ELVINGER HOSS
LUXEMBOURG LAW

New UK-Luxembourg treaty

On 7 June 2022, a new double tax treaty along with an additional protocol ("New DTT") were signed by the UK and Luxembourg. The entry into force is subject to completion of the ratification processes in both jurisdictions and so the New DTT is not expected to be effective before January 2023 (for some taxes though, there should even be a later start – see below for more details).

Below is a non-exhaustive summary of salient changes:

- Resident (Article 4): A Luxembourg collective investment vehicles (CIV) treated as body corporate is given access to the New DTT (as an individual who is a resident of Luxembourg) and shall be treated as the beneficial owner of the income it receives if (i) at least 75 per cent of the beneficial interests in the CIV are owned by equivalent beneficiaries, or (ii) the CIV is an undertaking for collective investment in transferable securities ("UCITS").

  The term "CIV" includes:
  - UCITS subject to Part I of the Law of 17 December 2010 and Undertakings for Collective Investment subject to Part II of the same law;
  - Specialised Investment Funds (SIF) subject to the Law of 13 February 2007; and
  - Reserved Alternative Investment Funds (RAIF) subject to the Law of 23 July 2016, with the exception of reserved alternative investment funds which choose to subject themselves to the regime of Article 48 of the said law;
  - any other investment fund, arrangement or entity established in Luxembourg which the competent authorities agree to regard as a CIV.

  "equivalent beneficiary" means a resident of Luxembourg, and a resident of any other jurisdiction with which the UK has a treaty providing for an effective and comprehensive information exchange and which benefits from a rate of tax with respect to that item of income that is at least as low as the rate claimed under the New DTT.

- Dividends (Article 10): the New DTT generally provides a full relief from withholding tax on dividends (which is currently levied at a minimum rate of 5%). By exception, a maximum 15% withholding tax will be levied on dividends paid out of income (including gains) derived directly or indirectly from immovable property by an investment vehicle which (i) distributes most of this income annually and (ii) whose income from such immovable property is exempted from tax (e.g. UK REITs), unless the beneficial owner of the dividends is a recognised pension established in the other

contracting state (in which case no withholding tax would apply).

- Interest continues to benefit from a full exemption of withholding tax. The New DTT requires however that the interest rate shall be at arm's length.
- Royalties (Article 12): the New DTT provides full relief from withholding tax on royalties (which is currently levied at a minimum rate of 5%). The New DTT requires, however, that the amount of royalties shall be at arm's length.
- Capital gains (Article 13): Under existing treaty, the UK has no taxing rights over gains from the sale of indirect investments in UK real estate. To be in line with other treaties, the New DTT now gives the UK the taxing right on the gains accruing to a resident in Luxembourg on the sale of shares or comparable interests (such as interests in a partnership or trust), deriving more than 50% of their value directly or indirectly from UK immovable property (and vice versa).
- The New DTT also introduces the concept of the principal purpose test.
- Entry into force (Article 29): the New DTT will apply as follows:

a) in the UK:

(i) in respect of taxes withheld at source, to income derived on or after 1 January of the next calendar year following the year in which New DTT enters into force;

(ii) in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6 April of the calendar year following the year in which the New DTT enters into force;

(iii) in respect of corporation tax, for any financial year beginning on or after 1 April of the calendar year following the year in which the New DTT enters into force;

b) in Luxembourg:

(i) in respect of taxes withheld at source, to income derived on or after 1 January of the calendar year following the year in which the New DTT enters into force;

(ii) in respect of other taxes on income, and taxes on capital, to taxes chargeable for any taxable year beginning on or after 1 January of the calendar year following the year in which the New DTT enters into force.

For any further information please contact us or visit our website at **www.elvingerhoss.lu**.

The information contained herein is not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific legal advice concerning particular situations.

We undertake no responsibility to notify any change in law or practice after the date of this newsletter.