CLIFFORD CHANCE

Client briefing - Tax
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The Luxembourg – Monaco Double Tax Treaty

Double tax treaty between the Principality of Monaco and the Grand Duchy of Luxembourg applicable as from 1 January 2011

The double tax treaty (the "**DTT**") between Luxembourg and Monaco signed on 27 July 2009 has come into force on 3 May 2010 further to the exchange of instruments of ratification by each of the contracting countries, and applies (i) from 1 January 2011 for taxes withheld at source and (ii) to any fiscal year beginning on / or after 1 January 2011 for other income and wealth taxes.

The key points of the DTT are the following:

Residency

For Luxembourg: any person subject to Luxembourg tax by reason of his domicile, residence, place of incorporation, place of management or any criteria of a similar nature, excluding taxpayers liable to tax in Luxembourg in respect only of Luxembourg source income or capital situated therein.

For Monaco: this condition of taxation does not apply to a resident of Monaco. The only condition for an individual or a company to be resident of Monaco is that it has its residence, domicile or its head office located in Monaco.

Dividends

The withholding tax rate on dividends paid by a Luxembourg company to a resident of Monaco is of 15 percent maximum. However, the rate is reduced to 5 percent if the beneficial owner of the dividend is a company (other than a partnership) holding directly at least 10 percent of the share capital of the paying company.

Furthermore, Luxembourg exempts from tax dividends received by a Luxembourg company when it owns:

- directly since the beginning of the accounting year at least 10% of a Monaco company's share capital,
- and when the Monaco company is subject in Monaco to tax comparable to the Luxembourg corporate income tax.

This exemption also applies if the Monaco company is exempt or subject to a lower rate, when dividends are paid out of profits resulting from agriculture, industrial, infrastructure or tourist activities carried out in Monaco.

Under the same conditions, the participation into a Monaco company is exempt from net wealth tax.

Interest

The DTT exempts all interests from any withholding tax.

Royalties

The DTT exempts all royalties from any withholding tax.

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Capital Gains

Capital gains are in principle taxable in the country of residence of the seller (e.g. in case of disposal of shares or bonds).

The main exceptions are the following:

- gains realized on real estate are taxable in the country where the property is situated;
- gains arising from the disposal of all or part of the movable assets allocated to a permanent establishment are taxable in the country where this permanent establishment is set up;
- gains from the disposal of ships and aircrafts operated in international traffic and gains from movable assets relating to the operation of such ships or aircraft are taxable in the State where the activity is effectively managed.

Method to avoid double taxation

In principle Luxembourg applies the exemption-with-progression method for the avoidance of double taxation. However, Luxembourg applies the tax credit method with respect to namely business profits deriving from a permanent establishment located in Monaco (when profits of the permanent establishment does not derive from agriculture, industrial, infrastructure and tourist activities carried out in Monaco) and dividends withholding tax levied in Monaco.

Monaco applies the exemption-with-progression method for the avoidance of double taxation (unless for dividend withholding tax levied in Luxembourg).

Exchange of information

The DTT includes exchange of information provisions upon request in line with the OECD Model Convention, i.e. the contracting State may not decline a request from the other contracting State to supply information regarding the taxes covered by the Treaty solely on the basis that the information is held by a bank, other financial institution, nominee or person acting in an agency or fiduciary capacity or because it relates to ownership interests in a person.