

## Luxembourg Tax Alert

### New Luxembourg exit tax rules

20 January 2020

The [EU Anti-Tax Avoidance Directive of 29 May 2017](#) (ATAD 2 – refer to the related [tax alert for more details](#)), as well as the exit tax provisions of the [EU Anti-Tax Avoidance Directive of 12 July 2016](#) (ATAD 1) became effective in Luxembourg as from fiscal years starting on or after 1 January 2020.

The Luxembourg legislation implementing the ATAD 1 into domestic law was published on 21 December 2018 and generally became effective for fiscal years starting on or after 1 January 2019. The provisions covering exit taxation apply to fiscal years starting on or after 1 January 2020.

#### Overview of new exit tax provisions

Luxembourg's exit tax rules are amended to bring them in line with the ATAD 1 provisions. The rules specifically cover the transfer of assets, the transfer of a taxpayer's tax residence and the transfer of activities of a permanent establishment (PE) into and out of Luxembourg.

Where assets are transferred into Luxembourg, the value of the assets as determined by the exit state must be used for Luxembourg tax purposes, unless that value does not reflect the fair market value (going concern value) of the assets. The acquisition date of the assets is their historical acquisition date as opposed to their transfer date. This rule applies to transfers of assets from any jurisdiction (even from a non-EU member state) into Luxembourg.

If an enterprise, a PE or individual assets are transferred from Luxembourg to another jurisdiction, taxpayers are subject to exit tax in an amount equal to the going concern value of the transferred assets at the date of the transfer less their tax value.

In addition, for fiscal years starting on or after 1 January 2020, taxpayers no longer can benefit from an indefinite deferral of payment of their exit tax liability. Instead, where applicable, the exit tax due must be paid in installments over a five-year period (without interest) in the case of a transfer to an EU or European Economic Area country with which Luxembourg or the EU has concluded a mutual assistance agreement for the recovery of tax claims. For transfers to any other jurisdiction, deferrals are no longer permitted.

## Modified provisions

### *Transfer of assets into Luxembourg*

Where a taxpayer transfers into Luxembourg (i) its tax residence, (ii) its activities carried out through a foreign PE, (iii) the assets of a foreign PE, or (iv) the assets of a foreign enterprise, the value of the net invested assets at the beginning of the first financial year in Luxembourg must be equal to the value determined in the exit state unless it does not reflect the going concern value of the assets. Luxembourg can challenge the value determined by the exit state if it is greater than the going concern value.

The acquisition date of the assets transferred is their effective acquisition date, i.e. the historical acquisition date. The new provisions cover transfers from any jurisdiction, including jurisdictions outside of the EU.

### *Transfer of assets out of Luxembourg*

The scope of the previous exit tax provisions is extended to cover the transfer of individual assets out of Luxembourg, in addition to assets forming part of an undertaking or a PE. These provisions cover transfers to both EU and non-EU jurisdictions.

The following transactions are treated as taxable transactions:

- A taxpayer transfers assets from an undertaking in Luxembourg to a PE in another jurisdiction, and Luxembourg no longer has the right to tax the assets;
- A taxpayer transfers the assets of a Luxembourg PE to an undertaking, registered office or PE in another jurisdiction and Luxembourg no longer has the right to tax the assets;
- A taxpayer transfers its tax residence, habitual abode or registered seat and head office to another jurisdiction, except for assets that remain effectively connected to a local PE and whose book values are maintained in Luxembourg; and
- A taxpayer transfers the activities of its local PE to another jurisdiction and Luxembourg no longer has the right to tax the assets.

In any of the above transactions, the going concern value of the transferred assets on the date of the transfer is used as the estimated realization value of the undertaking, the PE or the individual assets.

In addition, transfers of assets made to meet prudential capital requirements or for liquidity management purposes and that are temporary in nature are not subject to exit tax. These assets remain included in the net invested assets of the taxpayer as if the transfer abroad had not occurred and the income related to these assets continues to be taxable in Luxembourg.

### *Payment deferrals*

The exit tax provisions also were modified in line with ATAD 1 so that the payment of tax due on the gain realized on the transfer of assets abroad no longer may be deferred in most cases. Deferrals now are allowed only for transfers to EU member states and certain EEA countries with which Luxembourg or the EU has concluded a mutual assistance

agreement for the recovery of tax claims. The deferral will be terminated and the tax will become due immediately if:

- The assets or the business are disposed of other than through certain tax-neutral transactions;
- The assets, the business or the tax residence are transferred to a non-EU member state, unless certain conditions are fulfilled;
- The taxpayer becomes bankrupt;
- The taxpayer fails to pay installments as they become due; or
- The taxpayer fails to submit documentation to the tax authorities annually certifying that the assets, business or tax residence have not been transferred in violation of the tax deferral provisions.

Luxembourg chose not to impute interest on installment payments and not to require that the taxpayer provide a guarantee, although ATAD 1 offers such options for EU member states. In addition, exit tax payment deferrals granted under the old regime for financial years that closed before 1 January 2020 are not impacted by the new provisions.

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