Russia and Luxembourg have amended their double tax treaty

Russia and Luxembourg have amended their double tax treaty dated on the 28th of June 1993 with the signature of a new protocol signed on the 21st of November 2011. The main elements of the protocol that follow increase Luxembourg position for holding investments located in Russia and vice versa (except real estate rich companies clause):

Dividend distribution:

- the minimum withholding tax rate to be applied to dividend distributions is reduced from 10% to 5% if the beneficial owner holds a direct shareholding of 10% and has invested at least EUR 80.000 (or it equivalent in Roubles) in the subsidiary located in the other state. If these conditions are not met, dividends are taxed at a 15% rate.

This change is positive as it makes Luxembourg as attractive as the Netherlands and Cyprus, which were thus far often used as holding jurisdictions for Russian investments.

- the definition of "dividends" is clarified as it now also includes payments made in the form of interest to the extent the interest is treated as a dividend for tax purposes in the source country and extends its application to the payments carried out on units of collective investment vehicles.

Capital gains: real estate rich companies *clause*

A new paragraph is introduced in the capital gain article regarding the sale of shares issued by a company deriving "directly or indirectly" more than 50% of its value from real estate assets located in the other state. Such gains are now taxable in the country where the real estate property is situated.

The rule does not apply for shares in listed companies, or if the disposal occurs within a reorganization of companies, or if the gain is realized by pension funds or similar entities or State governments.

Limitation on benefits

The Protocol introduces a limitation of benefits clause that excludes companies that were mainly set up in order to take advantage of the treaty.

Exchange of information

The exchange of information article has been amended in order to bring the tax treaty in line with the OECD standards. The procedure and conditions to be met in order to apply for the exchange of information are detailed in the protocol.