Luxembourg
Tax Department

Luxembourg Tax Alert.

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Exit taxation and roll-over relief: Luxembourg has introduced new tax rules

Following recent European developments, Luxembourg has introduced new rules extending the deferral of tax collection applicable to:

- transfer of residence from Luxembourg to another European Economic Area ("EEA") Member State (exit taxation); and
- reinvestment of capital gains on some assets into a qualifying asset situated in a permanent establishment located in an EEA Member State (roll-over relief).

The new tax provisions, published in the Luxembourg official journal on 4 June 2014*, are now effective.

Exit taxation

Upon the transfer by a Luxembourg corporate taxpayer of its registered seat and central administration outside the country, any unrealised gains are immediately subject to taxation, unless a specific exemption applies (e.g. participation exemption regime).

In accordance with the European Court of Justice decision National Grid Indus (C-371/10), Luxembourg corporate taxpayers will now have the possibility to either:

1. pay immediately the tax liability arising upon the migration; or
2. upon request, defer the tax payment on unrealised gains until their realisation.
   In order to benefit from this regime, two conditions must be met: the corporate taxpayer remains resident in an EEA Member State following the migration outside Luxembourg and should continue to own the transferred assets. The ownership of the transferred assets must be documented every year to secure deferred taxation. No details have been issued as to the documentation required to evidence the ownership.
   No late interest payment will be charged and no financial guarantee will be required.

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Moreover, the deferred tax payment is also now applicable to any taxpayer resident in an EEA Member State who transfers, under the above conditions, a Luxembourg enterprise or permanent establishment to another EEA Member State.

Furthermore, any loss realised post-migration on assets transferred to another EEA Member State will be deductible in Luxembourg provided that such loss is not deductible in this other EEA Member State.

Roll-over relief

Any gain realised upon the disposal of real estate or non-depreciable assets ("fixed assets") may be deferred and transferred to another qualifying fixed asset ("reinvested asset") under certain conditions.

Previously, one of the conditions to benefit from roll-over relief was that the reinvested asset must be allocated to a Luxembourg permanent establishment. This condition was deemed to be in breach of European law.

Pursuant to the new law, roll-over relief now extends to situations where the reinvested asset is owned by a permanent establishment located in an EEA Member State provided that the reinvested asset is clearly identified and specific accounting rules are respected. The right of Luxembourg to tax the original gain will be guaranteed through the booking of a special and separate reserve in the balance sheet of the company.

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