N° 8021

CHAMBRE DES DEPUTES

Session ordinaire 2021-2022

P R O J E T   D E   L O I

portant approbation de l' "Agreement between the Grand Duchy of Luxembourg and the Republic of Rwanda for the elimination of double taxation with respect to taxes on income and on capital and the prevention tax evasion and avoidance", fait à Luxembourg, le 29 septembre 2021

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(Dépôt: le 7.6.2022)

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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 l' "Agreement between the Grand Duchy of Luxembourg and the Republic of Rwanda for the elimination of double taxation with respect to taxes on income and on capital and the prevention tax evasion and avoidance", fait à Luxembourg, le 29 septembre 2021.

Paris, le 17 mai 2022

Le Ministre des Affaires étrangères et européennes,
Jean ASSELBORN

HENRI

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TEXTE DU PROJET DE LOI

Article unique. Est approuvée l' "Agreement between the Grand Duchy of Luxembourg and the Republic of Rwanda for the elimination of double taxation with respect to taxes on income and on capital and the prevention of tax evasion and avoidance", fait à Luxembourg, le 29 septembre 2021.

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EXPOSE DES MOTIFS

Afin d'éviter les doubles impositions et de prévenir l'évasion et la fraude fiscales en matière d'impôts sur le revenu et sur la fortune, le Luxembourg et le Rwanda ont conclu une convention qui a été signée le 29 septembre 2021. L'objet du présent projet de loi est d'approuver cette convention fiscale avec la République du Rwanda.

La Convention s'inspire de certains principes préconisés au modèle de convention fiscale de l'Organisation de coopération et de développement économiques (OCDE) sous réserve de certaines modifications liées aux spécificités respectives de la législation des deux États. Elle reprend à la demande du Rwanda certaines dispositions du modèle de convention des Nations Unies.

Elle confirme les efforts effectués ces dernières années par le Gouvernement luxembourgeois en vue de compléter et d'améliorer progressivement son réseau de conventions fiscales.

La Convention entrera en vigueur à l'issue du processus de ratification classique en matière de conventions fiscales bilatérales.

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COMMENTAIRES DES ARTICLES

Le titre et le préambule précisent que la Convention vise non seulement l'élimination de la double imposition mais également la prévention de la fraude et de l'évasion fiscales.

Le titre de la Convention a donc vocation à mettre en évidence le rôle des conventions dans la prévention de l'utilisation abusive des conventions fiscales.

Le préambule précise que l'objet de la Convention est l'élimination de la double imposition 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. Il rappelle également l'intention commune des États contractants à la promotion de leurs relations économiques et à l'amélioration de leur coopération en matière fiscale.

Le paragraphe 1er de l'article 1er dispose que la Convention s'applique seulement aux personnes qui sont, conformément à l'article 4, des résidents du Luxembourg ou du Rwanda ou de ces deux États.

Le paragraphe 2 examine la situation du revenu d'entités ou de dispositifs qu'un des États contractants ou les deux traitent comme étant totalement ou partiellement transparent à des fins fiscales.

Il garantit non seulement que les avantages prévus par la Convention sont accordés dans des cas précis mais aussi qu'ils ne sont pas accordés lorsqu'aucun des États contractants ne traite, selon sa législation nationale, le revenu d'une entité ou d'un dispositif comme étant le revenu de l'un de ses résidents. Ce paragraphe a une incidence pratique pour le Luxembourg, étant donné que les sociétés de personnes sont considérées au Luxembourg comme étant des entités transparentes.

L'article 2 énumère les impôts actuels auxquels la Convention s'applique. Conformément à la pratique conventionnelle du Luxembourg, 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. L'article 2 prévoit par ailleurs que la Convention s'appliquera aux impôts équivalents mis en place après la signature de la Convention qui s'ajouteraient ou remplaceraient les impôts existants.

L'article 3 énonce les définitions nécessaires à l'interprétation des termes et expressions utilisés dans la Convention. En l'absence d'une telle définition, le paragraphe 2 prévoit que le droit fiscal prévaut

sur les autres branches du droit pour l'interprétation des termes et expressions non définis par ailleurs dans la Convention.

L'article 4 définit la notion de résidence laquelle permet de résoudre les cas de double résidence. Par ailleurs, cette notion 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 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 prévoit de résoudre les cas où une société est assujettie à l'impôt dans plus d'un État en raison de sa résidence. Ce paragraphe 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 paragraphe 4 prévoit par ailleurs qu'un organisme de placement collectif qui est établi dans un État contractant est considéré comme un résident de l'État contractant dans lequel il est établi et comme le bénéficiaire effectif des revenus qu'il reçoit.

L'article 5 donne une définition de l'établissement stable. Aux termes du paragraphe 1er, l'expression « établissement stable » désigne une installation fixe d'affaires par l'intermédiaire de laquelle une entreprise exerce tout ou partie de son activité. Cet article adopte une définition plus large de la notion d'établissement stable que celle retenue au modèle de l'OCDE.

Ainsi, le paragraphe 2 g) complète la liste d'exemples de l'expression « établissement stable » qui peuvent être considérés comme constituant un établissement stable dans les conditions du paragraphe 1er en ajoutant un dépôt utilisé afin de fournir des installations de stockage pour des tiers.

Le paragraphe 3 a) considère comme établissement stable un chantier de construction, de montage, d'installation ou de dragage, ou des activités de surveillance s'y rattachant lorsque ce chantier ou ces activités ont une durée supérieure à six mois.

Par ailleurs, le paragraphe 3 b) prévoit que la fourniture de services, y compris les services de consultants, par une entreprise agissant par l'intermédiaire de salariés ou d'autre personnel engagé à cette fin constitue un établissement stable mais seulement lorsque ces activités se poursuivent (pour le même projet ou un projet connexe) sur le territoire d'un État contractant pendant une période ou des périodes représentant un total de plus de 183 jours pendant une période quelconque de douze mois commençant ou se terminant durant l'année fiscale concernée.

Le paragraphe 3 c) considère comme établissement stable l'exploitation d'équipements substantiels ou de machines dans un État contractant pendant une période ou des périodes représentant un total de plus de 90 jours pendant une période quelconque de douze mois commençant ou se terminant durant l'année fiscale concernée.

Le paragraphe 4 énumère les activités qui sont considérées comme des exceptions à la définition générale du paragraphe 1er.

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. Aux termes de ce paragraphe, les entreprises d'assurance d'un État sont considérées comme ayant un établissement stable dans l'autre État si elles y perçoivent des primes ou assurent des risques y situés par l'intermédiaire d'un agent autre que celui ayant le statut d'agent indépendant.

Il est précisé au paragraphe 7 le principe suivant lequel un agent indépendant n'implique pas l'existence d'un établissement stable pour l'entreprise qu'il représente.

Conformément au paragraphe 8, il est admis que l'existence d'une filiale ne constitue pas à elle seule un élément permettant de conclure à l'existence d'un établissement stable de la société mère, puisque, d'un point de vue fiscal, la filiale constitue une entité juridique indépendante.

Les articles 6 à 21 posent les règles d'attribution du droit d'imposition concernant diverses catégories de revenus pour lesquelles des dispositions détaillées sont nécessaires.

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.

L'article 8 prévoit que les bénéfices d'une entreprise provenant de l'exploitation en trafic international de navires ou d'aéronefs ne sont imposables que dans l'État contractant où son siège de direction effective est situé.

Le paragraphe 2 précise que la notion d'exploitation de navires et d'aéronefs en trafic international comprend également la location coque nue de navires ou d'aéronefs et la location de conteneurs et d'équipement connexe, lorsque cette location est accessoire à l'exploitation en trafic international.

L'article 9 règle, conformément au principe de pleine concurrence posé par le modèle de l'OCDE, le cas des transferts de bénéfices entre entreprises associées.

Il 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 reprend le paragraphe 3 du modèle de l'ONU qui retient que les dispositions du paragraphe 2 ne s'appliquent pas lorsqu'à la suite d'une procédure judiciaire, administrative ou procédure légale, une décision finale a établi que du fait d'actions entraînant un ajustement des bénéfices en vertu du paragraphe 1er, une des entreprises en cause est passible d'une pénalité pour fraude, faute lourde ou défaillance.

En ce qui concerne les dividendes, les intérêts et les redevances, les articles 10, 11 et 12 stipulent que l'État de la source a le droit de les imposer à un taux n'excédant pas 10 pour cent de leur montant brut.

Le paragraphe 3 de l'article 11 prévoit une exonération de la retenue à la source pour les intérêts en faveur du Gouvernement d'un État contractant ou d'une collectivité locale, ainsi que de la Banque Centrale d'un des États contractants. Il en est de même pour les intérêts touchés par toute institution entièrement détenue ou contrôlée par le Gouvernement ou par une collectivité locale.

L'article 13 prévoit, contrairement au modèle de l'OCDE, un article particulier pour le traitement des rémunérations pour des services techniques. Cet article retient comme pour les articles 10, 11 et 12, une imposition dans l'État de la source qui ne peut excéder 10 pour cent du montant brut de ces rémunérations.

L'article 14 définit le régime applicable aux gains en capital.

Le paragraphe 1er dispose que les gains provenant de l'aliénation de biens immobiliers sont imposables dans l'État de situation de ces biens immobiliers.

Le paragraphe 2 vise l'imposition des gains provenant de l'aliénation des biens mobiliers qui font partie de l'actif d'un établissement stable. Ceux-ci sont imposables dans l'État où est situé l'établissement stable.

Pour ce qui est des gains provenant de l'aliénation de navires ou aéronefs exploités en trafic international, le paragraphe 3 dispose que ceux-ci ne sont imposables que dans l'État contractant où le siège de direction effective de l'entreprise est situé.

Le paragraphe 4 concerne l'aliénation d'actions de sociétés à prépondérance immobilière. L'objet de ce paragraphe est donc de maintenir un droit d'imposition à l'État de la source des gains tirés de l'aliénation d'actions d'une société dont les biens consistent à titre principal, directement ou indirectement, en biens immobiliers situés dans cet État contractant tout comme les biens immobiliers correspondants qui sont couverts par le paragraphe 1er.

Tous les gains provenant de l'aliénation de biens autres que ceux visés aux paragraphes 1er à 4, ne sont imposables que dans l'État de résidence du cédant.

L'article 15 réglemente le droit d'imposition en matière de revenus d'emploi et suit l'approche adoptée au modèle de l'OCDE à l'exception du paragraphe 3 concernant les rémunérations reçues au titre d'un emploi salarié exercé à bord d'un navire ou aéronef exploité en trafic international qui sont imposables dans l'État où le siège de direction effective de l'entreprise est situé.

L'article 16 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 rémunérations sont imposables dans l'État dont la société concernée est un résident.

L'article 17 relatif aux artistes et aux sportifs attribue à l'État où se produisent les intéressés, le droit d'imposer les revenus provenant des services rendus dans cet État. Cet article est complété par rapport à l'article 17 du modèle de l'OCDE par un paragraphe 3 spécifiant que les revenus des artistes ou sportifs sont exempts d'impôt dans l'État de l'exercice lorsque ces activités y sont exercées et que le séjour dans cet État est supporté entièrement ou substantiellement par des fonds publics. Il en est de même lorsque ces activités sont visées par un accord culturel entre les gouvernements des deux États contractants.

L'article 18 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 18, un droit d'imposition est attribué à l'État de résidence du bénéficiaire. Toutefois, ces pensions et autres rémunérations similaires sont aussi imposables dans l'État d'où elles proviennent.

Le paragraphe 2 de l'article 18 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.

Par ailleurs, 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 imposables que dans le premier 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 19 reprend les dispositions relatives aux rémunérations concernant les fonctions publiques et suit l'approche adoptée au modèle de convention fiscale de l'OCDE.

L'article 20 permet, conformément au modèle de l'OCDE, d'exonérer les étudiants et les stagiaires dans l'État où ils séjournent sous certaines conditions. Cet article prévoit donc de ne pas imposer dans l'État où séjournent les étudiants les sommes qu'ils reçoivent afin de couvrir leurs frais d'entretien, d'études ou de formation.

L'article 21 détermine le régime fiscal des revenus non expressément visés dans les autres articles de la Convention. À l'instar du modèle de l'OCDE, il prévoit l'imposition exclusive de ces revenus dans l'État de résidence de leur bénéficiaire effectif, à moins qu'ils ne puissent être rattachés à un établissement stable dont celui-ci dispose dans l'autre État. Contrairement au modèle de l'OCDE, le paragraphe 3 dispose que nonobstant les dispositions des paragraphes 1er et 2 de l'article 21, les éléments de revenu d'un résident d'un État contractant non traités dans les articles précédents de la pré-

sente Convention et provenant de l'autre État contractant sont également imposables dans cet autre État.

L'article 22 fixe les modalités d'imposition de la fortune.

L'article 23 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 au Rwanda, 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 services techniques dont le droit d'imposition est, aux termes des articles 10, 11, 12 et 13, partagé entre l'État d'où proviennent les revenus et l'État dont le bénéficiaire est un résident, le Luxembourg applique pour ces catégories de revenus la méthode de l'imputation. Il en est de même pour les revenus visés au paragraphe 4 de l'article 14, à l'article 17 et au paragraphe 3 de l'article 21.

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 au Rwanda. La déduction ne peut toutefois pas dépasser l'impôt luxembourgeois relatif à ces revenus.

Le sous-paragraphe c) du paragraphe 1er suit l'approche du modèle de l'OCDE. En effet, la disposition proposée par l'OCDE a pour objet d'éviter l'absence d'imposition qui résulterait de 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. Cette disposition permet ainsi d'éviter une double exonération, de sorte à ne pas aboutir à un résultat qui est contraire à l'objet d'une Convention tendant à éviter les doubles impositions.

Le Rwanda a opté d'une manière générale pour la méthode de l'imputation.

Les articles 24 à 31 contiennent certaines dispositions spéciales ainsi que les dispositions finales de la Convention.

L'article 24 comporte les clauses de non-discrimination habituelles.

L'article 25 règle les cas où une procédure amiable peut être engagée entre les autorités compétentes des deux États tout en prévoyant que les autorités compétentes doivent s'efforcer de régler par voie d'accord amiable la situation des contribuables qui ont fait l'objet d'une imposition non conforme aux dispositions de la Convention. Le paragraphe 1er dispose qu'une personne peut soumettre son cas à l'autorité compétente de l'un ou l'autre État contractant. L'article comporte au paragraphe 5 un dispositif d'arbitrage.

L'article 26 réglemente l'échange de renseignements entre les États contractants. L'article suit l'approche adoptée au modèle de l'OCDE.

L'article 27 organise l'assistance en matière de recouvrement des impôts. Cet article énonce les règles suivant lesquelles les États contractants peuvent se prêter mutuellement assistance dans le cadre du recouvrement de l'impôt. L'assistance au recouvrement est limitée aux impôts visés par la Convention.

L'article 28 reprend les règles applicables aux membres des missions diplomatiques et des postes consulaires. Il suit l'approche adoptée au modèle de l'OCDE.

L'article 29 reprend une disposition sur la limitation générale du droit aux avantages de la Convention. La disposition reprise est la règle des objets principaux stipulant qu'un avantage prévu par la Convention n'est pas accordé s'il est raisonnable de conclure que l'octroi de cet avantage était un des objets principaux d'un montage ou d'une transaction ayant permis, directement ou indirectement, de l'obtenir.

Le paragraphe 2 reprend une disposition optionnelle figurant aux commentaires du modèle de l'OCDE dans sa version 2017 qui met en place un processus de consultation entre les autorités compétentes. Ainsi, l'autorité compétente à laquelle la demande a été adressée consulte l'autorité compétente de l'autre État avant de rejeter une demande présentée par un résident de cet autre État.

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

L'article 31 arrête les modalités selon lesquelles la Convention pourra être dénoncée.

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FICHE D'EVALUATION D'IMPACT

Mesures législatives et réglementaires

Intitulé du projet:	**Projet de loi portant approbation de l' "Agreement between the Grand Duchy of Luxembourg and the Republic of Rwanda for the elimination of double taxation with respect to taxes on income and on capital and the prevention of tax evasion and avoidance", fait à Luxembourg, le 29 septembre 2021**
Ministère initiateur:	**Ministère des Finances**
Auteur:	**Michel Hoffmann**
Tél. :	**247-52361**
Courriel:	**michel.hoffmann@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):	
Ministère des Affaires étrangères et européennes	
Date:	**11.02.2022**

Mieux légiférer

1. Partie(s) prenante(s) (organismes divers, citoyens, …) consultée(s): Oui ☐ Non ☒[1]
   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.[2] ☒
   (c.àd. 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:

1 Double-click sur la case pour ouvrir la fenêtre permettant de l'activer

2 N.a.: non applicable.

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[3] 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[4] 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[5]? 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. ☒

    Si non, pourquoi?

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

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3 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.

4 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.).

5 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)

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[6]? Oui ☐ Non ☐ N.a. ☒

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

    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[7]? Oui ☐ Non ☐ N.a. ☒

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

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

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FICHE FINANCIERE

conformément à l'article 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 du Rwanda 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, faite à Luxembourg, le 29 septembre 2021, ne comporte pas de dispositions dont l'application est susceptible de grever le budget de l'État.

*

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

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

TEXTE DE LA CONVENTION

AGREEMENT

between the Grand Duchy of Luxembourg and the Republic of Rwanda 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 Republic of Rwanda

Desiring to further develop their economic relationship and to enhance their co-operation in tax matters,

Intending to conclude an Agreement 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 Agreement for the indirect benefit of residents of third States)

HAVE AGREED as follows:

Article 1

Persons covered

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

2. For the purposes of this Agreement, 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 Agreement shall apply to taxes on income and on capital imposed on behalf of a Contracting State or of its 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, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

3. The existing taxes to which the Agreement shall apply are in particular:
   a) in the Grand Duchy 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 Republic of Rwanda:
      (i) personal income tax;

(ii) corporate income tax;

(iii) tax on rent of immovable property; and

(iv) the withholding taxes;

(hereinafter referred to as "Rwandan tax").

4. The Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Agreement 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 taxation laws.

Article 3

General definitions

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

a) 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;

b) the term "Rwanda" means the Republic of Rwanda and when used in geographical sense, includes all the territory, lakes and any other area in the lakes and the air within which Rwanda may exercise sovereign rights or jurisdiction in accordance with international law;

c) the terms "a Contracting State" and "the other Contracting State" mean Luxembourg or Rwanda as the context requires;

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 term "enterprise" applies to the carrying on of any business;

g) 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;

h) 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;

i) the term "competent authority" means:

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

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

j) 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;

k) the term "business" includes the performance of professional services and of other activities of an independent character.

2. As regards the application of the Agreement 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 25, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Agreement 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 Agreement, 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

management or any other criterion of a similar nature, and also includes that State and any 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 to 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.

4. 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.

Article 5

Permanent establishment

1. For the purposes of this Agreement, 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 workshop;

f) a mine, an oil or gas well, a quarry or any other place of extraction, exploitation or exploration of natural resources, and

g) a warehouse in relation to a person providing storage facilities for others.

3. The term “permanent establishment” shall be deemed to include:

a) a building site, a construction, assembly, installation or dredging project or any supervisory activity in connection with such site or project, but only where such site, project or activity continues for a period of more than 6 months;

b) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by an enterprise for such purpose, but only where activities of that nature continue (for the same or a connected project) within the Contracting State for a period or periods exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned;

c) substantial equipment or machinery that is operated, or is available for operation, in a Contracting State for a period or periods aggregating more than 90 days in any twelve-month period commencing or ending in the fiscal year concerned.

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 activity not listed in sub-paragraphs a) to d), provided that this activity has 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 an 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.

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.

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 and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In determining 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 Contracting 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. In so far 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 Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8

International shipping and air transport

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

a) profits derived from the rental on a bare boat basis of ships or aircraft used in international traffic,

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

if such profits are incidental to the profits to which the provisions of paragraph 1 apply.

3. 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.

4. 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 Agreement and the competent authorities of the Contracting States shall if necessary consult each other.

3. The provisions of paragraph 2 shall not apply where judicial, administrative or other legal proceedings have resulted in a final ruling that by actions giving rise to an adjustment of profits under paragraph 1, one of the enterprises concerned is liable to penalty with respect to fraud, gross negligence or wilful default.

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 10 per cent of the gross amount of the dividends.

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, “jouissance” shares or “jouissance” rights, 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, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 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 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 10 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 derived by the Government of the other Contracting State or a local authority thereof, the Central Bank of a Contracting State or any institution wholly owned and controlled by that Government or local authority.

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 paragraphs 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, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 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 that person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment 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 bene-

ficial 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 Agreement.

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 10 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 cinematograph films, or films or tapes used for radio or television broadcasting, any patent, trade mark, 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, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 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 that person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the State in which the permanent establishment 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 Agreement.

Article 13

Technical fees

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

2. However, technical fees 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 technical fees is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the technical fees.

3. The term ”technical fees" 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 service of a technical, managerial, professional or consultancy nature, unless the payment is the reimbursement of actual expenses incurred by that person with respect to the service.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the technical fees, being a resident of a Contracting State, carries on business in the other Contracting State in which the technical fees arise, through a permanent establishment situated therein and the technical fees are effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.

5. Technical fees shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the technical fees, whether that person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the obligation to pay the technical fees was incurred, and such technical fees are borne by the permanent establishment, then such technical fees shall be deemed to arise in the State in which the permanent establishment 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 technical 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 payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

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, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), 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 deriving more than 50 per cent of their value directly or indirectly from immovable property situated in the other Contracting State may be taxed 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

Income from employment

1. Subject to the provisions of Articles 16, 18 and 19, 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 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, may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

Article 16

Director's 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 17

Entertainers and sportspersons

1. Notwithstanding the provisions of Article 15, 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, notwithstanding the provisions of Article 15, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

3. Income derived by a resident of a Contracting State from activities exercised in the other Contracting State as envisaged in paragraphs 1 and 2, shall be exempt from tax in that other State if the visit to that other State is supported wholly or mainly by public funds of the first-mentioned Contracting State or a local authority thereof, or takes place under a cultural agreement or arrangement between the Governments of the Contracting States.

Article 18

Pensions

1. Subject to the provisions of paragraph 2 of Article 19, 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. However, such pensions and other similar remuneration may also be taxed in the other Contracting State if they arise 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 19

Government service

1. a) Salaries, wages and other similar remuneration paid by a Contracting State 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 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 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 15, 16, 17 and 18 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 local authority thereof.

Article 20

Students

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.

Article 21

Other income

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement 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, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 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 the Agreement and arising in the other Contracting State may also be taxed in that other State.

Article 22

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 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 23

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 Agreement, may be taxed in Rwanda, 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 17 and paragraph 3 of Article 21 may be taxed in Rwanda, 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 Rwanda. 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 Rwanda.

c) The provisions of sub-paragraph a) shall not apply to income derived or capital owned by a resident of Luxembourg where Rwanda applies the provisions of this Agreement 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. In Rwanda, double taxation shall be eliminated as follows:

Luxembourg tax paid by a resident of Rwanda in respect of income taxable in Luxembourg, in accordance with the provisions of this Agreement, shall be deducted from taxes due in accordance with Rwandan Tax Law (which shall not affect the general principle hereof). Such deduction shall not, however, exceed the tax payable in Rwanda that would otherwise be payable on the income taxable in Luxembourg.

Article 24

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, technical fees 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 25

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 Agreement, 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 Agreement.

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 Agreement. 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 Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

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.

5. Where,

a) under paragraph 1, a person has presented a case to the competent authority of a Contracting State on the basis that the actions of one or both of the Contracting States have resulted for that person in taxation not in accordance with the provisions of this Agreement, and

b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 within three years from the date when all the information required by the competent authorities in order to address the case has been provided to both competent authorities,

any unresolved issues arising from the case shall be submitted to arbitration if the person so requests in writing. These unresolved issues shall not, however, be submitted to arbitration if a decision on these issues has already been rendered by a court or administrative tribunal of either State. Unless a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision, that decision shall be binding on both Contracting States and shall be implemented notwithstanding any time limits in the domestic laws of these States. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this paragraph.

Article 26

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 Agreement 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 local authorities, insofar as the taxation thereunder is not contrary to the Agreement. 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 27

Assistance in the collection of taxes

1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Article 1. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.

2. The term ”revenue claim” as used in this Article means any amount owed in respect of taxes covered by the Agreement together with interest, administrative penalties and costs of collection or conservancy related to such amount.

3. When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.

4. When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection.

5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.

6. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.

7. Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be:

a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, or

b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection.

the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.

8. In no case shall the provisions of this Article 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 carry out measures which would be contrary to public policy (ordre public);

c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;

d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State.

Article 28

Members of diplomatic missions and consular posts

Nothing in this Agreement 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 Agreement, a benefit under this Agreement 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 Agreement.

2. Where a benefit under this Agreement 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 Agreement have been satisfied. The Agreement shall enter into force on the date of receipt of the last notification.

2. The Agreement shall have effect:

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

b) in respect of other taxes on income, and taxes on capital, to taxes chargeable for any taxable year beginning on or after 1st January of the calendar year next following the year in which the Agreement enters into force.

Article 31

Termination

1. This Agreement shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Agreement, 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 Agreement shall cease to have effect:

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

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

IN WITNESS whereof the undersigned, duly authorised thereto, have signed this Agreement.

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

For The Government of the Grand Duchy of Luxembourg

Pierre GRAMEGNA

Minister of Finance

For The Government of the Republic of Rwanda

Dieudonné R. SEBASHONGORE

Ambassador of the Republic of Rwanda to Grand Duchy of Luxembourg

Impression: CTIE – Division Imprimés et Fournitures de bureau