

PROTOCOL AMENDING TAX CONVENTION WITH
LUXEMBOURG

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

PROTOCOL AMENDING THE CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE GRAND DUCHY OF LUXEMBOURG FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL, SIGNED ON MAY 20, 2009, AT LUXEMBOURG (THE "PROPOSED PROTOCOL") AND A RELATED AGREEMENT EFFECTED BY THE EXCHANGE OF NOTES ALSO SIGNED ON MAY 20, 2009



NOVEMBER 15, 2010.—Treaty was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

U.S. GOVERNMENT PRINTING OFFICE

LETTER OF TRANSMITTAL

THE WHITE HOUSE,
November 15, 2010.

To the Senate of the United States:

I transmit herewith, for the advice and consent of the Senate to its ratification, the Protocol Amending the Convention between the Government of the United States of America and the Government of the Grand Duchy of Luxembourg for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital, signed on May 20, 2009, at Luxembourg (the “proposed Protocol”) and a related agreement effected by the exchange of notes also signed on May 20, 2009. I also transmit for the information of the Senate the report of the Department of State, which includes an Overview of the proposed Protocol and related agreement.

The proposed Protocol and related agreement provide for more robust exchange of information between tax authorities in the two countries to facilitate the administration of each country’s tax laws. They generally follow the current U.S. Model Income Tax Convention and the Organization for Economic Cooperation and Development standards for exchange of tax information.

I recommend that the Senate give early and favorable consideration to the proposed Protocol and related agreement and give its advice and consent to their ratification.

BARACK OBAMA.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, August 3, 2010.

THE PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to their transmission to the Senate for advice and consent to ratification, the Protocol Amending the Convention between the Government of the United States of America and the Government of the Grand Duchy of Luxembourg for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital, signed on May 20, 2009, at Luxembourg (the “proposed Protocol”) together with a related agreement effected by exchange of notes also signed on May 20, 2009. The proposed Protocol and related agreement were negotiated to bring the existing income tax Convention with Luxembourg (the “existing Convention”) into closer conformity with current U.S. tax treaty policy regarding the exchange of tax information; and in recognition of the importance of the United States’ economic relations with Luxembourg. I recommend that the proposed Protocol be transmitted to the Senate for its advice and consent to ratification.

The proposed Protocol and related agreement provide for more robust exchange of information between tax authorities in the two countries to facilitate the administration of each country’s tax laws. They generally follow the current U.S. Model Income Tax Convention and the Organization for Economic Cooperation and Development standards for exchange of information. An overview of key provisions of the proposed Protocol is enclosed with this report.

The proposed Protocol is self-executing. The Department of the Treasury and the Department of State cooperated in the negotiation of the proposed Protocol and related agreement, and the Department of the Treasury joins the Department of State in recommending that the proposed Protocol and related agreement be transmitted to the Senate as soon as possible for its advice and consent to ratification.

Respectfully submitted.

HILLARY RODHAM CLINTON.

Enclosures: As stated.

OVERVIEW

The proposed Protocol to amend the income tax Convention with Luxembourg (proposed Protocol) and the related agreement effected by exchange of notes were negotiated to bring the existing Convention, signed in 1996 (existing Convention), into closer conformity with current U.S. tax treaty policy regarding exchange of information. There are, as with all bilateral tax conventions, some minor variations from the language of the U.S. Model Income Tax Convention. In the proposed Protocol and related agreement, these minor differences reflect particular aspects of Luxembourg law and treaty policy. However, the proposed Protocol and related agreement generally follow the current U.S. Model Income Tax Convention and the Organization for Economic Cooperation and Development standards for exchange of tax information.

Exchange of information

The proposed Protocol replaces the existing Convention's tax information exchange provisions with updated rules that are consistent with current U.S. tax treaty practice. The proposed Protocol allows the tax authorities of each country to exchange information relevant to carrying out the provisions of the agreement or the domestic tax laws of either country. Among other things, the proposed Protocol would allow the United States to obtain information from Luxembourg whether or not Luxembourg needs the information for its own tax purposes, and provides that requests for information cannot be declined solely because the information is held by a bank or other financial institution. The proposed related agreement effected by exchange of notes sets forth agreed understandings between the parties regarding the updated provisions on tax information exchange, including that:

- the United States and Luxembourg will ensure that their respective competent authorities have the authority to obtain and provide upon request information held by banks and other financial institutions and information regarding ownership of certain entities; and
- information shall be exchanged without regard to whether the conduct being investigated would be a crime under the laws of the requested State.

Entry into force

The proposed Protocol would enter into force once both the United States and Luxembourg have notified each other that their respective applicable procedures for ratification have been satisfied. It would have effect with respect to requests made on or after the date of entry into force with regard to tax years beginning on or after January 1, 2009. The related agreement effected by exchange of notes would enter into force on the date of entry into force of the proposed Protocol and would become an integral part of the Convention on that date.

**Protocol
Amending the Convention
Between
the Government of the United States of America and
the Government of the Grand Duchy of Luxembourg
for the Avoidance of Double Taxation and the Prevention of Fiscal
Evasion with Respect to Taxes on Income and Capital**

**THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND THE GOVERNMENT OF THE GRAND DUCHY OF
LUXEMBOURG**

DESIRING to conclude a Protocol amending the Convention between the Government of the United States of America and the Government of the Grand Duchy of Luxembourg for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital, signed at Luxembourg April 3, 1996, ("the Convention"), have agreed as follows:

ARTICLE I

Article 28 (Exchange of Information) of the Convention shall be deleted and replaced by the following:

"ARTICLE 28

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 of the domestic laws of the Contracting States concerning taxes of every kind imposed by a Contracting State to the extent that the taxation thereunder is not contrary to this Convention. The exchange of information is not restricted by Article 1 (General Scope) or Article 2 (Taxes Covered).

2. Any information received under this Article by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic law of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment, collection, or administration of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes referred to above, or the oversight of such functions. 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 paragraph 1 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 State 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 State 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.

6. If specifically requested by the competent authority of a Contracting State, the competent authority of the other Contracting State shall provide information under this Article in the form of depositions of witnesses and authenticated copies of unedited original documents (including books, papers, statements, records, accounts, and writings) to the extent allowable under its domestic laws.

7. The Contracting States undertake to lend each other support and assistance in the collection of taxes to the extent necessary to ensure that relief granted by the present Convention from taxation imposed by a Contracting State does not inure to the benefit of persons not entitled thereto. The provisions of this paragraph shall not impose upon either Contracting State the obligation to carry out administrative measures that would be contrary to its sovereignty, security, public policy (ordre public) or its essential interests."

ARTICLE II

1. This Protocol shall be subject to ratification in accordance with the applicable procedures in the United States and Luxembourg. The Contracting States shall notify each other in writing, through diplomatic channels, when their respective applicable procedures have been satisfied.

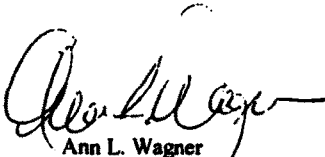
2. The Protocol shall enter into force on the date of the later of the notifications referred to in paragraph 1. The provisions of this Protocol shall have effect for requests made on or after the date of entry into force with regard to tax years beginning on or after January 1, 2009.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this Protocol.


DONE at Luxembourg, in duplicate, this 20th day of May, 2009, in the English and French languages, each text being equally authentic.

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE
GRAND DUCHY OF LUXEMBOURG:



Ann L. Wagner
Ambassador Extraordinary and
Plenipotentiary



Luc Frieden
Minister of the Treasury



Embassy of the United States of America
The Grand Duchy of Luxembourg

May 20, 2009

Excellency,

I have the honor to refer to the Convention between the Government of the United States of America and the Government of the Grand Duchy of Luxembourg for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on Income and Capital, signed at Luxembourg, April 3, 1996, as amended by the Protocol signed today (the "Convention") and to propose on behalf of the Government of the United States the following understandings:

1. It is understood that the competent authority of the requested State shall provide upon request by the competent authority of the requesting State information for the purposes referred to in paragraph 1 of Article 28. Such information shall be exchanged without regard to whether the requested State needs such information for its own tax purposes or the conduct being investigated would constitute a crime under the laws of the requested State if it had occurred in the territory of the requested State.
2. Pursuant to paragraph 5 of Article 28, it is understood that each Contracting State shall ensure that its competent authority has the authority to obtain and provide upon request:
 - a) information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees;
 - b) information regarding the ownership of companies, partnerships, trusts, foundations and other persons, including ownership information on all such persons in an ownership chain; in the case of trusts, information on settlors, trustees and beneficiaries; and in the case of foundations, information on founders, members of the foundation council and beneficiaries; provided, however, that a requested State is not obliged to provide information which is neither held by its authorities nor in the possession or control of persons who are within its territorial jurisdiction. For purposes of the preceding sentence, "authorities" includes all

government agencies, political subdivisions, and local authorities. Further, this Convention does not create an obligation on the Contracting States to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties.

3. The competent authority of the applicant State shall provide the following information to the competent authority of the requested State when making a request for information under the Convention to demonstrate the foreseeable relevance of the information to the request:

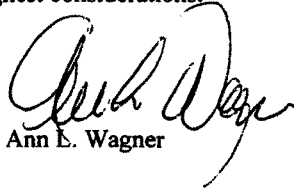
- (a) the identity of the person under examination or investigation;
- (b) a statement of the information sought including its nature and the form in which the applicant State wishes to receive the information from the requested State;
- (c) the tax purpose for which the information is sought;
- (d) grounds for believing that the information requested is held in the requested State or is in the possession or control of a person within the jurisdiction of the requested 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 applicant State, that if the requested information was within the jurisdiction of the applicant State then the competent authority of the applicant State would be able to obtain the information under the laws of the applicant State or in the normal course of administrative practice and that it is in conformity with this Convention;
- (g) a statement that the applicant State has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

4. The competent authorities of the Contracting States will work together to develop mutual procedures for the exchange of information, including, (i) with respect to specific requests, the form for making a specific request, the time and manner of responding to a request, and the possibility for declining a request, and (ii) other procedures or forms of assistance concerning the efficient exchange of information.

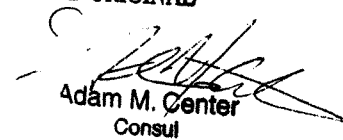
If the foregoing understandings meet with the approval of the Government of the Grand Duchy of Luxembourg, I have the further honor to propose that this Note and your affirmative Note in reply shall constitute an agreement between our Governments which shall become an integral part of the Convention on the date of entry into force of the Protocol.

Accept, Your Excellency, the expression of my highest considerations.




Ann E. Wagner

A TRUE COPY OF THE
SIGNED ORIGINAL


Adam M. Center
Consul

LE GOUVERNEMENT
DU GRAND-DUCHÉ DE LUXEMBOURG

Luxembourg, le 20 mai 2009

Excellence,

J'ai l'honneur d'accuser réception de votre lettre du 20 mai 2009, libellée comme suit:

"I have the honor to refer to the Convention between the Government of the United States of America and the Government of the Grand Duchy of Luxembourg for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on Income and Capital, signed at Luxembourg, April 3, 1996, as amended by the Protocol signed today (the "Convention") and to propose on behalf of the Government of the United States the following understandings:

1. It is understood that the competent authority of the requested State shall provide upon request by the competent authority of the requesting State information for the purposes referred to in paragraph 1 of Article 28. Such information shall be exchanged without regard to whether the requested State needs such information for its own tax purposes or the conduct being investigated would constitute a crime under the laws of the requested State if it had occurred in the territory of the requested State.

2. Pursuant to paragraph 5 of Article 28, it is understood that each Contracting State shall ensure that its competent authority has the authority to obtain and provide upon request:

a) information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees;

b) information regarding the ownership of companies, partnerships, trusts, foundations and other persons, including ownership information on all such persons in an ownership chain; in the case of trusts, information on settlors, trustees and beneficiaries; and in the case of foundations, information on founders, members of the foundation council and beneficiaries; provided, however, that a requested State is not obliged to provide information which is neither held by its authorities nor in the possession or control of persons who are within its territorial jurisdiction. For purposes of the preceding sentence, "authorities" includes all government agencies, political subdivisions, and local authorities. Further, this Convention does not create an obligation on the Contracting States to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties.

./.

Son Excellence
Madame Ann Louise WAGNER
Ambassadeur des Etats-Unis d'Amérique
22, boulevard Emmanuel Servais
L-2535 LUXEMBOURG

3. The competent authority of the applicant State shall provide the following information to the competent authority of the requested 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 applicant State wishes to receive the information from the requested State;
- (c) the tax purpose for which the information is sought;
- (d) grounds for believing that the information requested is held in the requested State or is in the possession or control of a person within the jurisdiction of the requested 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 applicant State, that if the requested information was within the jurisdiction of the applicant State then the competent authority of the applicant State would be able to obtain the information under the laws of the applicant State or in the normal course of administrative practice and that it is in conformity with this Convention;
- (g) a statement that the applicant State has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

4. The competent authorities of the Contracting States will work together to develop mutual procedures for the exchange of information, including, (i) with respect to specific requests, the form for making a specific request, the time and manner of responding to a request, and the possibility for declining a request, and (ii) other procedures or forms of assistance concerning the efficient exchange of information.

If the foregoing understandings meet with the approval of the Government of the Grand Duchy of Luxembourg, I have the further honor 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."

J'ai l'honneur de confirmer l'accord du Grand-Duché de Luxembourg sur le contenu de votre lettre. Par conséquent votre lettre et cette confirmation constituent ensemble un Accord entre nos gouvernements lequel deviendra partie intégrante de la Convention à la date de l'entrée en vigueur du Protocole.

Veillez agréer, Excellence, l'assurance de ma très haute considération.


Luc Frieden

U.S. Department of State
Office of Language Services
Translating Division



LS No. 06-2010-0435
French/English
ALK/GPG

TRANSLATION

Government of the Grand Duchy of Luxembourg

Luxembourg, May 20, 2009

Excellency:

I have the honor to acknowledge receipt of your letter of May 20, 2009, which reads as follows:

[English text].

I have the honor to confirm that the Grand Duchy of Luxembourg approves the contents of your letter. Accordingly, your Note and this 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.

Accept, Excellency, the assurances of my very high consideration.

Her Excellency
Ann Louise Wagner,
Ambassador of the United States of America,
22 boulevard Emmanuel Servais,
L-2535, Luxembourg

○