SALMON-LEGAGNEUR & ASSOCIÉS
AVOCATS À LA COUR

TAX ALERT
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The French tax authorities' guidelines[1] on the new French-Luxembourg double tax treaty[2] give details and confirm its enforcement's tightening, notably to the real estate sector:

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Refusal of entitlement to tax treaty benefits when one of the principal purposes of any structuring or transaction is to benefit directly or indirectly of treaty provisions[3].

Exclusion of the tax-exempted collective investment funds (such as SIIC, OPCI, SPPICAV, FCP) from tax treaty provisions except for those concerning dividends and interest[4].

Introduction of beneficial owner condition to benefit from the reduced withholding tax rate of 15% on dividends (and full exemption when they are paid to a company holding at least 5% for at least 365 days); **For distributions by SIIC, OPCI, SPPICAV,** the reduced rate of 15% applies only when Luxembourg beneficiary company holds less than 10%; **No reduced rate when higher holding**[5] (thus entailing French full domestic withholding rate of 0% - 25% by 2022).

Extending scope to any time over the 365 days preceding the sale for the measure concerning taxation of capital gains on sale of shares of a real estate-oriented company[6] in the country where the asset is located[7].

Removal ceiling of the *branch tax*/withholding tax on profits realized by the French permanent establishment of a Luxembourg company[8].

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This tightening of the new tax treaty, combined with the mandatory automatic exchange of information on cross-border arrangements (DAC 6[9]), might decrease the use of Luxembourg holdings by non-Luxembourg investors.

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[1] *BOI-INT-CVB-LUX dated February 23 2021 & BOI-INT-DG-20-25 dated Decembr 16 2020*
[2] Double Tax Treaty signed on March 20 2018, in force on August 19 201 and applicable since January 1, 2020
[3] *Preamble and article 28* introducing BEPS measures (prevention of tax evasion, and targeting of treaty-shopping arrangements)
[4] Articles 4-1, 4-2, 10 and 11
[5] *Article 10-6*
[6] Deriving, directly or indirectly more than 50% of its asset value from real estate property
[7] *Article 13-4*
[8] When the effective place of management is outside EEA, or when France applies to the permanent establishment the exemptions provided under domestic law for collective investment funds (*§1 et 7 of Protocol*)
[9] *BOI-CF-CPF-30-40-30 and BOI-CF-CPF-30-40-30-20 dated 29-4-2020*