



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

May 20, 2009

Excellency,

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

1. It is understood that the competent authority of the requested State shall provide upon request by the competent authority of the requesting State information for the purposes referred to in paragraph 1 of Article 28. Such information shall be exchanged without regard to whether the requested State needs such information for its own tax purposes or the conduct being investigated would constitute a crime under the laws of the requested State if it had occurred in the territory of the requested State.

2. Pursuant to paragraph 5 of Article 28, it is understood that each Contracting State shall ensure that its competent authority has the authority to obtain and provide upon request:

a) information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees;

b) information regarding the ownership of companies, partnerships, trusts, foundations and other persons, including ownership information on all such persons in an ownership chain; in the case of trusts, information on settlors, trustees and beneficiaries; and in the case of foundations, information on founders, members of the foundation council and beneficiaries; provided, however, that a requested State is not obliged to provide information which is neither held by its authorities nor in the possession or control of persons who are within its territorial jurisdiction. For purposes of the preceding sentence, "authorities" includes all

government agencies, political subdivisions, and local authorities. Further, this Convention does not create an obligation on the Contracting States to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties.

3. The competent authority of the applicant State shall provide the following information to the competent authority of the requested State when making a request for information under the Convention to demonstrate the foreseeable relevance of the information to the request:

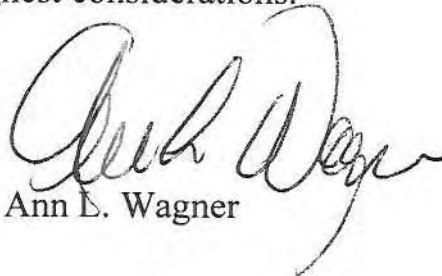
- (a) the identity of the person under examination or investigation;
- (b) a statement of the information sought including its nature and the form in which the applicant State wishes to receive the information from the requested State;
- (c) the tax purpose for which the information is sought;
- (d) grounds for believing that the information requested is held in the requested State or is in the possession or control of a person within the jurisdiction of the requested State;
- (e) to the extent known, the name and address of any person believed to be in possession of the requested information;
- (f) a statement that the request is in conformity with the law and administrative practices of the applicant State, that if the requested information was within the jurisdiction of the applicant State then the competent authority of the applicant State would be able to obtain the information under the laws of the applicant State or in the normal course of administrative practice and that it is in conformity with this Convention;
- (g) a statement that the applicant State has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

4. The competent authorities of the Contracting States will work together to develop mutual procedures for the exchange of information, including, (i) with respect to specific requests, the form for making a specific request, the time and manner of responding to a request, and the possibility for declining a request, and (ii) other procedures or forms of assistance concerning the efficient exchange of information.

If the foregoing understandings meet with the approval of the Government of the Grand Duchy of Luxembourg, I have the further honor to propose that this Note and your affirmative Note in reply shall constitute an agreement between our Governments which shall become an integral part of the Convention on the date of entry into force of the Protocol.

Accept, Your Excellency, the expression of my highest considerations.



  
Ann L. Wagner



Luxembourg, le 20 mai 2009

Excellence,

J'ai l'honneur d'accuser réception de votre lettre du 20 mai 2009, libellée comme suit:

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

1. It is understood that the competent authority of the requested State shall provide upon request by the competent authority of the requesting State information for the purposes referred to in paragraph 1 of Article 28. Such information shall be exchanged without regard to whether the requested State needs such information for its own tax purposes or the conduct being investigated would constitute a crime under the laws of the requested State if it had occurred in the territory of the requested State.

2. Pursuant to paragraph 5 of Article 28, it is understood that each Contracting State shall ensure that its competent authority has the authority to obtain and provide upon request:

a) information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees;

b) information regarding the ownership of companies, partnerships, trusts, foundations and other persons, including ownership information on all such persons in an ownership chain; in the case of trusts, information on settlors, trustees and beneficiaries; and in the case of foundations, information on founders, members of the foundation council and beneficiaries; provided, however, that a requested State is not obliged to provide information which is neither held by its authorities nor in the possession or control of persons who are within its territorial jurisdiction. For purposes of the preceding sentence, "authorities" includes all government agencies, political subdivisions, and local authorities. Further, this Convention does not create an obligation on the Contracting States to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties.

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Son Excellence  
Madame Ann Louise WAGNER  
Ambassadeur des Etats-Unis d'Amérique  
22, boulevard Emmanuel Servais  
L-2535 LUXEMBOURG

3. The competent authority of the applicant State shall provide the following information to the competent authority of the requested State when making a request for information under the Convention to demonstrate the foreseeable relevance of the information to the request:

- (a) the identity of the person under examination or investigation;
- (b) a statement of the information sought including its nature and the form in which the applicant State wishes to receive the information from the requested State;
- (c) the tax purpose for which the information is sought;
- (d) grounds for believing that the information requested is held in the requested State or is in the possession or control of a person within the jurisdiction of the requested State;
- (e) to the extent known, the name and address of any person believed to be in possession of the requested information;
- (f) a statement that the request is in conformity with the law and administrative practices of the applicant State, that if the requested information was within the jurisdiction of the applicant State then the competent authority of the applicant State would be able to obtain the information under the laws of the applicant State or in the normal course of administrative practice and that it is in conformity with this Convention;
- (g) a statement that the applicant State has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

4. The competent authorities of the Contracting States will work together to develop mutual procedures for the exchange of information, including, (i) with respect to specific requests, the form for making a specific request, the time and manner of responding to a request, and the possibility for declining a request, and (ii) other procedures or forms of assistance concerning the efficient exchange of information.

If the foregoing understandings meet with the approval of the Government of the Grand Duchy of Luxembourg, I have the further honor to propose that this Note and your affirmative Note in reply shall constitute an agreement between our Governments which shall become an integral part of the Convention on the date of entry into force of the Protocol.”

J'ai l'honneur de confirmer l'accord du Grand-Duché de Luxembourg sur le contenu de votre lettre. Par conséquent votre lettre et cette confirmation constituent ensemble un Accord entre nos gouvernements lequel deviendra partie intégrante de la Convention à la date de l'entrée en vigueur du Protocole.

Veuillez agréer, Excellence, l'assurance de ma très haute considération.



Luc Frieden