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Luxembourg and Russia agree on the amendments of the double tax treaty

Insights - 20/11/2020

An Amendment to the Convention of 28 June 1993 between the Grand Duchy of Luxembourg and the Russian Federation regarding the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital was signed on 6 November.

This amendment modifies two articles of the Convention:

- Article 10 relating to dividends;
- Article 11 relating to interest.

It sets the conventional rate of withholding tax on dividends and interest to 15% while providing for certain exceptions to this general principle.

Regarding dividends:

Paragraph 2 of the new version of Article 10 regulates the rate of withholding tax on the payment of dividends by a company resident in a Contracting State to a beneficial owner resident in the other Contracting State at 15%.

Paragraph 3 provides for a reduced withholding tax rate of 5% when certain special conditions laid down in the Article are fulfilled.

Regarding interest:

Similarly, paragraph 2 of the new version of Article 11 frames the rate of withholding tax on dividends at 15%.

Paragraph 3 provides that in certain cases specifically enumerated by the text there shall be no withholding tax on the payment of interest from a company resident in a Contracting State to a resident who is the beneficial owner of the interest in the other Contracting State.

Paragraph 4 provides for a reduced withholding tax rate of 5% for the payment of interest from one Contracting State to another in the special case of companies whose shares are listed on a stock exchange.

The Amendment will enter into force as soon as Luxembourg and Russia have completed the respective legislative procedures with the aim that this happens on 1 January 2021.

Convention after the amendment on 21 November 2011

Article 10
Dividends

1. Dividends paid by a company that is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the laws of that State, but if the person receiving the dividends is the beneficial owner thereof, the tax so charged shall not exceed:

    a. 5% of the gross amount of the dividends if the beneficial owner is a company which holds a direct interest of at least 10% of the capital of the company paying the dividends and has invested at least 80,000 Euro or its equivalent in Roubles;

    b. 15% of the gross amount of dividends in all other cases. This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income - whether or not paid in the form of interest - which is subjected to the same taxation treatment as income from shares

by the laws of the State of which the company making the distribution is a resident. The term also includes payments in respect of units in an investment fund or any other collective investment undertaking (other than those referred to in paragraph 5 of Article 6 "Income from immovable property" of the Convention).

The term "shares" as used in this Article includes depository receipts.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor to levy any tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in that other State.

Article 11
Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State.

2. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities. Penalties for late payment shall not be regarded as interest within the meaning of this Article.

3. The provisions of paragraph 1 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated therein,

and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In this case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

4. Where, by reason of a special relationship between the debtor and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the debtor and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the latter amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Agreement after the amendment of 6 November 2020

Article 10
Dividends

1. Dividends paid by a company that is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, dividends paid by a company which is a resident of a Contracting State may also be taxed in that Contracting State according to the laws of that Contracting State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed 15% of the gross amount of the dividends. This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. Notwithstanding the provisions of paragraphs 1 and 2, dividends paid by a company which is a resident of a Contracting State may also be taxed in that Contracting State according to the laws of that Contracting State but:

if the beneficial owner of the dividends is a resident of the other Contracting State and the beneficial owner is an insurance undertaking or a pension fund; or

a. if the beneficial owner of the dividends is a resident of the other Contracting State and the beneficial owner is a company whose shares are listed on a registered stock exchange provided that not less than 15% of the voting shares of that company are in free circulation and which holds directly at least 15% of the capital of the company paying the dividends throughout a period of 365 days including the day of payment of the dividends; or

b. if the beneficial owner of the dividends is a resident of the other Contracting State and the beneficial owner is the Government of that Contracting State or a political subdivision or a local authority; or;

c. if the beneficial owner of the dividends is a resident of the other Contracting State and the beneficial owner is the Central Bank of that Contracting State,

the tax thus established may not exceed 5%.

4. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income – whether or not paid in the form of interest – which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident. The term also includes payments in respect of units in an investment fund or any other collective investment undertaking (other than those referred to in paragraph 5 of Article 6 "Income from immovable property" of the Convention).

The term "shares" as used in this Article includes depository receipts.

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor to levy any tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in that other State.

Article 11
Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State.

2. However, interest arising in a Contracting State may also be taxed in that Contracting

State according to the laws of that Contracting State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 15 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraphs 1 and 2, interest arising in a Contracting State and paid to a resident of the other Contracting State who is the beneficial owner of the interest shall be taxable only in the other Contracting State if:

a. the beneficial owner is:

i. an insurance undertaking or a pension fund; or

ii. the Government of that Contracting State or a political subdivision or a local authority; or

iii. the Central Bank of that Contracting State; or

iv. a bank;

or

b. Interest is paid under the following securities listed on a registered stock exchange:

i. government bonds;

ii. corporate bonds;

iii. Eurobonds

4. Notwithstanding the provisions of paragraphs 1, 2 and 3, interest arising in a Contracting State and paid to a resident of the other Contracting State who is the beneficial owner of the interest may also be taxed in the Contracting State in which it arises and according to the laws of that Contracting State, but if the beneficial owner of the interest is a company whose shares are listed on a registered stock exchange provided that not less than 15% of the voting shares of that company are in free circulation and which directly holds at least 15% of the capital of the company paying the interest throughout a period of 365 days including the day on which the interest is paid, the tax so assessed may not exceed 5%.

5. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a mortgage or containing a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities. Penalties for late payment shall not be regarded as interest within the meaning of this Article.

6. The provisions of paragraphs 1, 2, 3 and 4 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such cases, the provisions of Article 7 or Article 14, as the case may be, shall apply.

7. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that Contracting State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

8. Where by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

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