

## No. 54782. Luxembourg and Ukraine      N° 54782. Luxembourg et Ukraine

CONVENTION BETWEEN THE GOVERNMENT OF THE GRAND DUCHY OF LUXEMBOURG AND THE GOVERNMENT OF UKRAINE FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL. KIEV, 6 SEPTEMBER 1997

CONVENTION ENTRE LE GOUVERNEMENT DU GRAND-DUCHÉ DE LUXEMBOURG ET LE GOUVERNEMENT DE L'UKRAINE TENDANT À ÉVITER LES DOUBLES IMPOSITIONS ET À PRÉVENIR LA FRAUDE FISCALE EN MATIÈRE D'IMPÔTS SUR LE REVENU ET SUR LA FORTUNE. KIEV, 6 SEPTEMBRE 1997

PROTOCOL BETWEEN THE GOVERNMENT OF THE GRAND DUCHY OF LUXEMBOURG AND THE GOVERNMENT OF UKRAINE TO AMEND THE CONVENTION BETWEEN THE GOVERNMENT OF THE GRAND DUCHY OF LUXEMBOURG AND THE GOVERNMENT OF UKRAINE FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL, SIGNED AT KIEV ON 6 SEPTEMBER 1997. KIEV, 30 SEPTEMBER 2016\*

PROTOCOLE ENTRE LE GOUVERNEMENT DU GRAND-DUCHÉ DE LUXEMBOURG ET LE GOUVERNEMENT DE L'UKRAINE EN VUE DE MODIFIER LA CONVENTION ENTRE LE GOUVERNEMENT DU GRAND-DUCHÉ DE LUXEMBOURG ET LE GOUVERNEMENT DE L'UKRAINE 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 KIEV, LE 6 SEPTEMBRE 1997. KIEV, 30 SEPTEMBRE 2016\*

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**PROTOCOL**

**BETWEEN THE GOVERNMENT OF THE GRAND DUCHY OF LUXEMBOURG  
AND THE GOVERNMENT OF UKRAINE TO AMEND THE CONVENTION BETWEEN  
THE GOVERNMENT OF THE GRAND DUCHY OF LUXEMBOURG AND THE  
GOVERNMENT OF UKRAINE  
FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF  
FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL,  
SIGNED AT KIEV ON 6 SEPTEMBER 1997**

The Government of the Grand Duchy of Luxembourg and the Government of Ukraine (hereinafter referred to as "the Contracting States"),

Desiring to conclude a Protocol to amend the Convention between the Government of the Grand Duchy of Luxembourg and the Government of Ukraine for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital, signed at Kiev on 6 September 1997 (hereinafter referred to as "the Convention"), have agreed as follows:

**ARTICLE 1**

Paragraph 3 of Article 5 "Permanent establishment" of the Convention shall be replaced by the following:

"3. The term "permanent establishment" also encompasses:

- a) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only if such site, project or activities last more than twelve months;
- b) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only if activities of that nature continue (for the same or a connected project) within a Contracting State for a period or periods aggregating more than six months within any twelve-month period".

## **ARTICLE 2**

1. Paragraph 2 of Article 10 "Dividends" of the Convention shall be replaced by the following:

"2. However, dividends paid by a company which is a resident of a Contracting State may also be taxed in that State according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

- a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 20 per cent of the capital of the company paying the dividends;
- b) 15 per cent of the gross amount of the dividends in all other cases.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid."

2. Paragraph 3 of Article 10 of the Convention shall be deleted. Paragraphs 4, 5 and 6 of Article 10 shall be renumbered as 3, 4 and 5 respectively.

## **ARTICLE 3**

Paragraph 2 of Article 11 "Interest" of the Convention shall be replaced by the following:

"2. However, interest arising in a Contracting State may also be taxed in that State according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed:

- a) 5 per cent of the gross amount of the interest, in the case of interest arising in a Contracting State and paid on any loans of whatever kind granted by a bank or any other financial institution of the other State, including investment banks and saving banks;
- b) 10 per cent of the gross amount of the interest in all other cases."

## **ARTICLE 4**

Paragraph 2 of Article 12 "Royalties" of the Convention shall be replaced by the following:

"2. However, royalties arising in a Contracting State may also be taxed in that State according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed:

- a) 5 per cent of the gross amount of the payments referred to in sub-paragraph a) of paragraph 3 of this Article;
- b) 10 per cent of the gross amount of the payments referred to in sub-paragraph b) of paragraph 3 of this Article.”.

#### **ARTICLE 5**

Paragraph 7 of Article 24 “Non-discrimination” of the Convention shall be replaced by the following:

“7. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.”.

#### **ARTICLE 6**

Article 26 “Exchange of information” of the Convention shall be replaced by the following:

##### **“Article 26**

##### **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 to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States or of their political subdivisions or local authorities, insofar as the taxation there under is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.
2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. 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. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.

3. In no case shall the provisions of paragraphs 1 and 2 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 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 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.”.

#### **ARTICLE 7**

Article 28 “Exclusion of certain companies” of the Convention shall be deleted. Articles 29 “Entry into force” and 30 “Termination” shall be renumbered as 28 and 29 respectively.

#### **ARTICLE 8**

1. Each of the Contracting States shall notify to the other, through the diplomatic channel the completion of the procedures required by its domestic law for the bringing into force of this Protocol.
2. This Protocol shall form an integral part of the Convention and shall enter into force when the Convention between the Government of the Grand Duchy of Luxembourg and the Government of Ukraine for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital shall enter into force and shall thereupon have effect:
  - a) in respect of taxes withheld at source, to income derived on or after 1 of January of the calendar year next following the year in which the Protocol enters into force;