

## No. 37485. Luxembourg and United States of America

CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE GRAND DUCHY OF LUXEMBOURG FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL. LUXEMBOURG, 3 APRIL 1996 [*United Nations, Treaty Series, vol. 2148, I-37485.*]

PROTOCOL AMENDING THE CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE GRAND DUCHY OF LUXEMBOURG FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL (WITH EXCHANGE OF LETTERS). LUXEMBOURG, 20 MAY 2009\*

**Entry into force:** 9 September 2019 by notification, in accordance with article II

**Authentic texts:** English and French

**Registration with the Secretariat of the United Nations:** Luxembourg, 19 September 2019

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## N° 37485. Luxembourg et États-Unis d'Amérique

CONVENTION ENTRE LE GOUVERNEMENT DU GRAND-DUCHÉ DE LUXEMBOURG ET LE GOUVERNEMENT DES ÉTATS-UNIS D'AMÉRIQUE TENDANT À ÉVITER LES DOUBLES IMPOSITIONS ET À PRÉVENIR LA FRAUDE FISCALE EN MATIÈRE D'IMPÔTS SUR LE REVENU ET SUR LA FORTUNE. LUXEMBOURG, 3 AVRIL 1996 [*Nations Unies, Recueil des Traités, vol. 2148, I-37485.*]

PROTOCOLE MODIFIANT LA CONVENTION ENTRE LE GOUVERNEMENT DU GRAND-DUCHÉ DE LUXEMBOURG ET LE GOUVERNEMENT DES ÉTATS-UNIS D'AMÉRIQUE TENDANT À ÉVITER LES DOUBLES IMPOSITIONS ET À PRÉVENIR LA FRAUDE FISCALE EN MATIÈRE D'IMPÔTS SUR LE REVENU ET SUR LA FORTUNE (AVEC ÉCHANGE DE LETTRES). LUXEMBOURG, 20 MAI 2009\*

**Entrée en vigueur :** 9 septembre 2019 par notification, conformément à l'article II

**Textes authentiques :** anglais et français

**Enregistrement auprès du Secrétariat de l'Organisation des Nations Unies :** Luxembourg, 19 septembre 2019

\*Aucun numéro de volume n'a encore été attribué à ce dossier. Les textes disponibles qui sont reproduits ci-dessous sont les textes originaux de l'accord ou de l'action tels que soumis pour enregistrement. Par souci de clarté, leurs pages ont été numérotées. Les traductions qui accompagnent ces textes ne sont pas définitives et sont fournies uniquement à titre d'information.

[ ENGLISH TEXT – TEXTE ANGLAIS ]

Protocol  
Amending the Convention  
Between  
the Government of the United States of America and  
the Government of the Grand Duchy of Luxembourg  
for the Avoidance of Double Taxation and the Prevention of Fiscal  
Evasion with Respect to Taxes on Income and Capital

**THE GOVERNMENT OF THE UNITED STATES OF AMERICA  
AND THE GOVERNMENT OF THE GRAND DUCHY OF  
LUXEMBOURG**

**DESIRING** to conclude a Protocol amending the Convention between the Government of the United States of America and the Government of the Grand Duchy of Luxembourg for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital, signed at Luxembourg April 3, 1996, ("the Convention"), have agreed as follows:

**ARTICLE I**

Article 28 (Exchange of Information) of the Convention shall be deleted and replaced by the following:

“ARTICLE 28

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes of every kind imposed by a Contracting State to the extent that the taxation thereunder is not contrary to this Convention. The exchange of information is not restricted by Article 1 (General Scope) or Article 2 (Taxes Covered).

2. Any information received under this Article by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic law of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment, collection, or administration of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes referred to above, or the oversight of such functions. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

3. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:

a) to carry out administrative measures at variance with the laws and administrative practice of that State or of the other Contracting State;

b) to supply information which is not obtainable under the laws or in the normal course of the administration of that State or of the other Contracting State;

c) to supply information which would disclose any trade, business, industrial, commercial, or professional secret or trade process, or information the disclosure of which would be contrary to public policy (*ordre public*).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

6. If specifically requested by the competent authority of a Contracting State, the competent authority of the other Contracting State shall provide information under this Article in the form of depositions of witnesses and authenticated copies of unedited original documents (including books, papers, statements, records, accounts, and writings) to the extent allowable under its domestic laws.

7. The Contracting States undertake to lend each other support and assistance in the collection of taxes to the extent necessary to ensure that relief granted by the present Convention from taxation imposed by a Contracting State does not inure to the benefit of persons not entitled thereto. The provisions of this paragraph shall not impose upon either Contracting State the obligation to carry out administrative measures that would be contrary to its sovereignty, security, public policy (*ordre public*) or its essential interests.”

## ARTICLE II

1. This Protocol shall be subject to ratification in accordance with the applicable procedures in the United States and Luxembourg. The Contracting States shall notify each other in writing, through diplomatic channels, when their respective applicable procedures have been satisfied.

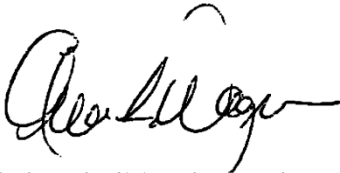
2. The Protocol shall enter into force on the date of the later of the notifications referred to in paragraph 1. The provisions of this Protocol shall have effect for requests made on or after the date of entry into force with regard to tax years beginning on or after January 1, 2009.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this Protocol.

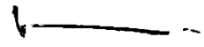
DONE at Luxembourg, in duplicate, this 20th day of May, 2009, in the English and French languages, each text being equally authentic.

FOR THE GOVERNMENT OF THE  
UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE  
GRAND DUCHY OF LUXEMBOURG:



Ambassador Extraordinary and  
Plenipotentiary



Minister of the Treasury

*Embassy of the United States of America*  
The Grand Duchy of Luxembourg

May 20, 2009

Excellency,

I have the honor to refer to the Convention between the Government of the United States of America and the Government of the Grand Duchy of Luxembourg for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on Income and Capital, signed at Luxembourg, April 3, 1996, as amended by the Protocol signed today (the “Convention”) and to propose on behalf of the Government of the United States the following understandings:

1. It is understood that the competent authority of the requested State shall provide upon request by the competent authority of the requesting State information for the purposes referred to in paragraph 1 of Article 28. Such information shall be exchanged without regard to whether the requested State needs such information for its own tax purposes or the conduct being investigated would constitute a crime under the laws of the requested State if it had occurred in the territory of the requested State.
2. Pursuant to paragraph 5 of Article 28, it is understood that each Contracting State shall ensure that its competent authority has the authority to obtain and provide upon request:
  - a) information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees;
  - b) information regarding the ownership of companies, partnerships, trusts, foundations and other persons, including ownership information on all such persons in an ownership chain; in the case of trusts, information on settlors, trustees and beneficiaries; and in the case of foundations, information on founders, members of the foundation council and beneficiaries; provided, however, that a requested State is not obliged to provide information which is neither held by its authorities nor in the possession or control of persons who are within its territorial jurisdiction. For purposes of the preceding sentence, “authorities” includes all