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Luxembourg Tax Alert

Draft law relating to 2017 tax measures available

27 July 2016

Following the February and April announcements (here our previous tax alert) in connection with the planned 2017 Luxembourg tax reform, the text of the draft law (n° 7020) relating to this reform was just submitted to the Luxembourg parliament. The Luxembourg parliament will now review this draft law, discuss and, if necessary, modify it before the approval.

The reform would impact many provisions of the Luxembourg tax law as from 2017 (for some measures as from 2016). The main tax measures that would affect companies and individuals are summarized below.

The main tax measures for companies would be:

- In order to encourage young innovative companies, the corporate income tax rate would be 15% (currently 20%) for corporations whose annual taxable income amount would not exceed EUR 25,000 (currently EUR 15,000). Moreover, to enhance competitiveness, this reduction would be combined with the reduction of the maximum corporate income tax from the current 21% to 19% in 2017 and 18% in 2018. The current effective combined income tax rate is 29.22%, including the corporate income tax, municipal business tax (for Luxembourg City) and the contribution to the unemployment fund; this effective combined income tax rate would decrease to 27.08% in 2017 and 26.01% in 2018. As mentioned in the draft law, the government aims to ensure the competitiveness of the Luxembourg tax system in compliance with international rules and therefore additional adjustments could be announced in the near future.

- The utilization of carried-forward losses would be time-restricted as from 2017. Losses realised as from 2017 would be carried forward for a limited period of 17 years (vs. indefinitely). The oldest losses would be deductible first. The second limitation relating to the amount of losses initially announced has finally not been retained. Prior years' tax losses realised up to the fiscal year ending on 31 December 2016 would be carried forward without any limitation in time.

- Currently certain undertakings (e.g. regulated credit institutions, regulated insurances and re-insurances and other undertakings trading monetary and financial assets) benefit from a temporary tax relief on foreign exchange gains derived from assets invested in the foreign currency of the share capital and representing the equity capital of the undertaking (article 54bis of the Luxembourg income tax law). This measure would be extended, as from tax year 2016, to all companies which have their contributed capital in a foreign currency (other than euros).

- A new deferred amortization regime would be introduced. The taxpayer would, under option, differ the deduction allowed by the amortization. This optional mechanism would increase the corporate income tax due and allow to limit, under certain conditions, the net wealth tax due.

- The tax credits for investment would be increased as follows:
    - The complementary tax credit for investment would be increased from 12% to 13%.
    - The global tax credit for investment would be increased from 7% to 8% for an investment which does not exceed EUR 150,000.
    - As for investments in fixed assets authorised to apply a special depreciation, the rate of 8% for the first bracket would be increased to 9%.
    - The goods physically located in the European economic area would benefit also of the tax credits for investment.

- The minimum net wealth tax, introduced in 2016 in replacement of the minimum corporate tax would be increased from EUR 3,210 to EUR 4,815 for SOPARFIs.

- The deadline for the constitution of the special net wealth tax reserve would be clarified and would be as follows: for example for a reduction of the NWT 2017, the constitution of the special reserve would be decided when the 2016 results are allocated and at the latest at the closing of the 2017 fiscal year.

- With regards to making the electronic filing mandatory, the electronic filing of the corporate tax returns, municipal business tax returns and net wealth tax returns for corporations would be mandatory as from the 2016 tax returns (01/01/2017 for the net wealth tax returns). With the electronic filing, the taxation would become in most cases automatically provisional under §100 AO (Abgabenordnung).

- To facilitate the transfer of family-owned companies, capital gains derived from immovable property (land or buildings) belonging to the divested business would be exempt if certain conditions are met.

- The 0.24% registration duty in connection with the use, transfer or capitalization of debts would be abolished.

The main tax measures for individuals would be:

- The temporary 0.5% budgetary compensation tax would be abolished.

- The top individual tax rate would be increased progressively from 40% to 42% (taxable income above EUR 200,004).

- A new tax reduction up to EUR 5,000 for cars with zero emission as well as for e-bikes would be introduced.

- The deductibility ceiling on mortgage interest on an individual's principal residence would be increased. The "rental value" for the principal residence would be abolished.

- Various tax advantages would be revisited:
  - The face value of meal vouchers for employees "chèques repas" would be increased from EUR 8.40 to EUR 10.80.
  - A modulation of the benefit in kind for company cars depending on the carbon.
  - The tax credits for single parent households would be increased up to EUR 1,500 and would be modulated depending on the revenues.
  - The tax deduction for debit interest and for life insurance premiums would be merged, allowing for a maximum tax deduction of EUR 672.
  - The tax credits for employees and pensioners would be modulated depending on the revenues.
  - The tax deduction for home saving schemes would be increased from EUR 672 to EUR 1,344 for taxpayers under 40.
  - The maximum tax deduction for old-age pension would not depend on the taxpayer's age anymore but would be fixed at maximum EUR 3,200.
  - A deduction of extraordinary costs for children not living as part of the household would be increased as from 2017 from EUR 3,480 to EUR 4,020.
  - The monthly maintenance allowance amount which does not reduce the tax credits for single parent households ("Crédit d'impôt monoparental") would be increased from EUR 160 to EUR 184 per month.
  - The lump sum allowance for extra-ordinary charges (i.e. domestic costs for housekeeping, cleaners and other home helps; cost of care and assistance in cases of dependence; childcare costs) currently amounts to EUR 3,600 per tax year. As from 2017, it would amount to EUR 5,400 per tax year.
- Married couples would be permitted to opt to be taxed separately. Each of them would benefit from an extra-professional abatement of EUR 2,250.

- The tax regime for non-resident married tax payers would be aligned more closely with the one of resident taxpayers with regard to the tax classes and applicable tax deductions.

- The withholding tax on interest income in the scope of the Relibi law would increase from 10% to 20%.

A planned modification of the tax fraud regime for individual income tax, corporate tax and VAT

A new “aggravated tax fraud” offence would be created which would be sanctioned by criminal law. The existing regime of fraud would also be modified to allow administrations to sanction certain reprehensible behaviours of tax payers by imposing administrative fines.

Moreover, and still in order to reinforce the coercive power of the tax authorities, various amounts of penalties would be increased. For example, the penalty for the late submission of the tax returns, currently amounting to EUR 1,239.47, would be increased up to EUR 25,000.

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