

New tax measures applicable as from 2015

Luxembourg tax alert

Last December, the Luxembourg parliament adopted the 2015 budget and the first part of the future package ("the Zukunftspack") introducing new tax measures for corporations and individuals. These measures are applicable as from 1 January 2015. The relevant measures are outlined below.

VAT

As from 1 January 2015, the standard VAT rate of 15% increases to 17%, remaining nevertheless the lowest within the European Union. The VAT rates of 6% and 12% also increase by 2%. The current 3% VAT rate remains unchanged.

Relevant measures affecting corporate entities

First of all, the existing corporate income tax rate of 22.47% (including the Employment Fund surcharge) continues to apply for 2015.

Advance tax decisions practice

The Luxembourg government legally formalises its advance tax decisions practice for both individuals and corporate entities. A specific tax regulation (Grand Ducal regulation) gives further details on the procedure and the conditions to obtain advance tax decisions:

- Upon a legitimate written request, the tax inspector (*Préposé*) of the relevant tax office may issue an advance tax decision;
- The advance tax decision may not result in a tax exemption or a tax moderation;
- The advance tax decision will be valid for a period of time which cannot exceed 5 tax years. The decision shall bind the direct tax authorities for this period of time except in three cases:
 - The circumstances or the operations were incomplete or inaccurate in the taxpayer's request;
 - The subsequent circumstances or operations differ from the ones on which the tax authorities based the advance tax decision;
 - The advance tax decision will not subsequently conform to national, European and international law.
- Request in connection with business taxation will be submitted by the tax inspector to a newly formed Commission ("*Commission des décisions anticipées*") for its opinion.
- When the advance tax decision concerns business taxation, an administrative fee will be due to the tax authorities. It will range from €3,000 to €10,000 depending on the complexity of the file and the volume of work. The fee will be payable within one month from the date

on which the fee is set by the Head of the tax authorities. The tax authorities will not issue their decision until payment of the fee. A refund will not be issued in the event of a withdrawal of the request by the taxpayer or a negative answer from the tax authorities.

- Written requests which were introduced before the end of 2014 and which are still being processed by the Luxembourg tax authorities will be submitted to the newly Commission but the fee will not be charged for such requests.
- Advance tax decisions will be published under a synthetic and anonymized presentation in the annual activity report of the Luxembourg tax authorities (first publication in 2016).

Other proposed tax measures for companies

Transfer pricing

In line with the previous announcements made by the government, the new law contains clarifications on the Luxembourg transfer pricing framework. The current legal ground for allowing an upward adjustment of the taxable base based on the arm's length principle is found in article 164 section 2 of the Income tax Law (LITL). Separately, Article 56 of the LITL allowed also an upward adjustment in case of special relations with an entity located abroad.

The law introduces a new article 56 covering specifically transfer pricing adjustments of the tax base to replace the former one while keeping article 164 (3) LITL under its current form to requalify transactions into hidden dividend distributions.

Separately, a new provision is inserted into the procedural part of the tax law so that the tax authorities may specifically ask for transfer pricing documentation to investigate transactions with related parties.

The new article 56 paves the way for more detailed guidance to be issued in the near future by the tax authorities on specific transfer pricing matters.

Minimum income tax

Collective entities are subject to either a minimum income tax of €3,210 or to a progressive minimum income tax from €535 to €21,400 that depends on the total assets on their balance sheet.

The criteria for the application of the minimum income tax of €3,210 is revised. A collective entity will have to own qualifying holding and financial assets that exceed 90% of its balance sheet and have a total balance sheet exceeding €350,000 to be liable to the €3,210 minimum income tax. Entities that meet the 90% test and have a total balance sheet below €350,000 would be liable to a minimum income tax of €535 (previously €3,210).

Other tax and social security measures for individuals

Temporary tax to balance the state budget

A temporary tax to balance the state budget (Temporary Tax) is introduced from 2015 on. The Temporary Tax:

- replaces the contribution for the funding of children's future that was part of the 2015 draft budget,
- amounts to 0.5%, and
- is due on professional income, on replacement income (e.g. unemployment benefits, pensions, etc.) as well as on income from capital (e.g. dividend and interest income, rental income, etc.).

Following the same mechanism as the dependence insurance, the basis of the Temporary Tax on professional and replacement income should be reduced by a lump-sum amount of EUR 480 (i.e. ¼ of the minimum wage) and applied without cap on the remaining portion of the income.

As to income from capital, the basis corresponds to the net income in the meaning of article 10 (for resident taxpayers) and 156 (for non-resident taxpayers) of the Luxembourg Income Tax Law.

Single payment of family allowance and child allowance

For administrative simplification purposes, the family allowances will be paid together with the child allowance payment (“boni pour enfant”) via a single payment. This will apply for eligible children. Currently, these two items are paid separately at different dates.

Directors' fees

While the Government was also considering the increase of a certain flat withholding tax rate such as that currently applied to directors' fees income (i.e. 20%), the 2015 budget law does not include any change in this respect.

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