

The Luxembourg-France Double Tax Treaty “amending Protocol signed on 10 October



Mrs. Gaëlle Felly

Counsel

gelly@bsp.lu



Ms. Laura Simmonds

Junior Associate

lsimmonds@bsp.lu

On 19 August 2019, the new Luxembourg-France Double Tax Treaty (“DTT”) came into force following finalisation of each country’s ratification procedures. The DTT will take effect from 1 January 2020 and replace the 1958 Luxembourg-France Double Tax Treaty. The DTT introduces a number of changes reflecting the amendments to the OECD Model Tax Convention following the Base-Erosion and Profit Shifting Project. These changes include:

- (i) amendments to the permanent establishment and resident definitions;
- (ii) introduction of a general anti-abuse rule based on the principal purpose test;
- (iii) taxation of real estate companies; and
- (iv) taxation of employment income (please see our April 2018 newsletter for further information).

As to employment income, a safe harbour clause provides that French resident employees carrying out their activity for a Luxembourg employer should be subject to tax in Luxembourg on their whole wages to the extent that they do not perform their duties in France or another state than Luxembourg for a period exceeding 29 days in total per year.

With regard to the elimination of double taxation, the DTT introduces the imputation/credit method for alleviating the double taxation of employment income for French residents. For Luxembourg residents, the exemption with progression system continues to apply for most types of income except dividends, royalties and income from artistic or sports performances.

On 10 October 2019, France and Luxembourg signed an amending protocol to the DTT dated 20 March 2018 (the “Protocol”), which clarifies the method used by France to avoid double taxation. In sum, for any income taxable in Luxembourg, France will grant a credit corresponding to the amount of tax paid in Luxembourg without exceeding the tax that would have applied in France. This Protocol aims at preventing French cross-border commuters who pay tax on their wages in

Luxembourg from paying a tax differential in France in the event that the amount of French taxes on this income would have been higher. Such Protocol has not yet entered into force, and is still subject to ratification procedures.