TAXATION

Double Income

Protocol Between the
UNITED STATES OF AMERICA
and LUXEMBOURG

Amending the Convention of April 3, 1996

Signed at Luxembourg May 20, 2009
Entered into force September 9, 2019

with Exchange of Notes

NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966 (80 Stat. 271; 1 U.S.C. 113)—

". . .the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof."

LUXEMBOURG

Taxation: Double Income

Protocol amending the Convention of April 3, 1996.
Protocol signed at Luxembourg May 20, 2009;
with related exchange of notes;
Transmitted by the President of the United States of America
to the Senate November 15, 2010 (Treaty Doc. 111-8,
111th Congress, 2nd Session);
Reported favorably by the Senate Committee on Foreign Relations
June 25, 2019 (Senate Executive Report No. 116-4,
116th Congress, 1st Session);
Advice and consent to ratification by the Senate July 17, 2019;
Ratified by the President August 5, 2019;
Ratified by Luxembourg September 9, 2019;
Exchange of entry into force notifications completed at Luxembourg
September 9, 2019;
Entered into force September 9, 2019.

Protocol
Amending the Convention
Between
the Government of the United States of America and
the Government of the Grand Duchy of Luxembourg
for the Avoidance of Double Taxation and the Prevention of Fiscal
Evasion with Respect to Taxes on Income and Capital

THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE GRAND DUCHY OF LUXEMBOURG

DESIRING to conclude a Protocol amending the Convention between the Government of the United States of America and the Government of the Grand Duchy of Luxembourg for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital, signed at Luxembourg April 3, 1996, ("the Convention"), have agreed as follows:

ARTICLE I

Article 28 (Exchange of Information) of the Convention shall be deleted and replaced by the following:

"ARTICLE 28

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes of every kind imposed by a Contracting State to the extent that the taxation thereunder is not contrary to this Convention. The exchange of information is not restricted by Article 1 (General Scope) or Article 2 (Taxes Covered).

2. Any information received under this Article by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic law of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment, collection, or administration of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes referred to above, or the oversight of such functions. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

3. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:

a) to carry out administrative measures at variance with the laws and administrative practice of that State or of the other Contracting State;

b) to supply information which is not obtainable under the laws or in the normal course of the administration of that State or of the other Contracting State;

c) to supply information which would disclose any trade, business, industrial, commercial, or professional secret or trade process, or information the disclosure of which would be contrary to public policy (ordre public).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

6. If specifically requested by the competent authority of a Contracting State, the competent authority of the other Contracting State shall provide information under this Article in the form of depositions of witnesses and authenticated copies of unedited original documents (including books, papers, statements, records, accounts, and writings) to the extent allowable under its domestic laws.

7. The Contracting States undertake to lend each other support and assistance in the collection of taxes to the extent necessary to ensure that relief granted by the present Convention from taxation imposed by a Contracting State does not inure to the benefit of persons not entitled thereto. The provisions of this paragraph shall not impose upon either Contracting State the obligation to carry out administrative measures that would be contrary to its sovereignty, security, public policy (ordre public) or its essential interests."

ARTICLE II

1. This Protocol shall be subject to ratification in accordance with the applicable procedures in the United States and Luxembourg. The Contracting States shall notify each other in writing, through diplomatic channels, when their respective applicable procedures have been satisfied.

2. The Protocol shall enter into force on the date of the later of the notifications referred to in paragraph 1. The provisions of this Protocol shall have effect for requests made on or after the date of entry into force with regard to tax years beginning on or after January 1, 2009.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this Protocol.

DONE at Luxembourg, in duplicate, this 20th day of May, 2009, in the English and French languages, each text being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

Ann L. Wagner
Ambassador Extraordinary and Plenipotentiary

FOR THE GOVERNMENT OF THE GRAND DUCHY OF LUXEMBOURG:

Luc Frieden
Minister of the Treasury

Protocole
Modifiant la Convention entre le Gouvernement des États- Unis d'Amérique et le Gouvernement du Grand-Duché de Luxembourg tendant à éviter les doubles impositions et à prévenir la fraude fiscale en matière d'impôts sur le revenu et sur la fortune

Le Gouvernement des États-Unis d'Amérique et le Gouvernement du Grand-Duché de Luxembourg, désireux de conclure un Protocole modifiant la Convention entre le Gouvernement des États-Unis d'Amérique et le Gouvernement du Grand-Duché de Luxembourg tendant à éviter les doubles impositions et à prévenir la fraude fiscale en matière d'impôts sur le revenu et sur la fortune, signée à Luxembourg, le 3 avril 1996, (la Convention), sont convenus de ce qui suit:

ARTICLE I

L'article 28 (Échange de Renseignements) de la Convention est supprimé et remplacé par celui qui suit:

"ARTICLE 28

Échange de Renseignements

1. Les autorités compétentes des États contractants échangent les renseignements vraisemblablement pertinents pour appliquer les dispositions de la présente Convention ou pour celles de la législation interne des États contractants relative aux impôts de toute nature perçus par un État contractant dans la mesure où l'imposition qu'elle prévoit n'est pas contraire à la présente Convention. L'échange de renseignements n'est pas restreint par l'article 1 (champ d'application général) ou l'article 2 (impôts visés).

2. Les renseignements reçus en vertu de cet article par un État contractant sont tenus secrets de la même manière que les renseignements obtenus en application de la législation interne de cet État et ne sont communiqués qu'aux personnes ou autorités (y compris les tribunaux et organes administratifs) impliquées dans l'établissement, le recouvrement ou l'administration des impôts ci avant référés, par les procédures ou poursuites concernant ces impôts, ou par les décisions sur les recours relatifs à ces impôts, ou par le contrôle de ces fonctions. Ses personnes ou autorités n'utilisent ces renseignements qu'à ces fins. Elles peuvent révéler ces renseignements au cours d'audiences publiques de tribunaux ou dans des jugements.

3. Les dispositions du paragraphe 1 ne peuvent en aucun cas être interprétées comme imposant à un État contractant l'obligation :
   a) de prendre des mesures administratives dérogeant à la législation et à la pratique administrative de cet État ou à celles de l'autre État contractant;
   b) de fournir des renseignements qui ne pourraient être obtenus sur la base de la législation ou dans le cadre de la pratique administrative de cet État ou de celles de l'autre État contractant;
   c) de fournir des renseignements qui révéleraient un secret commercial, industriel, professionnel ou un procédé commercial ou des renseignements dont la communication serait contraire à l'ordre public.

4. Si des renseignements sont demandés par un État contractant conformément à cet article, l'autre État contractant utilise les pouvoirs dont il dispose pour obtenir les renseignements demandés, même s'il n'en a pas besoin à ses propres fins fiscales. L'obligation qui figure dans la phrase précédente est soumise aux limitations prévues au paragraphe 3 sauf si ces limitations sont susceptibles d'empêcher un État contractant de communiquer des renseignements uniquement parce que ceux-ci ne présentent pas d'intérêt pour lui dans le cadre national.

5. En aucun cas, les dispositions du paragraphe 3 ne peuvent être interprétées comme permettant à un État contractant de refuser de communiquer des renseignements uniquement parce que ceux-ci sont détenus par une banque, un autre établissement financier, un mandataire ou une personne agissant en tant qu'agent ou fiduciaire ou parce que ces renseignements se rattachent aux droits de propriété d'une personne.

6. Si l'autorité compétente d'un État contractant en fait expressément la demande, l'autorité compétente de l'autre État contractant communique les renseignements prévus au présent article sous la forme de dépositions de témoins ou de copies certifiées conformes de documents originaux non retraités (tels que livres ou registres, papiers, déclarations, enregistrements, comptes et écrits) de la même manière qu'obtenus en application de sa législation interne.

7. Les États contractants conviennent de se prêter mutuellement appui et assistance pour le recouvrement des impôts dans la mesure nécessaire pour assurer que les réductions de l'impôt prélevé par un État contractant ne soient obtenues par des personnes qui n'y ont pas droit. Les dispositions du présent paragraphe n'imposent à aucun des États contractants l'obligation de prendre des mesures administratives contraires à sa souveraineté, sa sécurité, son ordre public ou ses intérêts vitaux."

ARTICLE II

1. Le présent Protocole sera ratifié conformément aux procédures applicables aux États-Unis et au Luxembourg. Chacun des États contractants notifiera à l'autre par écrit, par la voie diplomatique, l'accomplissement des procédures applicables respectives.

2. Le Protocole entrera en vigueur à la date de la dernière des notifications visées au paragraphe 1. Les dispositions du présent Protocole seront applicables aux demandes faites à ou après la date de l'entrée en vigueur en ce qui concerne les années d'impositions commençant le ou après le 1er janvier 2009.

EN FOI DE QUOI, les soussignés, dûment autorisés à cet effet par leur Gouvernements respectifs, ont signé le présent Protocole.

Fait à Luxembourg en deux exemplaires, le 20 mai 2009 en langue anglaise et en langue française, les deux textes faisant également foi.

Pour le Gouvernement des
États-Unis d'Amérique

Ann L. Wagner
Ambassadrice Extraordinaire et
Plénipotentiaire

Pour le Gouvernement
Grand-Duché de Luxembourg

Luc FRIEDEN
Ministre du Trésor et du Budget

LE GOUVERNEMENT
DU GRAND-DUCHÉ DE LUXEMBOURG

Luxembourg, le 20 mai 2009

Excellence,

J'ai l'honneur d'accuser réception de votre lettre du 20 mai 2009, libellée comme suit:

"I have the honor to refer to the Convention between the Government of the United States of America and the Government of the Grand Duchy of Luxembourg for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on Income and Capital, signed at Luxembourg, April 3, 1996, as amended by the Protocol signed today (the "Convention") and to propose on behalf of the Government of the United States the following understandings:

1. It is understood that the competent authority of the requested State shall provide upon request by the competent authority of the requesting State information for the purposes referred to in paragraph 1 of Article 28. Such information shall be exchanged without regard to whether the requested State needs such information for its own tax purposes or the conduct being investigated would constitute a crime under the laws of the requested State if it had occurred in the territory of the requested State.

2. Pursuant to paragraph 5 of Article 28, it is understood that each Contracting State shall ensure that its competent authority has the authority to obtain and provide upon request:

a) information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees;

b) information regarding the ownership of companies, partnerships, trusts, foundations and other persons, including ownership information on all such persons in an ownership chain; in the case of trusts, information on settlors, trustees and beneficiaries; and in the case of foundations, information on founders, members of the foundation council and beneficiaries; provided, however, that a requested State is not obliged to provide information which is neither held by its authorities nor in the possession or control of persons who are within its territorial jurisdiction. For purposes of the preceding sentence, "authorities" includes all government agencies, political subdivisions, and local authorities. Further, this Convention does not create an obligation on the Contracting States to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties.

./..

Son Excellence
Madame Ann Louise WAGNER
Ambassadeur des Etats-Unis d'Amérique
22, boulevard Emmanuel Servais
L-2535 LUXEMBOURG

3. The competent authority of the applicant State shall provide the following information to the competent authority of the requested State when making a request for information under the Convention to demonstrate the foreseeable relevance of the information to the request:

(a) the identity of the person under examination or investigation;

(b) a statement of the information sought including its nature and the form in which the applicant State wishes to receive the information from the requested State;

(c) the tax purpose for which the information is sought;

(d) grounds for believing that the information requested is held in the requested State or is in the possession or control of a person within the jurisdiction of the requested State;

(e) to the extent known, the name and address of any person believed to be in possession of the requested information;

(f) a statement that the request is in conformity with the law and administrative practices of the applicant State, that if the requested information was within the jurisdiction of the applicant State then the competent authority of the applicant State would be able to obtain the information under the laws of the applicant State or in the normal course of administrative practice and that it is in conformity with this Convention;

(g) a statement that the applicant State has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

4. The competent authorities of the Contracting States will work together to develop mutual procedures for the exchange of information, including, (i) with respect to specific requests, the form for making a specific request, the time and manner of responding to a request, and the possibility for declining a request, and (ii) other procedures or forms of assistance concerning the efficient exchange of information.

If the foregoing understandings meet with the approval of the Government of the Grand Duchy of Luxembourg, I have the further honor to propose that this Note and your affirmative Note in reply shall constitute an agreement between our Governments which shall become an integral part of the Convention on the date of entry into force of the Protocol."

J'ai l'honneur de confirmer l'accord du Grand-Duché de Luxembourg sur le contenu de votre lettre. Par conséquent votre lettre et cette confirmation constituent ensemble un Accord entre nos gouvernements lequel deviendra partie intégrante de la Convention à la date de l'entrée en vigueur du Protocole.

Veuillez agréer, Excellence, l'assurance de ma très haute considération.

Luc Frieden

U.S. Department of State
Office of Language Services
Translating Division

LS No. 06-2010-0435
French/English
ALK/GPG

TRANSLATION

Government of the Grand Duchy of Luxembourg

Luxembourg, May 20, 2009

Excellency:

I have the honor to acknowledge receipt of your letter of May 20, 2009, which reads as follows:

[English text].

I have the honor to confirm that the Grand Duchy of Luxembourg approves the contents of your letter. Accordingly, your Note and this affirmative Note in reply shall constitute an agreement between our Governments, which shall become an integral part of the Convention on the date of entry into force of the Protocol.

Accept, Excellency, the assurances of my very high consideration.

Her Excellency
Ann Louise Wagner,
Ambassador of the United States of America,
22 boulevard Emmanuel Servais,
L-2535, Luxembourg

Embassy of the United States of America
The Grand Duchy of Luxembourg

May 20, 2009

Excellency,

I have the honor to refer to the Convention between the Government of the United States of America and the Government of the Grand Duchy of Luxembourg for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on Income and Capital, signed at Luxembourg, April 3, 1996, as amended by the Protocol signed today (the "Convention") and to propose on behalf of the Government of the United States the following understandings:

1. It is understood that the competent authority of the requested State shall provide upon request by the competent authority of the requesting State information for the purposes referred to in paragraph 1 of Article 28. Such information shall be exchanged without regard to whether the requested State needs such information for its own tax purposes or the conduct being investigated would constitute a crime under the laws of the requested State if it had occurred in the territory of the requested State.

2. Pursuant to paragraph 5 of Article 28, it is understood that each Contracting State shall ensure that its competent authority has the authority to obtain and provide upon request:

a) information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees;

b) information regarding the ownership of companies, partnerships, trusts, foundations and other persons, including ownership information on all such persons in an ownership chain; in the case of trusts, information on settlors, trustees and beneficiaries; and in the case of foundations, information on founders, members of the foundation council and beneficiaries; provided, however, that a requested State is not obliged to provide information which is neither held by its authorities nor in the possession or control of persons who are within its territorial jurisdiction. For purposes of the preceding sentence, "authorities" includes all

government agencies, political subdivisions, and local authorities. Further, this Convention does not create an obligation on the Contracting States to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties.

3. The competent authority of the applicant State shall provide the following information to the competent authority of the requested State when making a request for information under the Convention to demonstrate the foreseeable relevance of the information to the request:

(a) the identity of the person under examination or investigation;

(b) a statement of the information sought including its nature and the form in which the applicant State wishes to receive the information from the requested State;

(c) the tax purpose for which the information is sought;

(d) grounds for believing that the information requested is held in the requested State or is in the possession or control of a person within the jurisdiction of the requested State;

(e) to the extent known, the name and address of any person believed to be in possession of the requested information;

(f) a statement that the request is in conformity with the law and administrative practices of the applicant State, that if the requested information was within the jurisdiction of the applicant State then the competent authority of the applicant State would be able to obtain the information under the laws of the applicant State or in the normal course of administrative practice and that it is in conformity with this Convention;

(g) a statement that the applicant State has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

4. The competent authorities of the Contracting States will work together to develop mutual procedures for the exchange of information, including, (i) with respect to specific requests, the form for making a specific request, the time and manner of responding to a request, and the possibility for declining a request, and (ii) other procedures or forms of assistance concerning the efficient exchange of information.

If the foregoing understandings meet with the approval of the Government of the Grand Duchy of Luxembourg, I have the further honor to propose that this Note and your affirmative Note in reply shall constitute an agreement between our Governments which shall become an integral part of the Convention on the date of entry into force of the Protocol.

Accept, Your Excellency, the expression of my highest considerations.

Ann L. Wagner