

KEY FACTS COMPANIES – REDOMICILIATION

COMPANIES MAY SEEK TO CHANGE THEIR CORPORATE DOMICILE FOR FISCAL, ECONOMIC AND POLITICAL REASONS. AN INCREASING NUMBER OF THE MORE POPULAR CORPORATE DOMICILES NOW PERMIT IN THEIR CORPORATE LAWS BOTH THE INBOUND AND OUTBOUND CHANGE OF CORPORATE DOMICILE.

SUMMARY

Luxembourg permits any type of foreign company to transfer its Registered Office to Luxembourg and be considered a company incorporated under Luxembourg law.

The recent international developments are prompting a trend of redomiciliation from offshore to onshore jurisdictions. Luxembourg, as a well-regulated jurisdiction is well suited to handle this type of transfer of Registered Office.

BENEFITS ON REDOMICILING A COMPANY TO LUXEMBOURG

A company redomiciled to Luxembourg is taxable at the normal corporate tax rate but can enjoy the benefits of partial exemptions under the law including dividends received, capital gains on participations in subsidiaries and other companies, real estate income from property located outside of Luxembourg, and additional royalty income exemptions from intellectual property rights.

Furthermore, a Société de Participations Financières (SOPARFI) will enjoy the benefits of the following EU directives:

- > Parent-subsidiary directive – exempts the SOPARFI from withholding taxes on dividends received from companies established in other EU countries.
- > Interest-royalty directive – exempts the SOPARFI from withholding taxes on interest or royalties received from companies established in other EU countries.
- > Merger-acquisition directive – exempts the SOPARFI from taxation on capital gains when a contribution in kind is made of a branch to a third company as well as exemption of capital gains when contributing shares to a SOPARFI.

A redomiciled company can also choose the advantageous fiscal regime of the Private Wealth Management Company (SPF). In addition to the normal exemptions available to all companies, an SPF will be entitled to tax exemptions of income from portfolio management (bonds, shares, funds, dividends and foreign exchange trading).

Key Fact sheets regarding SOPARFIs, SPFs and SICAVs are available from our Luxembourg office.

PROCEDURE

Once the transfer process is achieved in the country of origin (i.e., decision of the shareholder to transfer the registered office of the company), an extraordinary general meeting of the shareholder(s) before a Notary needs to be held in Luxembourg resolving the transfer to Luxembourg. First, a bank account will need to be opened in Luxembourg and then the Notary deed, including restated articles of association, will need to be signed in Luxembourg thus making the company an entity duly set-up under Luxembourg Law. This deed is then followed by a registration of the company with the Luxembourg Trade and company register "RCSL"; a fiscal number will be subsequently attributed. The company will then be allowed to obtain a fiscal residency certificate.

Step-by-Step Process

Step 1

Transfer process in the country of origin (decision of the shareholder to transfer the registered office of the company to Luxembourg).

Step 2

Opening of a Luxembourg bank account (2 to 3 weeks or less depending on the completeness of the due diligence documents received).

Step 3

Signature of the shareholder resolutions in front of a Luxembourg Notary.

In practice, this step should not take more than one week as far as:

- > All client's due diligence certified documents requested are received in originals
- > Client has been accepted by the bank and the company bank account is opened
- > The share capital (Sàrl EUR 12,000 or SA EUR 30,000 [or 25% paid-up]) has been wired on the company bank account, if applicable
- > The articles of association have been re-drafted in accordance with Luxembourg law and approval from the notary has been obtained
- > All the proxies executed by the shareholders of the company have been received in originals for the shareholder resolutions as well as the acceptance letters regarding the appointment of the new director(s) (if any) and all the necessary Declaration(s) of Ultimate Beneficial Owner(s) of the company
- > Acceptation of the company by our internal Client Acceptance Committee

Step 4

Proceed with filing of the discontinuation with the Registry of Corporate Affairs in the country of origin. Note the approval of the discontinuation is subject to the Registrar of Companies who may require further documents to approve the transaction, if the documents provided are not satisfactory. In this matter the Registry may require some additional documents such as a translation certificate, notarization, legalization, apostille, etc.

The assistance of a Luxembourg law firm is required. Please contact us if you need an introduction.

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