Luxembourg; Montenegro

Tax Treaty Between Luxembourg and Montenegro – Details

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Details of the Luxembourg - Montenegro Income and Capital Tax Treaty (2024), signed on 29 January 2024, have become available. The treaty and protocol were concluded in the French, Montenegrin and English languages, all texts being equally authentic. In case of divergence the English text prevails. The treaty generally follows the OECD Model (2017).

The maximum rates of withholding tax are:

- 10% on dividends generally, but 5% if the beneficial owner is a company (other than a partnership) which holds directly or indirectly at least 10% of the capital of the company paying the dividends (article 10(2) of the treaty);
- 10% on interest, but exemptions apply to the government of a contracting state, or a local authority thereof, the Central Bank of a contracting state and any financial institution wholly owned by that government (article 11(2) and (3) of the treaty); and
- 10% on royalties generally, but 5% on royalties from copyright of literary, artistic or scientific work (including cinematographic films and films or tapes for radio or television broadcasting or other means of reproduction or transmission (article 11(2)(a) and (b) of the treaty).

Deviations from the OECD Model (2017) include that:

- article 4(3) of the treaty provides that in case of dual residence of companies, the place of effective management is decisive;
- article 5(4)(e) and (f), 5(5) and 5(6) are in line with the OECD Model (2014);
- article 8(2) of the treaty provides that if the place of effective management of a shipping enterprise is aboard a ship it will be deemed to be situated in the contracting state in which the home harbour of the ship is situated, or, if there is no such home harbour, in the contracting state of which the operator of the ship is a resident;
- article 12(3)(a) and (b) of the treaty provides that the definition of royalties also includes films or tapes for radio or television broadcasting or other means of reproduction or transmission and computer software;
- article 12(5) of the treaty provides that royalties will be deemed to arise in a contracting state when the payer is a resident of that state. If the person paying the royalties, whether he is a resident of a contracting state or not, however, has in a contracting state a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties will be deemed to arise in the contracting state in which the permanent establishment or fixed base is situated;
- article 12(6) of the treaty provides that excess royalties based on a special relationship remain taxable under the domestic laws;
- article 13 does not contain a provision on capital gains derived from immovable property;
- article 18(2) of the treaty provides that social security payments are taxable only in the source state;
- article 19(3) of the tax treaty provides that pensions and other similar remuneration (including lump-sum payments) arising in a contracting state and paid to a resident of the other contracting state which derive from contributions paid to or from provisions made under a pension scheme by the recipient or on his behalf and if these contributions, provisions or the pensions or other similar remuneration have been subjected to tax in the first-mentioned state under the ordinary rules of its tax laws are taxable only in the source state;
- article 24 of the treaty on the mutual agreement procedure does not contain an arbitration clause; and
- the treaty does not contain a provision on the assistance in the collection of taxes.

Based on article 22(1)(a)-(c) of the treaty, Luxembourg applies both the exemption with progression and the treaty method for the avoidance of double taxation. The exemption with progression method, however, does not apply to income which is exempt in Montenegro.

Article 22(2)(a) and (b) of the treaty provides that Montenegro applies both the credit and exemption with progression methods.

Article 27 of the treaty contains a provision on the entitlement to treaty benefits under which those benefits are denied if one of the principal purposes of an arrangement or construction was to obtain those benefits unless the benefits would have been granted in the absence of the transaction or arrangement.

The protocol defines recognized pension funds, indicates when collective investment funds are entitled to treaty benefits and allows Luxembourg to apply its controlled foreign company (CFC) rules.

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