



GMS Flash Alert



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United States - Protocol Is Approved Amending U.S.-Luxembourg Tax Treaty

On July 17, 2019, the U.S. Senate ratified the Protocol amending the U.S.-Luxembourg income tax treaty.¹ The Protocol replaces the Exchange of Information article in the existing treaty with a new article that follows the approach of the U.S. model income tax treaty and the Organization for Economic Cooperation and Development (OECD) Model Tax Convention on Income and Capital.

WHY THIS MATTERS

The ratification of this Protocol, together with the protocols between the United States and Spain, Japan, and Switzerland, represents a breaking of the logjam that has prevented new treaties and protocols coming into effect since 2009.²

The revisions to the exchange of information article provide an additional impetus for international assignees to be compliant with the Foreign Account Tax Compliance Act (FATCA) and Foreign Bank and Financial Accounts (FBAR) filing requirements, as the Protocol expands the scope of information that can be exchanged between the United States and Luxembourg.

Background

The Protocol, accompanied by an exchange of notes between the two countries, was originally signed in 2009 and was transmitted to the U.S. Senate for its advice and consent as to ratification in 2010. It was approved by the Senate Foreign Relations Committee in 2011, but approval by the full Senate was blocked until this year. The existing treaty was signed in 1996 and entered into force on 20 December 2000.

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New Exchange of Information Article

The new exchange of information article introduced by the Protocol is modeled on the corresponding provisions in the U.S. and OECD model income tax treaties and provides for “more robust exchange of information between tax authorities in the two countries to facilitate the administration of each country’s tax laws.”³ The Protocol introduces a provision whereby a country may not decline to provide information solely because that information is held by financial institutions, nominees, or persons acting in a nominee or fiduciary capacity. Thus, a country is prevented from claiming that its domestic bank secrecy laws or similar legislation override its obligation to provide information under this treaty provision. This provision also requires disclosure of information concerning the beneficial ownership of interests in entities and assets such as bearer shares.⁴

Effective Date

The Protocol will enter into force once both the United States and Luxembourg have notified each other that their respective procedures for ratification have been completed. It will become effective for requests for information made on or after the date of entry into force with regard to tax years beginning on or after January 1, 2009.

FOOTNOTES:

1 “Protocol Amending the Convention between the United States of America and the Grand Duchy of Luxembourg for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and its Protocol.” For the text of the Protocol, see <https://www.treasury.gov/resource-center/tax-policy/treaties/Documents/LuxembourgProtocol09.pdf>. For the vote on this and other Protocols, see the U.S. Senate web page “Roll Call Votes 116th Congress - 1st Session (2019)” at: https://www.senate.gov/legislative/LIS/roll_call_lists/vote_menu_116_1.htm .

For the Joint Committee on Taxation’s “Explanation Of Proposed Protocol To The Income Tax Treaty Between The United States And Luxembourg,” see: <https://www.jct.gov/publications.html?func=startdown&id=3790> .

2 For prior coverage, see GMS [Flash Alert 2019-107](#) (June 26, 2019).

3 See the Letter of Submittal of the Protocol, *supra* at page V.

4 Article 1 of the Protocol, amending paragraph 5 of article 28 of the treaty.

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