THE ASSOCIATION OF GLOBAL CUSTODIANS

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24 June 2011

Mr. Bahk, Jae-wan
Minister of Strategy and Finance
Government Complex II,
88 Gwanmoonro,
Gwacheon City,
Gyeonggi Province,
Republic of Korea

Mr. Lee, Hyun-dong
Commissioner,
National Tax Service Republic of Korea,
44 Cheongjindong-gil,
Jongno-Gu,
Seoul, 110-705,
Republic of Korea

Re: The Status of Luxembourg SICAVs and SICAFs regarding Reduced Rates of Korean Withholding Tax under the Applicable Double Tax Treaty

Dear Mr. Bahk and Mr. Lee:

We write on behalf of the Association of Global Custodians (the "Association")[1] to convey Association members' concerns in respect of a treaty interpretation issued by the Republic of Korea's Ministry of Strategy and Finance ("MoSF"). This treaty interpretation concerns the eligibility of Luxembourg SICAVs and SICAFs to avail themselves of reduced rates of Korean withholding tax pursuant to the Republic of Korea – Luxembourg double tax treaty (the "treaty").

[1] Association Members are listed on the letterhead above.

As you may know the Association is an informal group of eleven global banking institutions with affiliates and branches in numerous countries that provide custody services and related securities asset-servicing functions to cross-border institutional investors around the globe. In providing global custody services, Association members routinely seek appropriate tax relief on behalf of their custody clients. The Association also works to eliminate or minimize existing discrepancies in the current tax relief processes and regimes from jurisdiction to jurisdiction, which can be problematic and costly for custodians and their clients.

Overview

Various Association members provide custodial services to Luxembourg SICAV and SICAF entities ("Luxembourg funds"). The Luxembourg Tax Authorities ("LTA") have provided -- through a public tax circular (n° II/1425-S38 HE/CG) -- clarification regarding the treaty eligibility of such Luxembourg funds (the "Circular"). For your ease of reference, we attach the Circular as an appendix to this letter. The Circular states that such Luxembourg funds are entitled to claim the benefits of the treaty. As such, general market practice has been to claim reduced rates of withholding tax on Korean investment income paid to a Luxembourg fund. Local-market sub-custodians are generally known to be aware of the Circular.

We have also attached as an appendix to this letter a copy of a letter dated April 21, 1994 issued by the National Tax Administration to the LTA confirming that Luxembourg Investment Funds should be considered as residents of Luxembourg within the meaning of Article 4 of the Treaty. This letter has been widely circulated and has been seen as further confirmation regarding the general treaty eligibility of such funds.

Association members have recently received notification from their Korean sub-custodians that the MoSF have issued an authoritative interpretation of the treaty that states that *Luxembourg funds are not treaty entitled* (the "Korean Interpretation"). We attach to this letter a copy of the relevant notification as released by the National Tax Administration of Korea and an unofficial translation of this notification. We note that this Interpretation appears to have been reached based on a misunderstanding of both the purpose and scope of Article 28 of the Treaty. Members do not believe that the relevant Luxembourg Funds tax regime should be equated with the laws applying to holding companies within the meaning of special Luxembourg laws, currently the Act (loi) of 31 July 1929 and the Decree (arrêté grand-ducal) of 17 December 1938 and any similar law enacted by Luxembourg after the signature date of the Convention.

At this stage members also understand that local market custodians have begun to receive some requests for repayment of "overclaimed" tax. This point is of significant concern to members in that Luxembourg funds are likely to have priced any tax claims made into the calculation of their net asset value. As you appreciate, a fund's net asset value is important as it sets the price at which an investor into the fund can either buy additional units or sell existing units. Furthermore, some funds that presumably made tax claims have been wound up or merged into other funds. However, members believe it unlikely that funds have been taking a provision for Korean withholding tax. Accordingly, requests for payment back of withholding tax previously repaid based on claims, would -- depending on materiality -- have an impact on current investors through a pricing adjustment to the net asset value. In addition, further potential issues and complications would be presented by the levy of any associated interest or penalties. We believe that this retroactive effect should be seen as inequitable and inconsistent with settled investor and industry expectations given the 1994 National Tax Administration's letter.

As a related general point, retroactive effect of changes in policy can be perceived by investors as creating a more general market-uncertainty risk. Such a risk could impair the attractiveness of the relevant market as an investment destination for institutional investors. In this case, such a risk could affect the investment choices of a range of institutional investors beyond Luxembourg funds, as many of those funds' managers may well provide advisory services to funds located elsewhere.

Finally, the Association inquires whether the MoSF have provided notification of the Korean Interpretation through competent authority channels. For completeness, members confirm that they are not aware of any change in the status or substance of the published LTA position regarding treaty eligibility for such funds.

The Association's request

Association members respectfully request the MoSF's assistance as listed below:

1. Members would greatly appreciate you providing the Association with further details regarding the technical position on which Article 28 was held to be relevant in respect of a question of treaty applicability to Luxembourg funds.

2. Please confirm whether the Interpretation should be regarded as having application only from the date of issuance forward.

3. To the extent the Interpretation is viewed as confirming the MoSF's position since the date the treaty was signed, please explain how that position reconciles with the 1994 National Tax Administration's letter?

4. Members believe that any change in position should not have a retroactive effect for the reasons set out above, and we request your confirmation that the Interpretation will not be applied with such effect.

5. Finally, industry reliance on information provided by national tax administrations whether through circulars or public rulings is of fundamental importance in the ongoing administration and application of tax treaties. As you can appreciate, members have a general concern regarding the release of this Interpretation and the potential it has to disrupt both current and future investment decisions by portfolio investors. We would welcome any future opportunities to work with you with regard to any questions related to treaty eligibility.

* * * * *

Association members express appreciation for your attention to the foregoing requests for assistance and look forward to receiving guidance from you in due course. If you have any questions or would like to receive additional information, please contact the undersigned at 312.861.2620 as an initial matter. For completeness, we note that members have raised their concerns with the LTA.

Sincerely yours,

Dan W. Schneider
Baker & McKenzie LLP
Counsel to the Association

CC: Mr. Ju, Young-Seob,
Deputy Minister for Tax and Customs, MoSF

ATTACHMENTS

DIRECTION

DES

CONTRIBUTIONS DIRECTES

N° II/1425-S38 HE/CG

Note de service

Objet: Application des conventions contre les doubles impositions aux organismes de placement collectif.

Vous trouvez ci-après une mise à jour des circulaires du 15 février 2000, réf. II/1425-S16 HE/CG et du 30 janvier 2001, réf. II/1425-S23 HE/CG, pour ce qui est des conventions contre les doubles impositions à l'endroit desquelles les SICAV/SICAF peuvent ou ne peuvent pas invoquer le bénéfice conventionnel.

1. Description

Un organisme de placement collectif doit opter pour l'une des formes juridiques suivantes:

- fonds commun de placement (FCP) qui est un ensemble de valeurs mobilières gérées en indivision pour le compte des détenteurs de parts ou indivisaires, lesquels seront alors engagés dans la limite du montant de leurs investissements; les FCP sont dépourvus de personnalité juridique propre et sont ainsi considérés comme des entités transparentes;

- société d'investissement à capital variable (SICAV), organisme ayant sa propre personnalité juridique et dont le capital social est égal à tout moment à la valeur de l'actif net investi;

- autres formes juridiques de sociétés d'investissement qui, elles, sont à capital fixe (SICAF).

On peut définir les OPC comme des organismes

- dont l'objet exclusif est le placement collectif en valeurs mobilières des capitaux qu'ils recueillent;

- qui recueillent ces capitaux par voie d'offres ouvertes au public;

Or, les SICAV/SICAF ne sont pas toujours en droit d'invoquer le bénéfice des dispositions conventionnelles. Il y a lieu de distinguer les catégories suivantes, et cela en exécution respectivement de la teneur des différentes conventions contre les doubles impositions et de leur interprétation.

A) Applicabilité des conventions contre les doubles impositions en vertu d'un accord exprès de la partie contractante ou en vertu de l'interprétation d'un texte clair:

l'Allemagne
l'Autriche
la Chine
la République de Corée
l'Espagne (limitée - à voir circ. L.G.-Conv. D.I. n° 52 annexée)
la Finlande
l'Indonésie
l'Irlande
Malte
le Maroc
l'Ouzbékistan
la Pologne
le Portugal
la Roumanie
la République slovaque
Singapour
la Thaïlande
la Tunisie
le Viêt-Nam

B) Non-applicabilité des conventions contre les doubles impositions:

l'Afrique du Sud
la Belgique
le Brésil
le Canada
le Danemark
les Etats-Unis
la France
la Hongrie
le Japon
Maurice
la Norvège
les Pays-Bas (l'exception: requête collective des détenteurs de parts qui sont des résidents du Luxembourg)
la République tchèque

국세청 국세법령정보시스템 National Tax Law Information System

[세 목] 국조 [문서번호] 국제조세협력과-252 [생산일자] 2011.05.16

[제 목]

룩셈부르크 집합투자기구 SICAV, SICAF가 조약의 제한세율 적용대상인지 여부

[요 지]

룩셈부르크 간접투자회사인 SICAV, SICAF는 한-룩셈부르크 조세조약의 제한세율 적용대상이 아님

[회 신]

룩셈부르크 간접투자회사인 SICAVSICAF는 한-룩셈부르크 조세조약 상 제한세율 적용대상이 아님

[관련법령] 한-룩셈부르크 조세조약 제28조【일부법인의 제외】

NATIONAL TAX ADMINISTRATION
108-4 SUSONG-DONG, CHONGNO-GU,
SEOUL 110-140,
REPUBLIC OF KOREA

OUR REF. : GJ1-94-13
YOUR REF.: II/133-94 SR/G

FAX:(02)732-0901
TEL:(02)

Mr. Martin Schroeder
Head of the division of
International Relations
Direction des Contributions Directes
45, bd Roosevelt
Luxembourg

DATE: Apr. 21, 1994

I/133-94

Dear Mr. Martin Schroeder :

This is a response to your letter dated Nov. 14, 1991 and Nov. 10, 1993 regarding the question on whether the Luxembourg Investment Funds are to be considered as residens of Luxembourg in the meaning of Article 4 of the Convention between Korea and Luxembourg.

I would like to inform you of our views that the Luxembourg Investment Funds having adopted the form of a public limited company should be considered as residents of Luxembourg for the application of Korea-Luxembourg Tax Convention if they have comprehensive tax liability based on the residence, place of head or main office or any other criterion under the Luxembourg tax laws. The criterion of the comprehensive tax liability, in our view, does not require an effective taxation in Luxembourg.

I would like to ask your excuse for my late reply to your letter.

Yours sincerely,

For Young Mok Kim

Se-Won Chang
Assistant Commissioner
for International Taxation