

PROTOCOL

AMENDING THE CONVENTION BETWEEN THE GRAND DUCHY OF LUXEMBOURG AND THE KINGDOM OF SPAIN FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL AND THE PREVENTION OF FISCAL FRAUD AND EVASION

THE GOVERNMENT OF THE GRAND DUCHY OF LUXEMBOURG AND THE GOVERNMENT OF THE KINGDOM OF SPAIN

DESIRING to conclude a Protocol amending the Convention between the Grand Duchy of Luxembourg and the Kingdom of Spain for the Avoidance of Double Taxation with Respect to Taxes on Income and on Capital and for the Prevention of Fiscal Fraud and Evasion and the Final Protocol, signed at Madrid on 3 June 1986 ("the Convention"), have agreed as follows:

ARTICLE I

Article 27 (Exchange of Information) of the Convention shall be deleted and replaced by the following:

ARTICLE 27

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 of their local authorities, insofar as the taxation thereunder 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, or 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.
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 upon request 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 II

1. This Protocol shall be subject to ratification in accordance with the applicable procedures in Luxembourg and Spain. 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 after the period of three months following the date of receipt of the latter of the notifications referred to in paragraph 1. The provisions of this Protocol shall have effect with regard to tax years beginning on or after 1 January of the calendar year next following the year of the entry into force of this Protocol.

In witness whereof the undersigned, duly authorised thereto, have signed this Protocol.

Done in duplicate at this day of 200 ,
in the French and Spanish languages, both texts being equally authentic.

For the Government of the
Grand Duchy of Luxembourg

For the Government of the
Kingdom of Spain

EXCHANGE OF NOTES

I have the honour to refer to the Convention between the Grand Duchy of Luxembourg and the Kingdom of Spain for the Avoidance of Double Taxation with Respect to Taxes on Income and on Capital and for the Prevention of Fiscal Fraud and Evasion, signed at Madrid on 3 June 1986, as amended by the Protocol signed today (the "Convention") and to propose on behalf of the Government of the Grand Duchy of Luxembourg the following understandings:

1. It is understood that the competent authority of a Contracting State shall provide upon request by the competent authority of the other Contracting State information for the purposes referred to in Article 27.
2. The competent authority of the Contracting State which makes the request shall provide the following information to the competent authority of the other Contracting 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 Contracting State making the request wishes to receive the information from the other Contracting State;
 - (c) the tax purpose for which the information is sought;
 - (d) grounds for believing that the information requested is held in the Contracting State to which the request is addressed or is in the possession or control of a person within the jurisdiction of that 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 Contracting State making the request, that if the requested information was within its jurisdiction then its competent authority would be able to obtain the information under the laws of that State or in the normal course of its administrative practice and that it is in conformity with this Convention;
 - (g) a statement that the Contracting State making the request has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.
3. In accordance with the provisions of the second sentence of paragraph 1 of the First Additional Provision of the Spanish Law to Avoid Tax Evasion (Disposición Adicional Primera de la Ley 36/2006 de Medidas para la Prevención del Fraude Fiscal) of 29 November 2006, the Grand Duchy of Luxembourg shall not longer be considered as a country or territory comprised in the first sentence of that same paragraph on and after the date of entry into force of this Protocol. Nor shall Luxembourg be qualified as such on the

pretence of the regimes mentioned in paragraph 1 of the former Protocol of the existing Convention.

If the foregoing understandings meet with the approval of your Government, I have the further honour 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.

EXCHANGE OF NOTES

Excellency,

I have the honour to acknowledge the receipt of Your Excellency's Note of the ____ of 2009 which reads as follows:

"I have the honour to refer to the Convention between the Grand Duchy of Luxembourg and the Kingdom of Spain for the Avoidance of Double Taxation with Respect to Taxes on Income and on Capital and for the Prevention of Fiscal Fraud and Evasion, signed at Madrid on 3 June 1986, as amended by the Protocol signed today (the "Convention") and to propose on behalf of the Government of the Grand Duchy of Luxembourg the following understandings:

3. It is understood that the competent authority of a Contracting State shall provide upon request by the competent authority of the other Contracting State information for the purposes referred to in Article 27.
4. The competent authority of the Contracting State which makes the request shall provide the following information to the competent authority of the other Contracting State when making a request for information under the Convention to demonstrate the foreseeable relevant 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 Contracting State making the request wishes to receive the information from the other Contracting State;
 - (c) the tax purpose for which the information is sought;
 - (d) grounds for believing that the information requested is held in the Contracting State to which the request is addressed or is in the possession or control of a person within the jurisdiction of that 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 Contracting State making the request, that if the requested information was within its jurisdiction then its competent authority would be able to obtain the information under the laws of that State or in the normal course of its administrative practice and that it is in conformity with this

Convention;

- (g) a statement that the Contracting State making the request has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.
3. In accordance with the provisions of the second sentence of paragraph 1 of the First Additional Provision of the Spanish Law to Avoid Tax Evasion (Disposición Adicional Primera de la Ley 36/2006 de Medidas para la Prevención del Fraude Fiscal) of 29 November 2006, the Grand Duchy of Luxembourg shall not longer be considered as a country or territory comprised in the first sentence of that same paragraph on and after the date of entry into force of this Protocol. Nor shall Luxembourg be qualified as such on the pretence of the regimes mentioned in paragraph 1 of the former Protocol of the existing Convention.

If the foregoing understandings meet with the approval of your Government, I have the further honour 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.”

I have further the honour to accept the understandings contained in Your Excellency's Note, on behalf of the Government of the Kingdom of Spain. Therefore Your Excellency's Note and this Note 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.