

TABLE OF CONTENTS

Foreword	15
List of abbreviations	17

I. Introduction

1. Overview	21
2. Structure of the Tax Treaty	21
3. Interpretative value of the OECD Model Convention and the related Commentary	24

II. Mechanism of the Tax Treaty

1. Overview	29
2. Distributive rules (Article 6 – 21 of the Tax Treaty)	30
2.1. Methods for allocation of taxing rights	30
2.2. The wording used for the allocation of taxing rights	32
3. Elimination rules (Article 22 of the Tax Treaty)	33
4. Checklist: Application of the Tax Treaty	37

III. Scope of the Tax Treaty and general definitions

1. Text of the Tax Treaty	41
2. Personal scope of the Tax Treaty	43
3. Dual residency cases	45
4. Considerations relating to permanent establishments	49
5. Considerations relating to partnerships	49
6. Considerations relating to States, their subdivisions and their wholly-owned entities	50

7. Considerations relating to investment funds and companies	50
8. General definitions	51
9. Taxes covered.....	53

IV.

Taxation of income and capital

1. Income from immovable property (Article 6 of the Tax Treaty)	57
1.1. Text of the Tax Treaty	57
1.2. Allocation of taxing rights and avoidance of double taxation (Article 6 (1) of the Tax Treaty)	57
1.3. Definition of the term “immovable property” (Article 6 (2) of the Tax Treaty)	58
1.4. Income covered by Article 6 of the Tax Treaty (Article 6 (3) of the Tax Treaty)	58
1.5. Immovable property held as business property of an enterprise (Article 6 (4) of the Tax Treaty)	59
2. Business profits (Article 7 of the Tax Treaty)	61
2.1. Text of the Tax Treaty	61
2.2. Overview	61
2.3. Permanent establishments (Article 5 of the Tax Treaty)	63
2.3.1. Text of the Tax Treaty	63
2.3.2. Opening comments	64
2.3.3. Essential characteristics of PEs (Article 5 (1), (2) of the Tax Treaty)	64
2.3.4. Building sites, constructions and installation projects (Article 5 (3) of the Tax Treaty)	66
2.3.5. Preparatory and auxiliary activities (Article 5 (4) of the Tax Treaty)	67
2.3.6. Dependent and independent agents (Article 5 (5), (6) of the Tax Treaty)	68
2.3.7. Considerations relating to controlled companies (Article 5 (7) of the Tax Treaty)	72
2.3.8. Checklist: PEs under the Tax Treaty	72
2.4. Allocation of taxing rights and avoidance of double taxation	74
2.5. The attribution of profits to a PE	75
2.5.1. The functionally separate enterprise approach (Article 7 (2) of the Tax Treaty)	75
2.5.2. Corresponding adjustments according to Article 7 (3) of the Tax Treaty	80
2.6. The interaction between Article 7 of the Tax Treaty and other categories of income (Article 7 (4) of the Tax Treaty)	82
3. Shipping, inland waterways transport and air transport (Article 8 of the Tax Treaty)	85
3.1. Text of the Tax Treaty	85
3.2. Scope of the provision	86
3.3. Allocation of taxing rights	87

4. Associated enterprises (Article 9 of the Tax Treaty)	87
4.1. Text of the Tax Treaty	87
4.2. Opening comments	88
4.3. Tax adjustments according to Article 9 (1) of the Tax Treaty	88
4.4. Matching adjustments according to Article 9 (2) of the Tax Treaty	90
5. Dividends (Article 10 of the Tax Treaty)	91
5.1. Text of the Tax Treaty	91
5.2. Allocation of taxing rights and avoidance of double taxation (Article 10 (1), (2) of the Tax Treaty)	92
5.3. Definition of the term “dividends” (Article 10 (3) of the Tax Treaty)	94
5.4. Dividends realized through a PE (Article 10 (4) of the Tax Treaty)	95
5.5. The prohibition of extra-territorial dividend taxation (Article 10 (5) of the Tax Treaty)	99
6. Interest (Article 11 of the Tax Treaty)	102
6.1. Text of the Tax Treaty	102
6.2. Allocation of taxing rights and avoidance of double taxation (Article 11 (1), (2) of the Tax Treaty)	102
6.3. Definition of the term “interest” (Article 11 (2) of the Tax Treaty)	104
6.4. Interest realized through a PE (Article 11 (3) of the Tax Treaty)	104
6.5. Tax adjustments relating to excessive interest payments (Article 11 (4) of the Tax Treaty)	108
7. Royalties (Article 12 of the Tax Treaty)	108
7.1. Text of the Tax Treaty	108
7.2. Allocation of taxing rights and avoidance of double taxation (Article 12 (1), (2) of the Tax Treaty)	109
7.3. Definition of the term “royalties” (Article 12 (3) of the Tax Treaty)	110
7.4. Royalties realized through a PE (Article 12 (4) of the Tax Treaty)	110
7.5. Determination of the source state of the royalties (Article 12 (5) of the Tax Treaty)	113
7.6. Tax adjustments relating to excessive royalty payments (Article 12 (6) of the Tax Treaty)	117
8. Capital gains (Article 13 of the Tax Treaty)	118
8.1. Text of the Tax Treaty	118
8.2. Opening comments	118
8.3. Capital gains realized on “immovable property” (Article 13 (1) of the Tax Treaty)	119
8.4. Capital gains realized on shares in “immovable property” companies (Article 13 (2) of the Tax Treaty)	120
8.5. Capital gains realized on “movable property” held as business property of a PE (Article 13 (3) of the Tax Treaty)	121

8.6. Capital gains realized on ships and aircrafts (Article 13 (4) of the Tax Treaty)	122
8.7. Other capital gains (Article 13 (5) of the Tax Treaty)	123
8.8. Migration of individuals (Article 13 (6) of the Tax Treaty)	124
9. Income from employment (Article 14 of the Tax Treaty)	124
9.1. Text of the Tax Treaty	124
9.2. Allocation of taxing rights (Article 14 (1) of the Tax Treaty)	125
9.3. The limitation provided in Article 14 (2) of the Tax Treaty	126
9.4. Remuneration of crews of ships or aircrafts (Article 14 (4) of the Tax Treaty)	128
9.5. Frontier workers	128
9.6. Avoidance of double taxation	129
10. Directors' fees (Article 15 of the Tax Treaty)	131
10.1. Text of the Tax Treaty	131
10.2. Analysis of the provision	131
11. Entertainers and sportspersons (Article 16 of the Tax Treaty)	132
11.1. Text of the Tax Treaty	132
11.2. Analysis of the provision	132
12. Pensions, annuities and similar remuneration (Article 17 of the Tax Treaty)	134
12.1. Text of the Tax Treaty	134
12.2. Analysis of the provision	135
13. Government services (Article 18 of the Tax Treaty)	136
13.1. Text of the Tax Treaty	136
13.2. Analysis of the provision	137
14. Visiting professors, teachers and students (Article 19 of the Tax Treaty)	139
14.1. Text of the Tax Treaty	139
14.2. Analysis of the provision	139
15. Other income (Article 20 of the Tax Treaty)	141
15.1. Text of the Tax Treaty	141
15.2. Tax treatment of "other income" within the scope of Article 20 (1) of the tax treaty	141
15.3. "Other income" realized by PEs (Article 20 (2) of the Tax Treaty)	142
16. Capital (Article 21 of the Tax Treaty)	145
16.1. Text of the Tax Treaty	145
16.2. Opening comments	145
16.3. Capital represented by immovable property (Article 21 (1) of the Tax Treaty)	146
16.4. Capital represented by movable property held as business property of a PE (Article 21 (2) of the Tax Treaty)	146

16.5. Capital represented by ships and aircrafts operated in international traffic (Article 21 (3) of the Tax Treaty)	147
16.6. Capital represented by other property (Article 21 (4) of the Tax Treaty)	148

V.

Elimination of double taxation (Article 22 of the Tax Treaty)

1. Text of the Tax Treaty	151
2. Overview	152
3. Analysis of the provision	154
3.1. Elimination of double taxation by the Federal Republic of Germany as residence state	154
3.2. Elimination of double taxation by Luxembourg as residence state	155

VI.

Special provisions

1. Non-discrimination (Article 23 of the Tax Treaty)	159
1.1. Text of the Tax Treaty	159
1.2. Opening comments	160
1.3. Non-discrimination on grounds of nationality (Article 24 (1) and (2) of the Tax Treaty)	160
1.4. Non-discrimination of PEs (Article 23 (3) of the Tax Treaty)	161
1.5. Non-discrimination in case of certain payments to non-residents (Article 23 (4) of the Tax Treaty)	162
1.6. Non-discrimination with respect to non-resident shareholders (Article 23 (5) of the Tax Treaty)	162
2. Mutual agreement procedure (Article 24 of the Tax Treaty)	163
2.1. Text of the Tax Treaty	163
2.2. Opening comments	164
2.3. Taxation not in accordance with the provisions of the Convention (Article 24 (1), (2) of the Tax Treaty)	165
2.4. Problems relating to the interpretation or application of the Convention (Article 24 (3) of the Tax Treaty)	166
2.5. Practical operation of the mutual agreement procedure (Article 24 (4) of the Tax Treaty)	166
2.6. The arbitration provision (Article 24 (5) of the Tax Treaty)	166
3. Exchange of information (Article 25 of the Tax Treaty)	167
3.1. Text of the Tax Treaty	167
3.2. Opening comments	168
3.3. The exchange of foreseeably relevant information (Article 25 (1), (4) of the Tax Treaty)	168

3.4. Limitations regarding the exchange of information (Article 25 (3), (5) of the Tax Treaty)	170
3.5. The confidentiality principle (Article 25 (2) of the Tax Treaty)	171
3.6. Clarifications in the protocol to the Tax Treaty	171
4. Procedural rules for taxation at source (Article 26 of the Tax Treaty)	173
4.1. Text of the Tax Treaty	173
4.2. Analysis of the provision	173
5. Application of the Convention in special cases (Article 27 of the Tax Treaty)	174
5.1. Text of the Tax Treaty	174
5.2. Analysis of the provision	174
6. Members of diplomatic missions and consular posts (Article 28 of the Tax Treaty)	174
6.1. Text of the Tax Treaty	174
6.2. Analysis of the provision	174
7. Protocol (Article 29 of the Tax Treaty)	175
7.1. Text of the Tax Treaty	175
7.2. Analysis of the provision	175
8. Entry into force (Article 30 of the Tax Treaty)	176
8.1. Text of the Tax Treaty	176
8.2. Analysis of the provision	176
9. Termination (Article 31 of the Tax Treaty)	177
9.1. Text of the Tax Treaty	177
9.2. Analysis of the provision	177

VII.

The multilateral instrument (“MLI”)

1. Overview	181
2. The Principal Purposes Test	182
3. Limits of the PPT in an EU context	184
4. Non-CIV fund examples in the Commentary to the OECD Model	186
4.1. Opening comments	186
4.2. A regional investment platform	186
4.3. A securitization vehicle	188
4.4. A real estate fund	189

VIII. Appendix

Appendix 1:	
Tax Treaty concluded between Luxembourg and the Federal Republic of Germany - 2012 (German version).....	195
Appendix 2:	
Protocol to the Tax Treaty concluded between Luxembourg and the Federal Republic of Germany – 2012 (German version).....	217
Appendix 3:	
Tax Treaty concluded between Luxembourg and the Federal Republic of Germany - 2012 (unofficial English translation)	221
Appendix 4:	
Protocol to the Tax Treaty concluded between Luxembourg and the Federal Republic of Germany – 2012 (unofficial English translation) ..	241
Appendix 5:	
Tax Circular L.G. – Conv. D.I. n° 58 of 9 February 2015	245
Appendix 6:	
Verständigungsvereinbarung zum Abkommen vom 23. August 1958 in der Fassung des Ergänzungsprotokolls vom 15. Juni 1973 zwischen dem Großherzogtum Luxemburg und der Bundesrepublik Deutschland zur Vermeidung der Doppelbesteuerungen betreffend die steuerliche Behandlung des Arbeitslohns von Grenzpendlern (continues to apply to the Tax Treaty)	247
Appendix 7:	
Verständigungsvereinbarung betreffend die Besteuerung von Abfindungszahlungen, Abfindungen und Entschädigungen in Folge einer Kündigung und/oder eines Sozialplans sowie Arbeitslosengeld	251
Appendix 8:	
Verständigungsvereinbarung zum Abkommen vom 23. April 2012 zwischen der Bundesrepublik Deutschland und dem Großherzogtum Luxemburg zur Vermeidung der Doppelbesteuerung und Verhinderung der Steuerhinterziehung auf dem Gebiet der Steuern vom Einkommen und vom Vermögen betreffend die steuerliche Behandlung des Arbeitslohns von im Home Office tätigen Grenzpendlern und im öffentlichen Dienst Beschäftigten	255
Appendix 9:	
Verständigungsvereinbarung zum Abkommen vom 23. August 1958 in der Fassung des Ergänzungsprotokolls vom 15. Juni 1973 und des Änderungsprotokolls vom 11. Dezember 2009 zwischen dem Großherzogtum Luxemburg und der Bundesrepublik Deutschland zur Vermeidung der Doppelbesteuerungen betreffend die Besteuerung der Löhne von Berufskraftfahrern, Lokomotivführern und Begleitpersonal, die in einem der beiden Vertragsstaaten ansässig und für ein in dem anderen Vertragsstaat ansässiges Unternehmen tätig sind	257
Appendix 10:	
Tax Circular L.G. – Conv. D. I. n° 60 of 11 March 2021	261