

Part II. Treaties and Tax Legislation

Subpart A.—Tax Conventions

LUXEMBOURG

EMBASSY OF THE UNITED
STATES OF AMERICA
LUXEMBOURG
APRIL 11, 1989

The Embassy of the United States of America presents its compliments to the Ministry of Foreign Affairs of the Grand Duchy of Luxembourg and has the honor to propose that the two Governments conclude an agreement to exempt from income and capital tax, on a reciprocal basis, income derived and capital owned by residents of the other country in respect of the international operations of ships and aircraft. The terms of the agreement are as follows:

The Government of the United States of America, in accordance with sections 872(b) and 883(a) of the Internal Revenue Code, agrees to exempt from tax, gross income derived from the international operation of ships or aircraft by individuals who are residents of Luxembourg (other than U.S. citizens) and corporations organized in Luxembourg. This exemption is granted on the basis of equivalent exemptions granted by the Grand Duchy of Luxembourg to individual residents of the United States and to corporations organized in the United States (which are not subject to tax by Luxembourg on the basis of residence).

In the case of a Luxembourg corporation, the exemption shall apply only if the corporation meets either of the following conditions:

(i) The corporation's stock is primarily and regularly traded on an established securities market in Luxembourg, another country which grants an equivalent exemption to U.S. corporations, or the United States; or

(ii) More than 50 percent of the value of the corporation's stock is owned, directly or indirectly, by individuals who are residents of Luxembourg or of another country which grants an equivalent exemption to U.S. corporations or by a corporation organized in a country which grants a reciprocal exemption to U.S. corporations and whose stock is primarily and regularly traded on an established

securities market in that country, another country which grants an equivalent exemption to U.S. corporations, or the United States.

For purposes of subparagraph (ii), the Government of the Grand Duchy of Luxembourg will be treated as an individual resident of Luxembourg. For purposes of the exemption from U.S. tax, subparagraph (ii) will be considered to be satisfied if the corporation is a "controlled foreign corporation" under the Internal Revenue Code.

Gross income includes all income derived from the international operation of ships or aircraft, including income from the rental of ships or aircraft on a full (time or voyage) basis and income from the rental of containers and related equipment which is incidental to the international operation of ships or aircraft. It also includes income from the rental on a bareboat basis of ships and aircraft used for international transport.

The Grand Duchy of Luxembourg agrees to exempt from income taxes on individuals and corporations and from communal tax on commercial profits income derived from the international operation of ships or aircraft by U.S. residents and corporations organized in the United States (other than corporations which are subject to tax by Luxembourg on the basis of residence).

The Grand Duchy of Luxembourg agrees to exempt from wealth tax and communal tax on invested capital, capital represented by ships or aircraft operated in international traffic and by movable property pertaining to the operation of such ships or aircraft.

In the case of a U.S. corporation, the exemption shall apply only if the corporation meets either of the following conditions:

(i) the corporation's stock is primarily and regularly traded on an established securities market in the United States, another country which grants a reciprocal exemption to Luxembourg corporations, or the United States; or

(ii) more than 50 percent of the value of the corporation's stock is owned, directly or indirectly, by individuals who are residents of the United States or of another country which grants a reciprocal exemption to Luxembourg corporations or by a corpora-

tion organized in a country which grants a reciprocal exemption to Luxembourg corporations and whose stock is primarily and regularly traded on an established securities exchange in that country, another country which grants a reciprocal exemption to Luxembourg corporations or the United States.

Income includes all income derived from the international operation of ships or aircraft, including income from the rental of ships or aircraft on a full (time or voyage) basis and income from the rental of containers and related equipment which is incidental to the international operation of ships or aircraft. It also includes income from the rental on a bareboat basis of ships and aircraft used for international transport.

This agreement will not affect the provisions of Article V of the Convention of December 18, 1962, between the United States of America and the Grand Duchy of Luxembourg with respect to taxes on income and property which will remain in effect.

This agreement shall enter into force upon the confirmation by the Embassy of the United States of America of the notification by the Government of the Grand Duchy of Luxembourg indicating that all necessary internal procedures have been completed and the exemption from taxes as provided for in paragraphs 1 and 2 shall have effect with respect to taxable years beginning on or after January 1, 1987.

Either government may terminate this agreement by giving written notice of termination through diplomatic channels.

The Embassy of the United States of America takes this opportunity to renew to the Ministry of Foreign Affairs the assurances of its highest consideration.

GRAND DUCHY OF LUXEMBOURG
MINISTRY OF FOREIGN AFFAIRS
LUXEMBOURG
JUNE 22, 1989

The Ministry of Foreign Affairs of the Grand Duchy of Luxembourg presents its compliments to the Embassy of the United States of America and has the honor to acknowledge receipt of its note of 11 April 1989, proposing the

terms of an agreement for a reciprocal exemption from income and capital tax of income derived and capital owned in respect of the international operation of ships and aircraft. The terms of the agreement are as follow:

1. The Government of the United States of America, in accordance with sections 872(b) and 883(a) of the Internal Revenue Code, agrees to exempt from tax gross income derived from the international operation of ships or aircraft by individuals who are residents of Luxembourg (other than U.S. citizens) and corporations organized in Luxembourg. This exemption is granted on the basis of equivalent exemptions granted by the Grand Duchy of Luxembourg to individual residents of the United States and to corporations organized in the United States (which are not subject to tax by Luxembourg on the basis of residence).

In the case of a Luxembourg corporation, the exemption shall apply only if the corporation meets either of the following conditions:

(i) The corporation's stock is primarily and regularly traded on an established securities market in Luxembourg, another country which grants an equivalent exemption to U.S. corporations, or the United States; or

(ii) More than 50 percent of the value of the corporation's stock is owned, directly or indirectly, by individuals who are residents of Luxembourg or of another country which grants an equivalent exemption to U.S. corporations or by a corporation organized in a country which grants a reciprocal exemption to U.S. corporations and whose stock is primarily and regularly traded on an established securities market in that country, another country which grants an equivalent exemption to U.S. corporations, or the United States.

For purposes of subparagraph (ii), the Government of the Grand Duchy of

Luxembourg will be treated as an individual resident of Luxembourg. For purposes of the exemption from U.S. tax, subparagraph (ii) will be considered to be satisfied if the corporation is a "controlled foreign corporation" under the Internal Revenue Code.

Gross income includes all income derived from the international operation of ships or aircraft, including income from the rental of ships or aircraft on a full (time or voyage) basis and income from the rental of containers and related equipment which is incidental to the international operation of ships or aircraft. It also includes income from the rental on a bareboat basis of ships and aircraft used for international transport.

2. The Grand Duchy of Luxembourg agrees to exempt from income taxes on individuals and corporations and from communal tax on commercial profits income derived from the international operations of ships or aircraft by U.S. residents and corporations organized in the United States (other than corporations which are subject to tax by Luxembourg on the basis of residence).

The Grand Duchy of Luxembourg agrees to exempt from wealth tax and communal tax on invested capital, capital represented by ships or aircraft operated in international traffic and by movable property pertaining to the operation of such ships or aircraft.

In the case of a U.S. corporation, the exemption shall apply only if the corporation meets either of the following conditions:

(i) The corporation's stock is primarily and regularly traded on an established securities market in the United States, another country which grants a reciprocal exemption to Luxembourg corporations, or Luxembourg; or

(ii) More than 50 percent of the value of the corporation's stock is owned, directly or indirectly, by indi-

viduals who are residents of the United States or of another country which grants a reciprocal exemption to Luxembourg corporations or by a corporation organized in a country which grants a reciprocal exemption to Luxembourg corporations and whose stock is primarily and regularly traded on an established securities exchange in that country, another country which grants a reciprocal exemption to Luxembourg corporations or Luxembourg.

Income includes all income derived from the international operation of ships or aircraft, including income from the rental of ships or aircraft on a full (time or voyage) basis and income from the rental of containers and related equipment which is incidental to the international operation of ships or aircraft. It also includes income from the rental on a bareboat basis of ships and aircraft used for international transport.

3. This agreement will not affect the provisions of Article V of the Convention of December 18, 1962, between the United States of America and the Grand Duchy of Luxembourg with respect to taxes on income and property which will remain in effect.

4. This agreement shall enter into force upon the confirmation by the Embassy of the United States of America of the notification by the Government of the Grand Duchy of Luxembourg indicating that all necessary internal procedures have been completed and the exemption from taxes as provided for in paragraphs 1 and 2 shall have effect with respect to taxable years beginning on or after January 1, 1987.

5. Either Government may terminate this agreement by giving written notice of termination through diplomatic channels.

The Ministry of Foreign Affairs of the Grand Duchy of Luxembourg takes this opportunity to renew to the Embassy of the United States of America the assurances of his highest consideration.