Nº 7944

CHAMBRE DES DEPUTES

Session ordinaire 2021-2022

P R O J E T D E L O I

portant approbation de la « Convention between the Grand Duchy of Luxembourg and the Federal Democratic Republic of Ethiopia for the elimination of double taxation with respect to taxes on income and on capital and the prevention of tax evasion and avoidance, faite à Luxembourg, le 29 juin 2021 »

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(Dépôt: le 6.1.2022)

SOMMAIRE:

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ARRETE GRAND-DUCAL DE DEPOT

Nous HENRI, Grand-Duc de Luxembourg, Duc de Nassau,

Sur le rapport de Notre Ministre des Affaires étrangères et européennes et après délibération du Gouvernement en conseil;

Arrêtons:

Article unique. Notre ministre des Affaires étrangères et européennes est autorisé à déposer en Notre nom à la Chambre des Députés le projet de loi portant approbation de la « Convention between the Grand Duchy of Luxembourg and the Federal Democratic Republic of Ethiopia for the elimination of double taxation with respect to taxes on income and on capital and the prevention of tax evasion and avoidance, faite à Luxembourg, le 29 juin 2021 ».

Palais de Luxembourg, le 22 novembre 2021

Le Ministre des Affaires étrangères et européennes,
Jean ASSELBORN

HENRI

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TEXTE DU PROJET DE LOI

Article unique. Sont approuvés la "Convention between the Grand Duchy of Luxembourg and the Federal Democratic Republic of Ethiopia for the elimination of double taxation with respect to taxes on income and on capital and the prevention of tax evasion and avoidance", et le Protocole y relatif, faits à Luxembourg, le 29 juin 2021

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EXPOSE DES MOTIFS

L'objet du présent projet de loi est d'approuver la Convention fiscale avec la République fédérale démocratique d'Éthiopie.

Les conventions contre les doubles impositions constituent un élément essentiel de la politique fiscale du Luxembourg. L'objet d'une telle convention fiscale est l'élimination de la double imposition juridique et la conclusion d'un tel accord est indispensable au bon développement des relations économiques bilatérales et favorise l'échange de biens et de services ainsi que les mouvements de capitaux, de technologies et de personnes. La convention prévoit une répartition claire des compétences fiscales pour l'imposition des personnes physiques et des personnes morales.

Le projet de loi confirme tous les efforts mis en œuvre ces dernières années par le Gouvernement luxembourgeois, ceci en vue de compléter et d'améliorer progressivement son réseau de conventions fiscales et particulièrement celui avec les pays d'Afrique.

Les modèles de convention du Luxembourg et de l'Éthiopie ont servi de base lors des discussions. Le texte final tient compte des intérêts nationaux des deux États contractants.

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COMMENTAIRE DES ARTICLES

La Convention retient le titre et le préambule préconisés par l'Action 6 des travaux BEPS. L'objectif est de mettre en évidence, dans le titre de la Convention, le rôle des conventions dans la prévention de l'utilisation abusive des conventions fiscales. Au préambule, il est précisé qu'il s'agit d'éliminer la double imposition et ce sans créer des possibilités de double non-imposition ou d'imposition réduite par l'évasion ou la fraude fiscale, en particulier par des mécanismes de chalandage fiscal.

L'*article 1er* dispose que la Convention s'applique aux personnes qui sont des résidents de l'un des États contractants ou de ces deux États.

Le paragraphe 2 du même article détermine la situation du revenu des entités ou des dispositifs qu'un des États contractants ou les deux traitent comme totalement ou partiellement transparents à des fins fiscales. Cette disposition permet ainsi aux associés d'une société de personnes du Luxembourg qui y est considérée comme étant transparente d'un point de vue fiscal de prendre avantage de la présente Convention lorsque ces associés sont des résidents du Luxembourg.

L'*article 2* énumère les impôts couverts par la Convention.

Du côté luxembourgeois, la Convention vise l'impôt sur le revenu des personnes physiques, l'impôt sur le revenu des collectivités, l'impôt sur la fortune et l'impôt commercial communal.

En ce qui concerne l'Éthiopie, sont visés l'impôt sur le revenu et sur les bénéfices ainsi que l'impôt sur le revenu provenant des activités minières, pétrolières et agricoles.

L'*article 3* énonce les définitions nécessaires à l'interprétation des termes et expressions utilisés dans la Convention. Le paragraphe 2 contient les règles d'interprétation pour les termes et expressions qui ne sont pas définis dans la Convention en renvoyant au droit interne des États contractants à moins que le contexte exige une interprétation différente ou que les autorités compétentes des États contractants conviennent d'un sens différent en application de l'article 26 concernant la procédure amiable.

L'*article 4* définit la notion de résidence. En donnant une définition de l'expression « résident d'un État contractant », l'article 4 permet de résoudre les cas de double résidence et constitue le critère essentiel de répartition du droit d'imposer entre les deux États.

Le paragraphe 1er vise en principe les personnes qui sont assujetties à l'impôt dans un État contractant en vertu de la législation interne de cet État. Il précise donc que sont des résidents les personnes assujetties à l'impôt en raison de leur domicile, de leur résidence, de leur lieu d'enregistrement, de leur siège de direction ou de tout autre critère de nature analogue.

Le paragraphe 2 clarifie les règles applicables aux personnes physiques en cas de double résidence. Conformément au modèle de l'OCDE, il reprend les critères habituels de foyer d'habitation permanent, de centre des intérêts vitaux, de séjour habituel et de nationalité. En dernier lieu, les autorités compétentes doivent trancher la question d'un commun accord.

Le paragraphe 3 retient le siège de direction effective comme critère de préférence pour les personnes autres que les personnes physiques afin de déterminer l'État de résidence de ces personnes.

Le *point 1. du Protocole* de la Convention relatif à l'article 4 prévoit de façon explicite que les organismes de placement collectif organisés soit sous forme de sociétés transparentes soit sous forme de sociétés non-transparentes sont couverts par les dispositions de la Convention.

L'*article 5* adopte une définition de la notion d'établissement stable. Cette notion est importante dans la mesure où les bénéfices d'une entreprise d'un État contractant ne sont imposables dans l'autre État contractant que si cette entreprise exerce son activité dans l'autre État par l'intermédiaire d'un établissement stable qui y est situé.

Le paragraphe 2 énumère une liste d'exemples d'installations d'affaires qui sont considérées comme étant des établissement stables sous réserve toutefois de remplir les conditions du paragraphe 1er. Un magasin de vente ainsi qu'un entrepôt commercial figurent parmi ces exemples en surplus de ceux figurant au modèle de l'OCDE.

Le paragraphe 3 considère comme établissement stable un chantier de construction, de montage ou de dragage, mais seulement lorsque ce chantier a une durée supérieure à six mois. Le délai de six mois est conforme à la politique conventionnelle du Luxembourg en cas de négociation d'une convention fiscale avec un pays en voie de développement.

Le paragraphe 4 exclut de l'expression « établissement stable » certaines activités même lorsque celles-ci sont effectuées par l'intermédiaire d'une installation fixe d'affaires remplissant les conditions du paragraphe 1er. La livraison figurant parmi les exceptions prévues aux alinéas a) et b) du paragraphe 4 du modèle de l'OCDE n'a pas été reprise.

Le paragraphe 5 traite de l'agent dépendant qui agit pour le compte d'une entreprise et qui dispose dans un État contractant de pouvoirs qu'il y exerce lui permettant de conclure des contrats au nom de l'entreprise. Celle-ci est considérée comme ayant un établissement stable dans cet État contractant pour les activités exercées pour elle par cet agent. La disposition retenue correspond à celle figurant au modèle de l'OCDE avant l'accomplissement des travaux BEPS.

Le paragraphe 6 étend le champ d'application de l'établissement stable aux entreprises d'assurance. Une telle disposition figure dans le modèle de l'ONU ainsi que dans certaines de nos conventions.

En vertu de cette disposition, les entreprises d'assurance d'un État contractant sont considérées comme ayant un établissement stable dans l'autre État contractant, dès lors que, par l'intermédiaire d'une personne autre qu'un agent jouissant du statut indépendant, elles perçoivent des primes ou assurent des risques situés dans cet autre État. Ne sont pas visées par cette mesure les opérations de réassurance.

Il est précisé au paragraphe 7 que le principe suivant lequel un agent indépendant n'implique pas l'existence d'un établissement stable pour l'entreprise qu'il représente, ne s'applique pas si cet agent exerce ses activités exclusivement ou presque exclusivement pour le compte de cette entreprise. En effet, lorsque les activités d'un tel agent sont entièrement ou presque entièrement consacrées à l'entreprise et lorsque des conditions sont établies ou imposées entre cette entreprise et l'agent dans leurs relations commerciales et financières qui diffèrent de celles qui auraient été établies entre des entreprises indépendantes, celui-ci ne sera pas considéré comme un agent ayant un statut indépendant au sens du paragraphe 7.

L'*article 6* qui traite de l'imposition des revenus immobiliers reprend le principe général que le revenu des biens immobiliers est attribué à l'État dans lequel est situé le bien immobilier qui produit le revenu.

L'*article 7* qui concerne l'imposition des bénéfices des entreprises suit l'approche du modèle de l'OCDE dans sa version de l'année 2008 à l'exception du paragraphe 3 qui est repris du modèle de l'ONU. Ainsi, une entreprise n'est imposable dans l'État de la source que si elle y dispose d'un établissement stable participant ainsi à la vie économique de cet État. Dans cette hypothèse, seuls les bénéfices qui sont imputables à l'établissement stable sont imposables dans l'État de la source des revenus.

L'*article 8* concerne l'imposition des bénéfices d'une entreprise d'un État contractant provenant de l'exploitation en trafic international de navires et d'aéronefs. Le siège de direction effective de l'entreprise est le critère déterminant pour régler le droit d'imposition des bénéfices d'une telle entreprise.

Le paragraphe 3 du même article énumère de façon précise certains types de revenus qui constituent des bénéfices provenant de l'exploitation en trafic international de navires ou d'aéronefs.

Aux fins du paragraphe 4, les intérêts sur les fonds directement liés à l'exploitation de navires ou d'aéronefs en trafic international sont considérés comme des bénéfices provenant de l'exploitation de ces navires ou aéronefs de sorte que les dispositions de l'article 11 ne s'appliquent pas à l'égard de ces intérêts.

L'*article 9* qui correspond au modèle de l'OCDE permet à un État d'opérer des ajustements de bénéfices à des fins fiscales lorsque des transactions ont été conclues entre des entreprises associées dans des conditions autres que celles de pleine concurrence. La rectification de la comptabilité des transactions entre entreprises associées peut entraîner une double imposition économique. Le paragraphe 2 vise à supprimer ces doubles impositions.

L'*article 10* réglemente le droit d'imposition des dividendes. Il partage le droit d'imposition des dividendes entre l'État de la source et l'État de résidence du bénéficiaire.

Le paragraphe 2 traitant de l'impôt pouvant être perçu par l'État de la source, prévoit que l'impôt établi dans cet État ne peut excéder 5 pour cent du montant brut des dividendes, si le bénéficiaire effectif est une société autre qu'une société de personnes qui détient directement au moins 25 pour cent du capital de la société qui paie les dividendes. Dans les autres cas, la retenue maximale s'élève à 10 pour cent du montant brut des dividendes.

L'*article 11* réserve un droit d'imposition des intérêts à l'État de la source, mais il limite l'exercice de ce droit en fixant un plafond à l'imposition qui ne peut pas dépasser 5 pour cent du montant brut des intérêts.

Le paragraphe 3 prévoit sous certaines conditions une exemption de la retenue à la source sur les intérêts. Les intérêts provenant d'un État contractant sont exonérés d'impôts dans cet État s'ils sont payés par ou payés à ou garantis par:

– le Gouvernement d'un État contractant ou l'une de ses subdivisions politiques ou autorités locales;
– la Banque Centrale d'un État contractant; ou
– l'agence de financement des exportations d'un État contractant.

Le paragraphe 4 définit le terme « intérêts » comme revenus de créances de toute nature, assorties ou non de garanties hypothécaires ou d'une clause de participation aux bénéfices du débiteur, les revenus des fonds publics et des obligations d'emprunts, y compris les primes et lots attachés à ces titres.

Le paragraphe 5 prévoit que les paragraphes précédents du même article ne s'appliquent pas si le bénéficiaire effectif des intérêts, résident d'un État contractant, exerce dans l'autre État contractant d'où proviennent les intérêts, soit une activité industrielle ou commerciale par l'intermédiaire d'un établissement stable qui y est situé, soit une profession indépendante au moyen d'une base fixe qui y est située, et que la créance génératrice des intérêts s'y rattache effectivement.

L'*article 12* dispose que la Convention partage le droit d'imposition des redevances entre l'État de la source et l'État de résidence du bénéficiaire, contrairement à la disposition du modèle de l'OCDE qui ne prévoit qu'une imposition dans l'État de résidence du bénéficiaire des redevances. L'imposition dans l'État de la source ne peut excéder 5 pour cent du montant brut des redevances.

La définition des redevances qui fait l'objet du paragraphe 3 précise que le terme « redevances » vise également les logiciels, ainsi que les films ou bandes pour la télévision ou la radio.

L'*article 13* prévoit, contrairement au modèle de l'OCDE, un article particulier pour le traitement des rémunérations pour des services techniques et retient une imposition dans l'État de la source qui ne peut excéder 7,5 pour cent du montant brut de ces rémunérations. Cet article suit l'approche du modèle de l'ONU.

L'*article 14* traite les gains en capital. Le paragraphe 4 de l'article 14 concerne les gains provenant de l'aliénation d'actions de sociétés à prépondérance immobilière.

L'*article 15* de la Convention vise, à la demande des négociateurs éthiopiens, l'imposition des professions indépendantes. Cet article dispose que le droit d'imposition des revenus qu'un résident tire d'une profession indépendante dans l'État de l'exercice d'une pareille activité est fondé sur le critère de l'existence d'une base fixe.

L'*article 16* réglemente le droit d'imposition en matière de professions dépendantes.

L'*article 17* qui vise les rémunérations perçues par un résident d'un État, en sa qualité de membre du conseil d'administration ou de surveillance d'une société qui est un résident de l'autre État, dispose que ces services sont imposables dans l'État dont la société concernée est un résident.

L'*article 18* qui a pour objet l'imposition des artistes et sportifs, est complété par rapport au modèle de l'OCDE par un paragraphe 3 spécifiant que les revenus des artistes du spectacle ou sportifs sont exempts d'impôt dans l'État de l'exercice de leurs activités lorsque ces activités sont exercées dans le cadre d'un programme d'échange culturel ou sportif conclu par les deux États.

L'*article 19* réglemente le droit d'imposition des pensions. En ce qui concerne les pensions du secteur privé, payées en vertu d'un emploi antérieur, visées au paragraphe 1er de l'article 19, un droit d'imposition exclusif est attribué à l'État de résidence du bénéficiaire.

Le paragraphe 2 de l'article 19 déroge à cette règle prévue au paragraphe 1er, en stipulant que les pensions et autres sommes payées en application de la législation sur la sécurité sociale ne sont imposables que dans l'État de la source. Cette mesure est motivée par le fait que les prestations sociales sont fortement budgétisées et fiscalisées au Luxembourg.

Le paragraphe 3 dispose que les pensions et autres rémunérations similaires provenant d'un État contractant et payées à un résident de l'autre État contractant en vertu d'un régime de pension complémentaire ou résultant de dotations faites par l'employeur à un régime interne, ne sont pas imposables dans l'autre État contractant dans la mesure où les cotisations, allocations, primes d'assurances ou dotations dont découlent les pensions et autres rémunérations visées sous rubrique, ont été soumises à une imposition « à l'entrée » dans le premier État.

Cette disposition permet d'éviter que les cotisations, allocations, primes d'assurances ou dotations ayant été soumises à une imposition forfaitaire lors de la constitution au Grand-Duché ne soient imposées une seconde fois lors du versement de la pension.

L'*article 20* reprend les dispositions relatives aux rémunérations concernant les fonctions publiques et suit l'approche du modèle de l'OCDE.

L'*article 21* règle le régime d'imposition applicable aux étudiants.

La Convention est complétée par un paragraphe 2 par rapport au modèle de l'OCDE, reprenant les dispositions relatives à l'imposition des stagiaires ou des étudiants visitant une université ou autre institution pour études supérieures. Celles-ci prévoient sous certaines conditions l'exemption dans l'État hôte des rémunérations touchées pour des services rendus dans le cadre des études ou de la

formation, pour une période n'excédant pas deux années dans la mesure où les rémunérations sont nécessaires à l'entretien des étudiants ou des stagiaires.

L'*article 22* réglemente le droit d'imposition des revenus qui ne sont pas traités dans les articles 6 à 21.

Contrairement au modèle de l'OCDE le paragraphe 3 dispose que nonobstant les dispositions des paragraphes 1 et 2 de l'article 22, les éléments de revenu d'un résident d'un État contractant non traités dans les articles précédents de la présente Convention et provenant de l'autre État contractant sont également imposables dans cet autre État.

L'*article 23* fixe les modalités d'imposition de la fortune.

L'*article 24* traite des modalités de l'élimination des doubles impositions par les deux États.

Le Luxembourg a choisi la méthode de l'exemption avec réserve de progressivité pour éviter la double imposition. Cette méthode consiste à exonérer de l'impôt luxembourgeois les revenus et la fortune imposables en Éthiopie, mais à en tenir compte pour calculer le taux d'impôt applicable aux revenus et à la fortune qui sont imposables au Luxembourg.

En ce qui concerne les dividendes, les intérêts, les redevances et les rémunérations pour des services techniques dont le droit d'imposition est, aux termes des articles 10, 11, 12 et 13, partagé entre l'État d'où proviennent ces revenus et l'État dont le bénéficiaire est un résident, ainsi que les revenus visés au paragraphe 4 de l'article 14, à l'article 18 et au paragraphe 3 de l'article 22, le Luxembourg applique pour ces catégories de revenus la méthode de l'imputation.

Cette méthode consiste à intégrer ces revenus de source étrangère dans la base d'imposition luxembourgeoise, mais à déduire de l'impôt luxembourgeois l'impôt payé sur ces revenus en Éthiopie. La déduction ne peut toutefois pas dépasser l'impôt luxembourgeois relatif à ces revenus.

La disposition du paragraphe c) a pour objet d'éviter l'absence d'imposition qui résulterait des désaccords entre l'État de résidence et l'État de la source sur les faits d'un cas spécifique ou sur l'interprétation des dispositions de la Convention.

L'Éthiopie a opté d'une manière générale pour la méthode de l'imputation.

Les *articles 25* à *31* contiennent certaines dispositions spéciales ainsi que les dispositions finales de la Convention.

L'*article 25* comporte les clauses habituelles de non-discrimination.

L'*article 26* règle les cas où une procédure amiable peut être engagée entre les autorités compétentes des deux États. Les paragraphes 1er et 2 s'appliquent aux situations dans lesquelles une personne estime que les mesures prises par un État contractant ou les deux États contractants entraînent ou entraîneront pour elle une imposition non conforme aux dispositions de la Convention tandis que le paragraphe 3 couvre les questions d'interprétation ou d'application de la Convention. La dernière phrase du paragraphe 2 précise que l'accord amiable est appliqué quels que soient les délais prévus par le droit interne des États contractants.

Contrairement au modèle de l'OCDE, la Convention ne prévoit pas de disposition relative à l'arbitrage.

L'*article 27* réglemente l'échange de renseignements entre les États contractants. Il suit l'approche adoptée au modèle de l'OCDE dans sa version 2017.

L'*article 28* sur les membres des missions diplomatiques et postes consulaires a pour but de donner aux membres des missions diplomatiques et postes consulaires la garantie qu'en vertu des dispositions d'une convention contre les doubles impositions, ils bénéficieront d'un traitement au moins aussi favorable que celui auquel ils ont droit conformément au droit international ou à des accords internationaux particuliers.

L'*article 29* reprend une disposition sur le droit aux avantages de la Convention. Il adopte la règle des objets principaux.

L'article reflète l'approche adoptée dans l'action 6 des travaux BEPS selon laquelle les avantages d'une convention fiscale ne devraient pas être accordés lorsqu'un des objets principaux est de bénéficier d'un avantage d'une disposition conventionnelle et que l'octroi de cet avantage serait contraire à l'objet et au but des dispositions de la convention fiscale. L'article permet aux États de s'attaquer aux cas d'utilisation abusive de la Convention.

Par ailleurs, le paragraphe 2 prévoit une procédure de consultation entre les autorités compétentes des deux États contractants avant que l'autorité compétente d'un des États qui a été contacté par un contribuable ne rejette la demande d'application de la Convention de celui-ci.

L'*article 30* établit les règles relatives à l'entrée en vigueur de la Convention dans les deux États contractants.

L'*article 31* décrit la procédure à respecter en cas de dénonciation de la Convention par l'un des États contractants.

La Convention est complétée par un Protocole qui forme partie intégrante de la Convention. Le *point 2. du Protocole* contient une disposition permettant au Luxembourg d'appliquer l'article 164*ter* de la loi concernant l'impôt sur le revenu qui fixe les règles relatives aux sociétés étrangères contrôlées.

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FICHE D'EVALUATION D'IMPACT

Mesures législatives et réglementaires

Intitulé du projet :	**Projet de loi portant approbation de la « Convention between the Grand Duchy of Luxembourg and the Federal Democratic Republic of Ethiopia for the elimination of double taxation with respect to taxes on income and on capital and the prevention of tax evasion and avoidance, faite à Luxembourg, le 29 juin 2021 »**
Ministère initiateur :	**Ministère des Finances**
Auteur(s) :	**Yoann LE DORZE**
Tél. :	**247-52361**
Courriel :	**yoann.ledorze@co.etat.lu**
Objectif(s) du projet :	**Approbation d'un traité international en matière fiscale**
Autre(s) Ministère(s)/Organisme(s)/Commune(s)impliqué(e)(s) :	
Date :	**26.8.2021**

Mieux légiférer

1. Partie(s) prenante(s) (organismes divers, citoyens, …) consultée(s) : Oui ☐ Non ☒
   Si oui, laquelle/lesquelles :
   Remarques/Observations :

2. Destinataires du projet :
   – Entreprises/Professions libérales : Oui ☒ Non ☐
   – Citoyens : Oui ☒ Non ☐
   – Administrations : Oui ☒ Non ☐

3. Le principe « Think small first » est-il respecté ? Oui ☐ Non ☐ N.a. ☒
   (c.-à-d. des exemptions ou dérogations sont-elles prévues suivant la taille de l'entreprise et/ou son secteur d'activité ?)

Remarques/Observations :

4. Le projet est-il lisible et compréhensible pour le destinataire ? Oui ☒ Non ☐
   Existe-t-il un texte coordonné ou un guide pratique, mis à jour et publié d'une façon régulière ? Oui ☒ Non ☐
   Remarques/Observations :

5. Le projet a-t-il saisi l'opportunité pour supprimer ou simplifier des régimes d'autorisation et de déclaration existants, ou pour améliorer la qualité des procédures ? Oui ☐ Non ☒
   Remarques/Observations :

6. Le projet contient-il une charge administrative[1] pour le(s) destinataire(s) ? (un coût imposé pour satisfaire à une obligation d'information émanant du projet ?) Oui ☐ Non ☒
   Si oui, quel est le coût administratif approximatif total ? (nombre de destinataires x coût administratif[2] par destinataire)

7. a) Le projet prend-il recours à un échange de données inter-administratif (national ou international) plutôt que de demander l'information au destinataire ? Oui ☐ Non ☒ N.a. ☐
      Si oui, de quelle(s) donnée(s) et/ou administration(s) s'agit-il ?
   b) Le projet en question contient-il des dispositions spécifiques concernant la protection des personnes à l'égard du traitement des données à caractère personnel[3] ? Oui ☐ Non ☐ N.a. ☒
      Si oui, de quelle(s) donnée(s) et/ou administration(s) s'agit-il ?

8. Le projet prévoit-il :
   – une autorisation tacite en cas de non réponse de l'administration ? Oui ☐ Non ☒ N.a. ☐
   – des délais de réponse à respecter par l'administration ? Oui ☐ Non ☒ N.a. ☐
   – le principe que l'administration ne pourra demander des informations supplémentaires qu'une seule fois ? Oui ☐ Non ☒ N.a. ☐

9. Y a-t-il une possibilité de regroupement de formalités et/ou de procédures (p. ex. prévues le cas échéant par un autre texte) ? Oui ☐ Non ☐ N.a. ☒
   Si oui, laquelle :

10. En cas de transposition de directives européennes, le principe « la directive, rien que la directive » est-il respecté ? Oui ☐ Non ☐ N.a. ☒
    Sinon, pourquoi ?

11. Le projet contribue-t-il en général à une :
    a) simplification administrative, et/ou à une Oui ☐ Non ☒

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1 Il s'agit d'obligations et de formalités administratives imposées aux entreprises et aux citoyens, liées à l'exécution, l'application ou la mise en oeuvre d'une loi, d'un règlement grand-ducal, d'une application administrative, d'un règlement ministériel, d'une circulaire, d'une directive, d'un règlement UE ou d'un accord international prévoyant un droit, une interdiction ou une obligation.

2 Coût auquel un destinataire est confronté lorsqu'il répond à une obligation d'information inscrite dans une loi ou un texte d'application de celle-ci (exemple: taxe, coût de salaire, perte de temps ou de congé, coût de déplacement physique, achat de matériel, etc.).

3 Loi modifiée du 2 août 2002 relative à la protection des personnes à l'égard du traitement des données à caractère personnel (www.cnpd.lu)

b) amélioration de la qualité règlementaire ? Oui ☐ Non ☒

Remarques/Observations :

12. Des heures d'ouverture de guichet, favorables et adaptées aux besoins du/des destinataire(s), seront-elles introduites ? Oui ☐ Non ☐ N.a. ☒

13. Y a-t-il une nécessité d'adapter un système informatique auprès de l'Etat (e-Government ou application back-office) ? Oui ☐ Non ☒

Si oui, quel est le délai pour disposer du nouveau système ?

14. Y a-t-il un besoin en formation du personnel de l'administration concernée ? Oui ☐ Non ☒ N.a. ☐

Si oui, lequel ?

Remarques/Observations :

Egalité des chances

15. Le projet est-il :
    - principalement centré sur l'égalité des femmes et des hommes ? Oui ☐ Non ☒
    - positif en matière d'égalité des femmes et des hommes ? Oui ☐ Non ☒

      Si oui, expliquez de quelle manière :
    - neutre en matière d'égalité des femmes et des hommes ? Oui ☐ Non ☒

      Si oui, expliquez pourquoi :
    - négatif en matière d'égalité des femmes et des hommes ? Oui ☐ Non ☒

      Si oui, expliquez de quelle manière :

16. Y a-t-il un impact financier différent sur les femmes et les hommes ? Oui ☐ Non ☒ N.a. ☐

Si oui, expliquez de quelle manière :

Directive « services »

17. Le projet introduit-il une exigence relative à la liberté d'établissement soumise à évaluation[4] ? Oui ☐ Non ☐ N.a. ☒

Si oui, veuillez annexer le formulaire A, disponible au site Internet du Ministère de l'Economie et du Commerce extérieur :

www.eco.public.lu/attributions/dg2/d_consommation/d_march_int_rieur/Services/index.html

18. Le projet introduit-il une exigence relative à la libre prestation de services transfrontaliers[5] ? Oui ☐ Non ☐ N.a. ☒

Si oui, veuillez annexer le formulaire B, disponible au site Internet du Ministère de l'Economie et du Commerce extérieur :

www.eco.public.lu/attributions/dg2/d_consommation/d_march_int_rieur/Services/index.html

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4 Article 15, paragraphe 2 de la directive « services » (cf. Note explicative, p. 10-11)

5 Article 16, paragraphe 1, troisième alinéa et paragraphe 3, première phrase de la directive « services » (cf. Note explicative, p. 10-11)

FICHE FINANCIERE

(art. 79 de la loi du 8 juin 1999 sur le Budget,
la Comptabilité et la Trésorerie de l'État)

Le projet de loi portant approbation de la Convention entre le Grand-Duché de Luxembourg et la République fédérale démocratique de l'Éthiopie pour l'élimination de la double imposition en matière d'impôts sur le revenu et sur la fortune et pour la prévention de l'évasion et de la fraude fiscales et du Protocole y relatif, faits à Luxembourg, le 29 juin 2021 ne comportent pas de dispositions dont l'application est susceptible de grever le budget de l'Etat.

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TEXTE DE LA CONVENTION

CONVENTION

between the Grand Duchy of Luxembourg and the Federal Democratic Republic of Ethiopia for the elimination of double taxation with respect to taxes on income and on capital and the prevention of tax evasion and avoidance

The Government of the Grand Duchy of Luxembourg and the Government of the Federal Democratic Republic of Ethiopia

Desiring to further develop their economic relationship and to enhance their cooperation in tax matters,

Intending to conclude a Convention for the elimination of double taxation with respect to taxes on income and on capital without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Convention for the indirect benefit of residents of third States)

HAVE AGREED as follows:

Article 1

Persons covered

1. This Convention shall apply to persons who are residents of one or both of the Contracting States.

2. For the purposes of this Convention, income derived by or through an entity or arrangement that is treated as wholly or partly fiscally transparent under the tax law of either Contracting State shall be considered to be income of a resident of a Contracting State but only to the extent that the income is treated, for purposes of taxation by that State, as the income of a resident of that State. In no case shall the provisions of this paragraph be construed to affect a Contracting State's right to tax its own residents.

Article 2

Taxes covered

1. This Convention shall apply to taxes on income and on capital imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property.

3. The existing taxes to which the Convention shall apply are in particular:

a) in the case of Luxembourg:

(i) the income tax on individuals (l'impôt sur le revenu des personnes physiques);

(ii) the corporation tax (l'impôt sur le revenu des collectivités);

(iii) the capital tax (l'impôt sur la fortune); and

(iv) the communal trade tax (l'impôt commercial communal); (hereinafter referred to as „Luxembourg tax");

b) in the case of Ethiopia:

(i) the tax on income and profit; and

(ii) the tax on income from mining, petroleum and agricultural activities; (hereinafter referred to as „Ethiopian tax").

4. The Convention shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in their respective taxation laws.

Article 3

General definitions

1. For the purposes of this Convention, unless the context otherwise requires:

a) the terms „a Contracting State" and „the other Contracting State" mean Luxembourg or Ethiopia as the context requires; and the term „Contracting States" means Luxembourg and Ethiopia;

b) the term „Luxembourg" means the Grand Duchy of Luxembourg and, when used in a geographical sense, means the territory of the Grand Duchy of Luxembourg;

c) the term „Ethiopia" means the Federal Democratic Republic of Ethiopia and, when used in a geographical sense, it means the national territory and any other area which in accordance with international law and the laws of Ethiopia is or may be designated as an area in which Ethiopia exercises sovereign rights or jurisdictions;

d) the term „person" includes an individual, a company and any other body of persons;

e) the term „company" means any body corporate or any entity that is treated as a body corporate for tax purposes;

f) the terms „enterprise of a Contracting State" and „enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

g) the term „international traffic" means any transport by a ship or aircraft operated by an enterprise that has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

h) the term „competent authority" means:

(i) in the case of Luxembourg, the Minister of Finance or his authorised representative;

(ii) in the case of Ethiopia, the Minister of Finance or his authorised representative;

i) the term „national", in relation to a Contracting State, means:

(i) any individual possessing the nationality or citizenship of that Contracting State; and

(ii) any legal person, partnership or association deriving its status as such from the laws in force in that Contracting State.

2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires or the competent authorities agree to a different meaning pursuant to the provisions of Article 26, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

Article 4

Resident

1. For the purposes of this Convention, the term „resident of a Contracting State“ means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of incorporation, place of management or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);

b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;

c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;

d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the State in which its place of effective management is situated.

Article 5

Permanent establishment

1. For the purposes of this Convention, the term „permanent establishment“ means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term „permanent establishment“ includes especially:

a) a place of management;

b) a branch;

c) an office;

d) a factory;

e) a sales outlet;

f) a workshop;

g) a commercial warehouse; and

h) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. A building site, a construction, installation or dredging project constitutes a permanent establishment only if it lasts more than six months.

4. Notwithstanding the preceding provisions of this Article, the term „permanent establishment“ shall be deemed not to include:

a) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;

b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;

c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;

e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character; or

f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 7 applies – is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other. Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of independent status to whom paragraph 7 applies.

7. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, and conditions are made or imposed between that enterprise and the agent in their commercial and financial relations which differ from those which would have been made between independent enterprises, he will not be considered an agent of an independent status within the meaning of this paragraph.

8. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 6

Income from immovable property

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term „immovable property“ shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

Article 7

Business profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions arid dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

7. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8

International traffic

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.

3. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic include:

a) profits from the rental on a bareboat basis of ships or aircrafts; and

b) profits from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used for the transport of goods or merchandise,

c) profits from the sale of tickets for such transportation on behalf of other enterprises

where such rental, use, maintenance or sale of tickets, as the case may be, is incidental to the operation of ships or aircraft in international traffic.

4. For the purposes of this Article, interest on funds directly connected with the operation of ships or aircraft in international traffic shall be regarded as profits derived from the operation of such ships or aircraft, and the provisions of Article 11 not apply in relation to such interest.

5. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 9

Associated enterprises

1. Where

a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State – and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

Article 10

Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, dividends paid by a company which is a resident of a Contracting State may also be taxed in that State according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends;

b) 10 per cent of the gross amount of the dividends in all other cases.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term „dividends“ as used in this Article means income from shares, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such cases, the provisions of Article 7 or Article 15, as the case may be, shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 11

Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, interest arising in a Contracting State may also be taxed in that State according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 5 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that State if it is paid by or to or guaranteed by:

a) the Government of a Contracting State, or a political subdivision or a local authority thereof; or

b) the Central Bank of a Contracting State; or

c) the export financing agency of a Contracting State.

4. The term „interest“ as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

5. The provisions of paragraph 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such cases the provisions of Article 7 or Article 15, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 12

Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, royalties arising in a Contracting State may also be taxed in that State according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 5 per cent of the gross amount of the royalties.

3. The term „royalties“ as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including computer software, cinematograph films, or films or tapes used for radio or television broadcasting, any patent, trademark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such cases, the provisions of Article 7 or Article 15, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 13

Fees for technical services

1. Fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, fees for technical services arising in a Contracting State may also be taxed in that State according to the laws of that State, but if the beneficial owner of the fees for technical services is a resident of the other Contracting State, the tax so charged shall not exceed 7.5 per cent of the gross amount of the fees for technical services.

3. The term „fees for technical services“ as used in this Article means payments of any kind to any person, other than to an employee of the person making the payments, in consideration for any services of a technical, managerial or consultancy nature.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the fees for technical services arise through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the fees for technical services are effectively connected with such permanent establishment or fixed base. In such cases, the provisions of Article 7 or Article 15, as the case may be, shall apply.

5. Fees for technical services shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the fees for technical services, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or fixed base in connection with which the liability to pay the fees for technical services was incurred, and such fees for techni9al services are borne by such permanent establishment or fixed base, then such fees for technical services shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner of the fees for technical services or between both of them and some other person, the amount of the fees, having regard to the services for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the fees shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 14

Capital gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. Gains derived by a resident of a Contracting State from the alienation of shares or comparable interests, such as interests in a partnership or trust, may be taxed in the other Contracting State if, at any time during the 365 days preceding the alienation, these shares or comparable interests derived more than 50 per cent of their value directly or indirectly from immovable property, as defined in Article 6, situated in that other State.

5. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3 and 4, shall be taxable only in the Contracting State of which the alienator is a resident.

Article 15

Independent personal services

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to that fixed base.

2. The term „professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 16

Dependent personal services

1. Subject to the provisions of Articles 17, 19, 20 and 21, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the calendar year concerned, and

b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and

c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

Article 17

Directors' fees

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 18

Entertainers and Sportspersons

1. Notwithstanding the provisions of Articles 15 and 16, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from that resident's personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson acting as such accrues not to the entertainer or sportsperson but to another person, that income may, notwith-

standing the provisions of Articles 7, 15 and 16 be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

3. Notwithstanding the provisions of paragraphs 1 and 2, income derived in respect of the activities referred to in paragraph 1 within the framework of any cultural or sports exchange programme agreed to by both Contracting States shall be exempt from tax in the Contracting State in which these activities are exercised.

Article 19

Pensions

1. Subject to the provisions of paragraph 2 of Article 20, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

2. Notwithstanding the provisions of paragraph 1, pensions and other payments made under the social security legislation of a Contracting State shall be taxable only in that State.

3. Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration (including lump-sum payments) arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in the first mentioned State, provided that such payments derive from contributions paid to or from provisions made under a pension scheme by the recipient or on his behalf and that these contributions, provisions or the pensions or other similar remuneration have been subjected to tax in the first-mentioned State under the ordinary rules of its tax laws.

Article 20

Government service

1. a) Salaries, wages and other similar remuneration paid by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or authority shall be taxable only in that State.

   b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

      (i) is a national of that State; or

      (ii) did not become a resident of that State solely for the purpose of rendering the services.

2. a) Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

   b) However, such pensions and other similar remuneration shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 16, 17, 18 and 19 shall apply to salaries, wages, pensions, and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

Article 21

Students

1. Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance,

education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

2. A student at an university or other institution for higher education in a Contracting State, or a business apprentice, who is or was immediately before visiting that Contracting State a resident of the other Contracting State and who is present in the first-mentioned State for a continuous period not exceeding two years, shall not be taxed in that State in respect of remuneration he receives for services rendered in that State, provided that the services are in connection with his studies or training and the remuneration constitutes earnings necessary for his maintenance.

Article 22

Other income

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 15, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Convention and arising in the other Contracting State may also be taxed in that other State.

Article 23

Capital

1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.

2. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or by movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, may be taxed in that other State.

3. Capital represented by ships and aircraft operated in international traffic and by movable property pertaining to the operation of such ships and aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

Article 24

Elimination of double taxation

1. Subject to the provisions of the law of Luxembourg regarding the elimination of double taxation which shall not affect the general principle hereof, double taxation shall be eliminated as follows:

a) Where a resident of Luxembourg derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in Ethiopia, Luxembourg shall, subject to the provisions of sub-paragraphs b) and c), exempt such income or capital from tax, but may, in order to calculate the amount of tax on the remaining income or capital of the resident, apply the same rates of tax as if the income or capital had not been exempted.

b) Where a resident of Luxembourg derives income which, in accordance with the provisions of Articles 10, 11, 12, 13, paragraph 4 of Article 14, Article 18 and paragraph 3 of Article 22 may be taxed in Ethiopia, Luxembourg shall allow as a deduction from the income tax on individuals or from the corporation tax of that resident an amount equal to the tax paid in Ethiopia. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to such items of income derived from Ethiopia.

c) The provisions of sub-paragraph a) shall not apply to income derived or capital owned by a resident of Luxembourg where Ethiopia applies the provisions of this Convention to exempt such income or capital from tax or applies the provisions of paragraph 2 of Article 10, 11, 12 or 13 to such income.

2. Subject to the provisions of the law of Ethiopia regarding the elimination of double taxation which shall not affect the general principle hereof, double taxation shall be eliminated as follows:

a) Where a resident of Ethiopia derives income or owns capital which may be taxed in Luxembourg in accordance with the provisions of this Convention (except to the extent that these provisions allow taxation by Luxembourg solely because the income is also income derived by a resident of Luxembourg or because the capital is also capital owned by a resident of Luxembourg), Ethiopia shall allow:

i) as a deduction from the tax on the income of that resident an amount equal to the income tax paid in Luxembourg;

ii) as a deduction from the tax on the capital of that resident, an amount equal to the capital tax paid in Luxembourg.

Such deduction in either case shall not, however, exceed that part of the income tax or capital tax, as computed before the deduction is given, which is attributable, as the case may be, to the income or the capital which may be taxed in Luxembourg.

b) Where, in accordance with any provision of this Convention, income derived or capital owned by a resident of Ethiopia is exempt from tax in Luxembourg, Ethiopia may nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income or capital.

Article 25

Non-discrimination

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, paragraph 6 of Article 12 or paragraph 6 of Article 13, apply, interest, royalties, fees for technical services and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

5. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

Article 26

Mutual agreement procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of either Contracting State. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 27

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 to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. 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. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.

3. In no case shall the provisions of paragraphs 1 and 2 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 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 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.

Article 28

Members of diplomatic missions and consular posts

Nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

Article 29

Entitlement to benefits

1. Notwithstanding the other provisions of this Convention, a benefit under this Convention shall not be granted in respect of an item of income or capital if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Convention.

2. Where a benefit under this Convention is denied to a person under paragraph 1, the competent authority of the Contracting State that would otherwise have granted this benefit shall nevertheless treat that person as being entitled to this benefit, or to different benefits with respect to a specific item of income or capital, if such competent authority, upon request from that person and after consideration of the relevant facts and circumstances, determines that such benefits would have been granted to that person in the absence of the transaction or arrangement referred to in paragraph 1. The competent authority of the Contracting State to which the request has been made will consult with the competent authority of the other State before rejecting a request made under this paragraph by a resident of that other State.

Article 30

Entry into force

1. The Contracting States shall notify each other in writing, through diplomatic channels, that the procedures required by its law for the entry into force of this Convention have been satisfied. The Convention shall enter into force on the date of receipt of the last notification.

2. The Convention shall have effect:

a) in the case of Luxembourg:

(i) in respect of taxes withheld at source, to income derived on or after 1 January of the calendar year next following the year in which the Convention enters into force;

(ii) in respect of other taxes on income, and taxes on capital, to taxes chargeable for any taxable year beginning on or after 1 January of the calendar year next following the year in which the Convention enters into force;

b) in the case of Ethiopia:

(i) with regard to taxes withheld at source, in respect of amounts paid on or after the eighth day of July next following the date on which this Convention enters into force; and

(ii) with regard to other taxes, in respect of tax year beginning on or after the eighth day of July next following the date on which this Convention enters into force.

Article 31

Termination

1. This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year beginning after the expiration of a period of five years from the date of its entry into force.

2. The Convention shall cease to have effect:

a) in the case of Luxembourg:

(i) in respect of taxes withheld at source, to income derived on or after 1 January of the calendar year next following the year in which the notice is given;

(ii) in respect of other taxes on income, and taxes on capital, to taxes chargeable for any taxable year beginning on or after 1 January of the calendar year next following the year in which the notice is given;

b) in the case of Ethiopia:

(i) with regard to taxes withheld at source, in respect of amounts paid on or after the eighth day of July next following the date on which the period specified in the said notice of termination expires; and

(ii) with regard to other taxes, in respect of tax year beginning on or after the eighth day of July next following the date on which the period specified in the said notice of termination expires.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Convention.

DONE in duplicate at Luxembourg, on the 29th day of June 2021, in the English language.

For the Government of the
Grand Duchy of Luxembourg
Pierre GRAMEGNA
Minister of Finance

For the Government of the Federal
Democratic Republic of Ethiopia
Hirut Zemene KASSA
Ambassador of the
Federal Democratic Republic of Ethiopia
to the Grand Duchy of Luxembourg

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PROTOCOL

At the moment of the signing of the Convention between the Grand Duchy of Luxembourg and the Federal Democratic Republic of Ethiopia for the elimination of double taxation with respect to taxes on income and on capital and the prevention of tax evasion and avoidance, both sides have agreed upon the following provisions, which shall form an integral part of the Convention:

1. With reference to Article 4:
   a) A collective investment vehicle which is established in a Contracting State and that is treated as a body corporate for tax purposes in this Contracting State shall be considered as a resident of the Contracting State in which it is established and as the beneficial owner of the income it receives.
   b) A collective investment vehicle which is established in a Contracting State and that is not treated as a body corporate for tax purposes in this Contracting State shall be considered as an individual who is resident of the Contracting State in which it is established and as the beneficial owner of the income it receives.
2. Nothing in this Convention shall prevent Luxembourg from applying the provisions of Article 164ter of the income tax law or any other similar provision that amends or replaces the above-mentioned Article.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Convention.

DONE in duplicate at Luxembourg, on the 29th day of June 2021, in the English language.

For the Government of the
Grand Duchy of Luxembourg
Pierre GRAMEGNA
Minister of Finance

For the Government of the Federal
Democratic Republic of Ethiopia
Hirut Zemene KASSA
Ambassador of the
Federal Democratic Republic of Ethiopia
to the Grand Duchy of Luxembourg

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