e.g. SIF under the corporate form of SICAV or SICAF);
- Amendment of the "exchange of information" article to be in line with the OECD model convention;
- Introduction of a "Limitation of Benefits" clause which purpose is to preclude the application of the DTT to companies that are established either in Russia or in Luxembourg mainly to benefit from the DTT (i.e. treaty shopping).

The changes introduced by the Protocol will apply the year following the end of the ratification process in both States. It is foreseen that the changes will not be in force before January 2013.

Please find below the chart comparing the application of the DTT with Russia between Luxembourg (based on the amendments to be ratified), the Netherlands and Cyprus.

DTT with Russia	Luxembourg (based on the amendments to be ratified)	The Netherlands	Cyprus
Dividends	<ul style="list-style-type: none"> • 5% if qualifying entity (minimum shareholding of 10% and acquisition price of at least EUR 80.000); • 15% otherwise 	<ul style="list-style-type: none"> • 5% if qualifying entity (minimum shareholding of 25% and acquisition price of at least EUR 75.000); • 15% otherwise 	<ul style="list-style-type: none"> • 5% if qualifying entity (shareholding of an acquisition price of at least EUR 100.000); • 10% otherwise
Interest and royalties	<ul style="list-style-type: none"> • 0% 	<ul style="list-style-type: none"> • 0% 	<ul style="list-style-type: none"> • 0%
Capital gain on immovable property	<ul style="list-style-type: none"> • Exclusive right to tax in the State where the asset is located 	<ul style="list-style-type: none"> • Exclusive right to tax in the State where the asset is located 	<ul style="list-style-type: none"> • Exclusive right to tax in the State where the asset is located
Capital gain on real estate shares (more than 50% of the value of the shares deriving from immovable property)	<ul style="list-style-type: none"> • Exclusive right to tax in the State where the immovable property is located 	<ul style="list-style-type: none"> • Exclusive right to tax in the State where the alienator is tax resident 	<ul style="list-style-type: none"> • Exclusive right to tax in the State where the alienator is tax resident
Access of the DTT to SICAV and SICAF	<ul style="list-style-type: none"> • Yes (including SIF under the form of SICAV or SICAF) 	<ul style="list-style-type: none"> • N/A 	<ul style="list-style-type: none"> • N/A

As highlighted in the above chart, further to the amendments of the Luxembourg-Russia DTT, Luxembourg would become an attractive jurisdiction for structuring investments in Russia and would have all the weapons to compete with Cyprus and the Netherlands. Attention should however be kept to real estate investment in Russia which would need to be carefully structured.

Luxembourg, December 2011