

Luxembourg Tax Alert

The Luxembourg government presents new tax measures

The Luxembourg government presented during the summer a draft bill to the Luxembourg parliament that included some beneficial measures for corporate taxpayers. In addition, the Luxembourg government has just presented the 2016 state budget draft law and another draft bill including new tax measures for taxpayers.

The relevant proposed measures for companies and individuals are outlined below:

Measures affecting companies

- *Abolition of minimum corporate income tax and revising of Net Worth Tax*

A Net Worth Tax (NWT) of 0.5% is levied annually on the total net assets of Luxembourg companies.

The draft law proposes the revision of the NWT in two ways: a reduction of the NWT rate and the introduction of a minimum NWT to replace the minimum corporate income tax.

On the basis of the proposed draft bill, the NWT rate would be in two threshold depending on the total net assets as from 1 January 2016:

- 0,5% on the total net assets up to €500 million (unchanged from the current rule);
- 0,05% on the total net assets as from €500 million.

The minimum corporate income tax, which was introduced in 2011 and has since been revised, is proposed to be abolished to bring Luxembourg in line with EU law. It would be replaced by a minimum NWT as from fiscal year 2016.

[The attached diagram summarizes the proposed minimum NWT regime.](#)

The NWT charge may be reduced in whole or in part if the relevant entity creates and maintains for five years a specific reserve. Currently, the minimum corporate income tax is not taken into account for this NWT reduction. The same measure will apply for the minimum NWT.

- *Repeal of the current IP box regime and transitional period*

Pursuant to the discussions and the agreement reached at both OECD and EU levels, the current Article 50 bis LITL and 60 BewG pertaining to the Luxembourg IP regime will be repealed but with some grand-fathering, subject to certain conditions.

This repeal echoes the political agreement reached for patent boxes regimes according to which IP regimes need to comply with the new approach called “Nexus approach” as depicted in the BEPS action 5 “Agreement on Modified Nexus Approach for IP Regimes”.

The repeal will be applicable as from 1 July 2016 and for net wealth tax purposes as from 1 January 2017. The new IP regime is expected to be presented in the coming months.

Existing IP regimes may however be maintained during a transitory period beginning as of 1 July 2016 and ending on 30 June 2021.

It means that taxpayers benefiting from the current Luxembourg IP regime, having created, acquired or definitely improved eligible IP rights before 1 July 2016 will be able to continue to benefit from this regime until 30 June 2021. New entrants may also be admitted to the existing regime until 30 June 2016.

The transitional period is however subject to two safeguard conditions.

- The benefit of the transitional period does not apply after the 31 December 2016 for IP rights that will be acquired directly or indirectly from related parties after the 31 December 2015, unless if the IP right has been eligible at the time of its acquisition to the Luxembourg IP regime or foreign IP regime corresponding to the Luxembourg one.

The term “related parties” is broadly defined by reference to Article 56 LITL as an undertaking participating directly or indirectly in the management, control or capital of another undertaking, or a situation in which the same persons participate directly or indirectly in the management, control or capital of two undertakings.

- For taxpayers benefiting from the current Luxembourg IP regime in connection with IP rights acquired or created after 6 February 2015, there will be a spontaneous exchange of information three months after Luxembourg tax authorities have been informed, or no later than one year after the filing of the tax return by the taxpayer.

For the purpose of the transitional period, IP right transferred through tax neutral corporate reorganization (e.g. merger, divisions, contribution) are deemed to be acquired at the date of the reorganization.

Measures affecting individuals

- *Step up*

The government introduces a mechanism a “step-up” mechanism for individuals (this mechanism is already being applied in the context of corporations under Article 35 LITL).

According to this step-up mechanism, latent unrealized gains accrued in foreign jurisdictions on (i) shares (and equivalent participations) as well as (ii) on convertible loans when the individual owns an important participation in the company would not be considered in Luxembourg when computing the taxable basis on disposal.

In order to achieve the taxable basis, the original acquisition price of the asset is replaced by its fair market value at the time of migration to Luxembourg under tax neutrality conditions. While the acquisition price is replaced by the fair market value at the time of migration to Luxembourg, the acquisition date of the asset remains the initial acquisition date (and not the date of migration) to compute holding periods. However, the draft law further provides that revaluation coefficients (used to compute the taxable capital gains) should refer to the date of migration and not the acquisition date.

- *Article 154 LITL*

The government modifies Article 154, § 6 LITL dealing with the taxation of employees and retired individuals who have only been resident for a part of the year. These individuals can claim a refund of withholding taxes by declaring their worldwide income and claiming full year tax deductions.

On the basis of the draft legislation, the application of this Article will be extended to all taxpayers being only part year resident. Currently a part year Luxembourg tax resident, who did not receive any Luxembourg nor foreign income in the non-resident period, was only entitled to a pro rata of the available tax deductions, reliefs and credits based on the number of months taxable in Luxembourg. In order to be aligned with EU legislation, these individuals would be entitled to full amount of the tax deductions. This modification would entail a very limited impact (employees and retired individuals being not impacted).

- *Other measure*

To benefit from this tax amnesty, the taxpayer must spontaneously file an amended tax return and must pay the whole of the tax due plus a surcharge.

For amended tax returns filed between the 1 January 2016 and 31 December 2016, the surcharge will be of 10% and of 20% for amended tax returns filed between 1 January 2017 and 31 December 2017.

The benefit of this regime is strictly reserved to Luxembourg tax residents and cannot obviously be used by a person under administrative or judicial proceeding in connection with eluded taxes.

The Luxembourg parliament must now review, discuss and, if necessary, modify the draft laws before it can be approved by the year-end.

Your contacts

Raymond Krawczykowski

Partner | Tax Leader

Tel/Direct: +352 451 452 500

rkrawczykowski@deloitte.lu

François Guilloteau

Partner | Cross Border Tax

Tel/Direct: +352 451 452 577

fguilloteau@deloitte.lu

Pierre-Jean Estagerie

Partner | Cross Border Tax

Tel/Direct: +352 451 454 940

pjestagerie@deloitte.lu

Deloitte Luxembourg

560, rue de Neudorf

L-2220 Luxembourg

Tel: +352 451 451

Fax: +352 451 452 401

www.deloitte.lu

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