

## Luxembourg Tax Alert

### Limitation of validity period of tax rulings issued before 1 January 2015 and guidance on how to renew them

**3 January 2020**

Luxembourg's 2020 budget law, voted and published in the Official Journal, includes a new provision limiting the validity period of advance tax decisions (ATAs) issued by the Luxembourg direct tax authorities before 1 January 2015 to the end of fiscal year 2019.

ATAs are granted by Luxembourg's tax authorities upon written requests by taxpayers; such decisions set out how the concerned transactions/activities will be treated for tax purposes. Since ATAs approved by the Luxembourg tax authorities (*Commission des Décisions Anticipées*) after 1 January 2015, in principle, are valid for five years, the new measure aligns the treatment of pre- and post-2015 ATAs.

As a result, pre-2015 ATAs cannot be relied on as from fiscal year 2020. However, as long as the tax treatment described in the expired ATA complies with the legislation in force, this treatment should continue to apply.

As from fiscal year 2020, taxpayers who wish to obtain an ATA to replace an ATA expired by application of new paragraph 29b of the General Tax Law, will have to submit a new request. In the parliamentary process, both the Council of State and the parliamentary commission (*COFIBU*) stated that the Luxembourg tax authorities cannot reject a new request on the grounds that the relevant transactions already have produced their effects under the application of an ATA expiring under paragraph 29b of the General Tax Law.

On 3 December 2019, the Luxembourg tax authorities published a newsletter (in French only) detailing the formalities and procedural steps that taxpayers should follow if they wish to renew an expired ATA:

- ATA requests must be submitted in writing to the competent tax office and must follow specific procedures (as detailed in paragraph 29a of the General Tax Law and the Grand Ducal Regulation of 23 December 2014). The request must be substantiated and include:
  1. Information about the applicant (name, address and, if applicable, tax identification number), the names of the parties relevant to the transaction(s), other third parties involved and a description of their respective activities
  2. A detailed description of the transaction(s) under consideration that have not yet produced their effects

3. A detailed analysis of the tax issues related to the proposed transaction(s), along with an explanation of the applicant's position on the issues
  4. Confirmation that all necessary information is complete and accurate.
- Taxpayers may reapply for an ATA by following these procedures if the ATA expires as a result of the new provision or pursuant to the terms of the ATA itself (e.g. expiration of the term mentioned in the ATA) and the ATA addresses transactions that have not yet produced their effects at the time the ATA expires.

However, the interpretation mentioned by the Luxembourg tax authorities in their December newsletter is inconsistent with the views clearly shared during the legislative procedure as stated above. Therefore, if an ATA without a time limit expires by application of the new paragraph 29b of the General Tax Law, the concerned taxpayer may reapply for an ATA even if transactions have already produced their effects. Taking these circumstances into account, taxpayers should consider submitting the new request before the closing date of the 2020 fiscal year.

- To facilitate the review of ATA requests and to ensure the efficient and timely issuance of responses, the tax authorities remind taxpayers that all applications must include a summary based on the model that may be obtained from the ATA commission (*Commission des Décisions Anticipées*). The summary must include the information required by the Grand Ducal Regulation of 23 December 2014 and a sworn statement.

The tax authorities also remind taxpayers that the standard form for the international exchange of information on advance cross-border rulings and advance pricing agreements (Form 777E) must be submitted if the request concerns a company and a cross-border transaction.

An ATA may not result in a tax exemption or a tax reduction. It will bind the Luxembourg tax authorities for up to five fiscal years, except in the following cases:

- The circumstances or the transactions were incomplete or inaccurately described in the taxpayer's request
- Subsequent circumstances or transactions differ from those on which the tax authorities based the ATA
- The ATA does not conform to national, EU, or international law.

# Your contacts

**Bernard David**

Partner – International Tax Leader

Tel : +352 45145 2799

[bdavid@deloitte.lu](mailto:bdavid@deloitte.lu)

**Dany Teillant**

Partner – Private Equity Tax Leader

Tel : +352 45145 2246

[dteillant@deloitte.lu](mailto:dteillant@deloitte.lu)

**Raymond Krawczykowski**

Partner – Tax Business Leader

Tel : +352 45145 2500

[rkrawczykowski@deloitte.lu](mailto:rkrawczykowski@deloitte.lu)

**Stéphane Tilkin**

Partner – International Tax

Tel : +352 45145 2307

[stilkin@deloitte.lu](mailto:stilkin@deloitte.lu)

Deloitte Luxembourg  
20 Boulevard de Kockelscheuer  
L-1821 Luxembourg  
Grand Duchy of Luxembourg

Tel: +352 451 451

Fax: +352 451 452 401

[www.deloitte.lu](http://www.deloitte.lu)

Deloitte is a multidisciplinary service organisation which is subject to certain regulatory and professional restrictions on the types of services we can provide to our clients, particularly where an audit relationship exists, as independence issues and other conflicts of interest may arise. Any services we commit to deliver to you will comply fully with applicable restrictions.

Due to the constant changes and amendments to Luxembourg legislation, Deloitte cannot assume any liability for the content of this leaflet. It shall only serve as general information and shall not replace the need to consult your Deloitte advisor.

**About Deloitte Touche Tohmatsu Limited:**

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee, and its network of member firms, each of which is a legally separate and independent entity. Please see [www.deloitte.com/lu/about](http://www.deloitte.com/lu/about) for a detailed description of the legal structure of Deloitte Touche Tohmatsu Limited and its member firms.

Deloitte provides audit, tax, consulting and financial advisory services to public and private clients spanning multiple industries. With a globally connected network of member firms in more than 150 countries, Deloitte brings world-class capabilities and deep local expertise to help clients succeed wherever they operate. Deloitte has in the region of 200,000 professionals, all committed to becoming the standard of excellence.

© 2020 Deloitte General Services

Designed and produced by MarCom at Deloitte Luxembourg