

Insights

DELAY TO LUXEMBOURG-UK TREATY CHANGES – IMPACT ON UK REAL ESTATE

Dec 30, 2022

SUMMARY

Unexpectedly, it is likely the changes to the Luxembourg-UK double tax treaty will not be effective until 2024 at the earliest. Where that is the case, some Luxembourg investors in UK property rich entities will have another year to rely on the current capital gains article to prevent a charge to UK tax on capital gains.

CHANGES TO THE TREATY

On 8 June 2022 the UK and Luxembourg announced they had renegotiated their double tax treaty. The new treaty includes a mixture of changes. Some are welcomed by taxpayers (e.g. the changes to the dividend article, removing 5% withholding tax on dividends paid by Luxembourg companies to UK tax resident shareholders). Other changes were less welcome, including the withdrawal of the exemption from UK tax on Luxembourg resident investors selling indirect holdings in UK real estate. The change for UK real estate investments is described in more detail in our June insight '[Tax changes to Luxembourg structures investing in UK real estate](#)'. The changes to the treaty will not affect disposals of direct holdings in UK real estate, which are already within the charge to UK tax.

WHEN DO CHANGES TO THE TREATY TAKE EFFECT?

The revised treaty does not take effect for UK tax on chargeable gains until April of the calendar year following ratification by both the UK and Luxembourg. It would seem unlikely that Luxembourg will ratify the changes before 2023, such that the capital gains changes would not have effect before April 2024.

WHEN IS RATIFICATION LIKELY TO HAPPEN?

BCLP and Stibbe have been following the progress of the ratification of the new treaty in the UK and Luxembourg:

- The UK ratified the new treaty in October 2022.
- We understand from Stibbe that it is now unlikely that Luxembourg will ratify the new treaty before 2023.

WHY IS THIS IMPORTANT FOR INVESTMENT IN UK REAL ESTATE?

Assuming that Luxembourg does not ratify the treaty until 2023, certain Luxembourg investors should continue to be able to sell UK property rich entities without incurring UK tax on chargeable gains until April 2024 at the earliest.

Once the amended treaty comes into effect, it will be the full chargeable gain on any disposal that will be brought into charge and not just gains accruing after the treaty is amended. Given this cliff edge impact, any delay in the updated treaty taking effect will be welcomed by many Luxembourg investors that own UK property rich entities, especially in the context of current market conditions.

QUESTIONS?

If you have any questions, please contact [Elizabeth Bradley](#) at BCLP, or [Johan Leonard](#) at Stibbe.

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