UPDATE

Luxembourg Replaces Tax Treaty Benefits and UCI Residency Certificates Circular

On 24 December 2024, the Luxembourg tax authorities ("LTA") issued [Circular L.G.- A n°61](#) ("Circular") which updated the guidelines on the issuance of tax residency certificates for undertakings for collective investments ("UCIs"). It replaces, and largely replicates, the guidance of the previous circular issued in 2017. As with the prior version, the Circular includes guidance on which of the 88 double tax treaties ("DTT") with Luxembourg are applicable to UCIs. It further elaborates on different approaches to treaty benefits between UCIs in the corporate form (i.e., tax opaque) versus those in contractual or partnership form (tax transparent) and updates the list of new DTTs available to Luxembourg UCIs including Ethiopia, France, Rwanda, and the UK.

Background and Application

The purpose of the Circular is to provide details on the issuance of residency certificates to UCIs. It supersedes two prior versions and is largely consistent with the prior versions' interpretations and procedures.[1]

As with the previous versions, the Circular applies to (i) all UCIs governed by the Law of 17 December 2010 relating to undertakings for collective investment, as amended ("UCI Law"), which encompasses undertakings for collective investment in transferable securities and UCIs subject to Part II of the UCI Law, (ii) all specialised investment funds governed by the Law of 13 February 2007 relating to specialised investment funds, as amended ("SIF Law" together with the UCI Law, the "Product Laws"), and (iii) reserved alternative investment funds ("RAIFs") governed by the Law of 23 July 2016 on reserved alternative investment funds ("RAIF Law"), with the exception of RAIFs investing in risk capital as per Article 48 of the RAIF Law.[2]

As elaborated below, the LTA categorises the circumstances under which certain DTTs will consider UCIs as tax residents, thereby granting them the benefit of the DTT. This includes several DTTs that will recognise even tax transparent UCIs as tax residents.

Tax Residency of FCPs

The Circular clarifies that UCIs constituted as "FCPs" generally cannot take advantage of the benefits provided by the DTTs due to their tax transparent nature[3]. An FCP is, therefore, generally not to be treated as a resident of the contracting state in which it is established. Consequently, the LTA cannot normally issue tax residency certificates for FCPs. The

[1] The new Circular replaces Circular L.G. - A. n° 61 of 8 December 2017, which itself replaced Circular L.G. - A. n° 61 of 12 February 2015.

[2] RAIFs investing in risk capital in corporate form are subject to Luxembourg corporate income tax and thus can obtain tax residency certificates similar to other Luxembourg resident companies subject to Luxembourg corporate income tax.

[3] FCPs or « ***fonds communs de placement »*** are contractual in nature and lack legal personality.

Circular highlights that Article 1 of the OECD Model Convention (which forms the basis of the DTTs concluded by Luxembourg), provides that only persons who are residents of a contracting state can benefit from a DTT. As a result of this principle, the Circular clarifies that unitholders of an FCP who are resident in Luxembourg can personally invoke the benefit of a DTT (i.e., look through up to the beneficial owner of the FCP).

The Circular clarifies that even if FCPs are tax transparent, Luxembourg has several DTTs in place according to which FCPs are eligible to benefit from a DTT's terms. This may occur when a DTT provides that an FCP or other tax transparent entity is considered as an individual of the contracting state in which it is established and the beneficial owner of the income it receives. Notably, the Circular highlights that under the Luxembourg DTT with Ireland, FCPs can obtain treaty benefits even without the issuance of a tax residency certificate.

The following is a list of countries where DTTs provide that FCPs can be treated as tax residents and benefit from the applicable DTT: Andorra, Brunei, Croatia, Estonia, Germany, Guernsey, Isle of Man, Jersey, Saudi Arabia, Seychelles, Tajikistan and Uruguay.

Tax Residency of Investment Companies with Variable Capital ("SICAV") and Investment Companies with Fixed Capital ("SICAF")

UCIs that have taken the form of a SICAV or SICAF, are ***per se*** considered as Luxembourg tax residents if either their registered office or central administration is in the Grand Duchy of Luxembourg[4]. As long as at least one of these two criteria for tax residency is satisfied, the LTA is able to issue a residency certificate.

The Circular highlights that several types of UCIs are exempt from corporate income tax under specific provisions of Luxembourg's tax law. However, the Circular goes on to explain that despite this corporate income tax exemption, the LTA will still consider such a UCI as tax resident and will also issue a tax residency certificate. Such an approach is however not unanimously shared by all of Luxembourg's treaty partners. Consequently, SICAVs and SICAFs are not always entitled to invoke the benefits of treaty provisions, and such treatment will largely depend on how the DTT partner jurisdiction interprets residency for UCIs.

Luxembourg's DTT - Applicable vs. Not Applicable to UCIs

As with prior versions, the Circular methodically explains three scenarios when a respective DTT will be applicable to a Luxembourg UCI and specifically lists DTT jurisdictions where such approach is applicable:

Scenario 1. The DTT applies to UCIs based on an agreement between Luxembourg and the DTT partner. Relevant jurisdictions are Denmark, Indonesia, Ireland and Morocco.

Scenario 2. The DTT applies to UCIs based on a clear text in the DTT between Luxembourg and the respective treaty partner. Relevant jurisdictions are Andorra, Armenia, Austria, Azerbaijan, Bahrain, Barbados, Brunei, China, Croatia, Cyprus, Czech Republic, Estonia, Ethiopia, Germany, Georgia, Guernsey, Hong Kong, Hungary, Isle of Man, Israel, Jersey, Kosovo, Laos, Liechtenstein, Malaysia, Malta, Moldovia, Monaco, Northern Macedonia, Panama, Poland, Portugal, Qatar, Romania, San Marino, Saudi Arabia, Serbia, Seychelles, Singapore, Slovenia, Sri Lanka, Tajikistan, Taiwan, Trinidad and Tobago, Tunisia, Turkey,

[4] Luxembourg Income Tax Law (**LITL**) Article 159.

United Arab Emirates, Uruguay, Uzbekistan and Vietnam.

Scenario 3. The DTT applies to UCIs based on an interpretation by the LTA. Relevant jurisdictions are Finland, Kazakhstan, Slovak Republic and Thailand.

Similarly, the Circular also explains the four scenarios in which a particular DTT will not be applicable to UCIs as follows:

Scenario 1. The DTT does not apply to UCIs based on an agreement (i.e., the DTT partner refuses to apply the treaty to UCIs). Relevant jurisdictions are Belgium, Brazil, Japan, Norway and South Africa.

Scenario 2. The DTT does not apply to UCIs based on a clear text in the DTT. Relevant jurisdictions are Canada, Iceland, India, Latvia and Switzerland.

Scenario 3. The DTT does not apply based on the DTT's provisions. Relevant jurisdictions are Mauritius, Mexico, Senegal, Sweden and the USA.

Scenario 4. The DTT does not apply based on the DTT's interpretation by local tax authorities. Relevant jurisdictions are Russia and Ukraine.

Application for Residency Certificates

Applications for obtaining tax residency certificates must be addressed to the LTA indicating the company's tax number and enclosing a certificate from the Luxembourg regulator (***Commission de Surveillance du Secteur Financier*** – **CSSF**) certifying that the applicant takes the form of a SICAV or SICAF and is subject to its supervision (with the exception of RAIFs which do not require such certificate as they are not supervised by the CSSF).

Requests for tax residency certificates for RAIFs are to be requested either by the RAIF itself or its depositary.

Additionally, requests for residency certificates may be required to state the reason why the residency certificate is required with an express reference to the foreign legislative provision or applicable DTT which requires such residency certificate.

Further Information

If you would like to: (i) receive more information on the recent developments in relation to UCI, SIF or RAIF taxation; (ii) discuss any legal, practical and / or operational challenges of this Circular; or (iii) obtain guidance on how to best prepare your request for a residency certificate in light of the Circular, please reach out to your usual Maples Group contact or any of the contacts below.

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