

# ***Circular L.G.-A. n°61 of 8 December 2017: New rules regarding the issuance of certificates of residence for Undertakings for Collective Investment***

20 December 2017

## ***In brief***

With this new Circular, the Luxembourg Tax Authority updated the rules provided in 2015 regarding the issuance of certificates of residence for Luxembourg Undertakings for Collective Investment (UCIs). The new Circular updates the list of tax treaties applicable to UCIs and how the Funds can obtain a certificate of residence, including Reserved Alternative Investment Funds (RAIFs).

## ***In detail***

The issuance of certificates of residence is of crucial importance for UCIs in order to prove their eligibility for favourable tax treatments. Luxembourg tax resident UCIs may indeed benefit from reduced tax rates or exemptions under certain double tax treaties entered into by Luxembourg.

Foreign tax authorities normally require a certificate of residence in order to determine whether an UCI is a Luxembourg tax resident and is potentially entitled to treaty benefits. Additionally, certificates of residence play an important role for UCIs' withholding tax reclaims in the context of EU case law such as the Fokus/Aberdeen/Santander cases.

In 2015, the Luxembourg Tax Authority issued the Circular L.G.-A. n° 61 dated 12 February 2015, which clarified the conditions under which UCIs could obtain Luxembourg tax residence certificates.

Following the new tax treaties concluded by Luxembourg during the last years and the introduction of RAIFs in 2016, this Circular had to reflect such new developments.

Significantly, the new Circular covers the question of tax residence certificates for treaty purposes for Luxembourg RAIFs subject to the general RAIF tax regime established by Article 45 of the law of 23 July 2016.

RAIFs that invest exclusively in risk capital subject to the tax regime provided by Article 48 of the law of 23 July 2016 are generally not concerned with the guidelines described below regarding treaty access for RAIFs with corporate form.

### **Updated list of tax treaties applicable to UCIs**

The new Circular has taken into account the last treaties signed by Luxembourg. Notably, it has updated the list of treaties under which UCIs can obtain a Luxembourg residence certificate, including the following treaties:

New treaties	Applicable to SICAVs/SICARs	Applicable to FCPs
Andorra	Yes	Yes
Brunei	Yes	Yes
Croatia	Yes	Yes
Estonia	Yes	Yes
Serbia	Yes	No
Uruguay	Yes	Yes

In addition, the new Circular has included the treaty between Luxembourg and Ukraine, as amended by a protocol signed on 30 September 2016, in the list of treaties not applicable to UCIs.

### **Tax residence certificates for RAIFs**

#### *RAIFs with corporate form*

Provided that certain conditions are met, RAIFs with corporate form can obtain tax residence certificates for the purposes of a number of tax treaties.

If a double tax treaty is applicable, as defined in the updated list of the new Circular (<http://www.impotsdirects.public.lu/content/dam/acd/fr/legislation/circulaires/lga-61-08122017.pdf>), then a Luxembourg certificate of residence can be issued based on the relevant double tax treaty.

If treaty benefits are not granted, or when treaty application is uncertain, then the Luxembourg tax authority will not issue certificates based on double tax treaty provisions but based on the provisions of domestic Luxembourg law.

#### *RAIFs with transparent form*

RAIFs with contractual form (FCPs) and RAIFs organised as partnerships are transparent from a Luxembourg tax perspective and generally do not have access to treaty benefits.

Exceptionally, RAIFs with transparent form can have access to a limited number of treaties listed in the new Circular. In that case, transparent RAIFs are seen as tax residents according to those double tax treaties and Luxembourg tax residence certificates can be issued for such purpose.

#### *Requests of residence certificates based on tax treaties*

Requests must be addressed to the following office: *Administration des contributions directes, Bureau d'imposition Sociétés VI, L-2982 Luxembourg.*

Requests for certificates of residence, including for RAIFs, can be submitted by the fund itself or its appointed depository, providing the following information:

- Tax number;
- Date of incorporation; and
- Registered address.

The tax administration may ask for additional information or documents (e.g. statement of profits), if required. Once issued, the certificate of residence will be delivered directly to the registered address of the fund.

### *Requests of residence certificates based on domestic law*

Requests for certificates of residence, including for RAIFs, based on domestic law can be submitted by the fund itself or its appointed depositary to the office already mentioned above, providing the following information:

- Tax number;
- Date of incorporation;
- Registered address; and
- The reasons why the certificate of residence is required with an explicit reference to the related provision in the foreign legislation or in the treaty which, to apply, requires the production of a certificate of residence;

### *In conclusion*

The new Circular reinforces the **growing list of treaty benefits** available to Luxembourg UCIs. This ever-growing network is expected to facilitate the investment for corporate entities and will reinforce Luxembourg's leader position as the gateway to Europe.

Moreover, the express inclusion of RAIFs in the procedures governing the issuance of certificates of residence will **strengthen the success of RAIFs** by providing more tax certainty. This initiative attests Luxembourg's tax authority business acumen and reinforces the attractiveness of the country to set up funds.

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