Deloitte regulatory news alert

Update of Luxembourg Accounting Law - Implementation of the new Accounting Directive

5 January 2016

The new Luxembourg law* published in Memorial A on 28 December 2015 (the Law) implements a new EU requirement to report on payments made to governments by certain groups active in the extractive industry, and various amendments related to the individual and consolidated annual accounts. The main change affects the presentation of the profit and loss account that will be presented as a list from 2016 onwards.

Luxembourg's legislative bodies decided to adopt a 2-step approach for the implementation of the Directive 2013/34/EU** provisions. The first step, through draft law 6718, aims to conform Luxembourg Law to the Directive's requirements. These changes will be applicable for the financial years beginning on or after 1 January 2016. A second step will consist of deciding on optionality of certain accounting provisions foreseen in the new EU accounting directive, and to recast more deeply the Luxembourg Accounting Law.

In the context of the first step of the implementation of the new Accounting Directive, the Law mainly:

- revises upwards the size criteria for medium / large entities and groups;
- impacts the preparation of the annual accounts (introduction of a materiality concept, profit and loss account presented as a list, various changes in the disclosures and for consolidation rules);
- implements the requirement for large undertakings and public-interest entities which are active in the extractive industry or logging of primary forests to draw up report on payments made to governments.

*Law of 18 December 2015 amending, for the implementation of Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC:

1. the Law of 10 August 1915 on commercial companies, as amended,

2. Title II of the Law of 19 December 2002 on the commercial and companies register and on the accounting and annual accounts of undertakings, as amended,

3. Title II of Book I of the Commercial Code

** The Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings was published on 29 June 2013 in the Official Journal of the European Union. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 20 July 2015. This Directive is mainly a recast of the 4th and 7th accounting directives and provides more consistency and coherence to the accounting framework of non-listed companies

Key impacts of the update of Luxembourg Accounting Law

The following table presents the key topics and amendments of the

- Law of 19 December 2002 on the commercial and companies register and on the accounting records and annual accounts of undertakings (2002 Law)
- Law of 10 August 1915 on commercial companies, as amended (1915 Law)

Main topics in scope of the Law	**Category**	**2002 Law**	**1915 Law**
New principle of materiality (i)	Overall + Disclosures	Art. 26 (6), 51	Art. 319 (6)
Increased size criteria for medium/big entities and groups (ii)	Overall	Art. 47 (1)	Art. 313 (1)
New structure of balance sheet and profit and loss account (iii)	Balance sheet, P&L	Art. 34, 35, 46, 47	
Removal of extraordinary charges/income captions (iii)	P&L+ Disclosures	Art. 49, 50	
Costs of research cannot be capitalized	Valuation method	Art. 34., 35	
Accounting treatment of goodwill and development costs: amortization over useful life - if it cannot be estimated reliably, maximum 10 years	Valuation method	Art. 55. (1) c), 59	Art. 333
Disclosure of gross amounts where amounts of charges and income are offset in the profit and loss account or balance sheet	Disclosures	Art. 33	
Disclosure of details on other provisions is not required anymore	Disclosures	Art. 64	
Notes should be presented in the same order as in the financial statements	Disclosures	Art. 65 (1)	Art. 337.
Disclosure of accounting policies	Disclosures	Art. 65. (1) 1°	Art. 337. 1.
Disclosure of significant post balance sheet events in the notes (and not in the management report anymore)	Disclosures + Management report	Art. 65. (1) 18 Art. 68. (2) a)	Art. 337. 18 Art. 339. (2) a)
Repeal of exemption for small and medium entities concerning disclosure of off-balance sheet operations	Disclosures	Art. 65. (1) 7bis, 66	
Disclosure on deferred taxes (balances and movements during the year)	Disclosures	Art. 65. (1) 11° c)	Art. 337. 11. c)
Other changes on the disclosures for small entities: additions and withdrawals (iv)	Disclosures	Art. 66.	
Amended provisions regarding business combination under common control	Consolidation		Art. 323.
Elimination of value adjustment booked for tax purposes – no more derogation if disclosed	Consolidation		Art. 332. (5)
Enhancement of auditor's opinion	Auditor's opinion	Art. 69bis.	Art. 340bis.
Introduction of new report on material payments to governments (v)	Country-by-country reporting	Art. 72*quater.* to 72*nonies.*	Art. 340*ter.*to 340*octies.*

(i) - New principle of materiality

As per the directive, “material” means the status of information where its omission or misstatement could reasonably be expected to influence decisions that users make on the basis of the financial statements of the undertaking. The materiality of individual items shall be assessed in the context of other similar items.

It should be highlighted that according to the directive, Member States are allowed to limit the mandatory application of the principle of materiality to presentation and disclosures, or to apply it as well to recognition and measurement. At this stage, Luxembourg opted for an application limited to the presentation and disclosures.

(ii) - Size criteria for medium-sized and large entities / groups

The size criteria for a "medium-sized entity", and as a consequence for large entities and groups have been revised upwards:

Thresholds:	**Actual Lux Law**	**New directive**
Total balance sheet: (million EUR)	17,5	20
Net turnover: (million EUR)	35	40
Average number of full-time staff employed during the financial year:	250 (un-changed)	

The new directive proposes only 2 options to Member States as regards the categories of entities:

- the option to implement or not the “micro-entity” category (for companies with turnover below 700 000 EUR, total balance sheet below 350 000 EUR, and average headcount below 10 employees), and
- the possibility to set the thresholds for small entities between the below mentioned range

	New directive		**Lux Law**
Range:	**Minimum**	**Maximum**	**Actual**
Total balance sheet: (million EUR)	4	6	4,4
Net turnover : (million EUR)	8	12	8,8
Average number of full-time staff employed during the financial year :	50	50	50

These options will be analysed during the second step of implementation of the directive.

Deloitte.

(iii) - New format of annual accounts

The layout of the balance sheet and profit and loss account is amended to conform with the new directive. The new formats for full and abridged presentations will be defined by Grand-Ducal Regulation of 18 December 2015 ***.

The main change relates to the profit and loss account, for which the format adopted in Luxembourg ("table" presentation), out of the 4 initially proposed in the 4th directive, will not be used anymore. The new directive proposes 2 different layouts for balance sheet and 2 layouts for profit and loss account, which will all be available for consolidated accounts, whereas for stand-alone (individual) annual accounts (which are subject to standardized eCDF filing), only one format is foreseen i.e. the "horizontal" presentation of the balance sheet and the presentation "by nature of expense" for the profit and loss account.

As with IFRS, the captions related to extraordinary charges and income are removed, however the amount and nature of individual items of income or expenses which are of exceptional size or incidence will need to be disclosed in the notes.

The new layouts of annual accounts applicable for 2016 are already available on the eCDF website.

***Grand-Ducal Regulation of 18 December 2015 defining the form and the content of the balance sheet and profit and loss account layouts and implementing Articles 34, 35, 46 and 47 of the Law of 19 December 2002 on the commercial and companies register and on the accounting and annual accounts of undertakings, as amended

(iv) - Information disclosures for small enterprises: additions and removals

The Law foresees additions and withdrawals regarding disclosures requirements for small entities.

New exemptions for small enterprises	
Movements in number and the nominal value/accounting par value of the shares	Art. 65. (1) 3
Number and nominal value/accounting par value of each class	Art. 65. (1) 4
Name and registered office of the undertaking which draws up the consolidated accounts of the largest body of undertakings	Art. 65. (1) 15 a)
Fair value of financial fixed assets subject to possible impairment, where valuation at fair value is not applied (exemption already exists for disclosure of the fair value of derivative financial instruments)	Art. 65. (1) 17 b)
New disclosures requirements for small enterprises	
Detail on maturity of debts and debts secured by collateral on assets furnished by the entity	Art. 65. (1) 6°
Financial commitments, commitments concerning pensions and commitments vis-a-vis affiliated undertakings	Art. 65. (1) 7°
Average number of staff	Art. 65. (1) 9°
Movements on deferred tax liabilities during the year	Art. 65. (1) 11°c)

(v) - Country-by-country reporting (CBCR)

Country-by-country reporting (CBCR) will introduce new transparency rules for the extractive industry and loggers of primary forests. It will create a framework where public-interest entities ("PIE") and large non-PIE companies with activities in the extractive industry and the logging of primary forests must disclose material payments made to governments (above EUR 100.000), contributing to transparency and to the fight against tax fraud and corruption. The following types of payments shall be reported:

- Production entitlements;
- Taxes levied on the income, production and profits of companies;
- Royalties;
- Dividends;
- Signature, discovery and production bonuses;
- License fees, rental fees, entry fees and other considerations for licenses and/or concessions;
- Payments for infrastructure improvements.

Large companies are currently those defined by Article 47 of 2002 Law.

The CBCR is a separate report that will need to be prepared and published on an annual basis.

Entry into force

New requirements included in the Law will be applicable to financial statements for financial years beginning on 1 January 2016 or during the calendar year 2016.

We trust this information is of assistance and remain at your disposal for any further questions.

Your contacts

Georges Kioes
Partner | Middle Market Industry Leader
Tel: +352 45145 2249
gkioes@deloitte.lu

Karine Thil
Partner | Corporate & Accounting
Tel/Direct: +352 45145 2452
kthil@deloitte.lu

Anne-Françoise Liégeois
Director - Regulatory watch
Tel/Direct: +352 45145 2536
afliegeois@deloitte.lu

Deloitte Luxembourg
560, rue de Neudorf
L-2220 Luxembourg

Tel: +352 451 451
Fax: +352 451 452 401
www.deloitte.lu

Designed and produced by MarCom at Deloitte Luxembourg