

## Luxembourg Tax Alert

### New tax regime of stock options in Luxembourg

30 November 2017

Following the *Luxembourg draft 2018 Budget Law and the Law of 23 December 2016 implementing the 2017 tax reform*, the Luxembourg Tax Authorities issued a new administrative circular concerning the tax regime of stock-option/warrant plans and the related reporting obligations towards the Luxembourg Tax Authorities.

While the Circular applies as of 29 November 2017, the main amendment (related to the taxable basis of irrevocable options, as explained below) will only be applicable as of 1 January 2018.

The Circular replaces the Circulars 104/2 dated 20 December 2012 and 104/2/bis dated 28 December 2015 as well as the service notes 104/3 dated 22 May 2013 and 104/4 dated 12 January 2015.

#### Impact

The new Circular 104/2 issued on 29 November 2017 (hereafter "**the Circular**") introduces (i) a change regarding the taxable basis of irrevocable options, (ii) clarifications regarding the eligibility of employees to option/warrant plans and (iii) stringent deadlines for reporting obligations towards the Luxembourg Tax Authorities.

##### (i) Taxable basis

Historically and in line with the initial Circular 104/2 dated 20 December 2012, granting irrevocable options/warrants for no consideration generates a grant gain that could be valued at 17.50% of the value of the underlying unit of an option/warrant on the granting date, multiplied by the number of options/warrants granted. As of 1 January 2018, this lump-sum valuation of the benefit in kind will increase from 17.50% to **30%**.

It is however worth pointing out that the tax treatment applicable to conditional options remains unchanged.

## (ii) Clarification on eligibility

Furthermore, the Circular integrates the three cumulative conditions of “reasonableness” – **only applicable to options/warrants not correlated to the shares of the company (e.g. warrant plans)** – as defined by the Ministry of Finance in its answer to a parliamentary question dated 1 July 2013. Subsequently, respective conditions to be met remain unchanged and confirm the approach undertaken by Deloitte over the past years:

- The portion of remuneration paid in options/warrants cannot exceed 50% of the yearly total gross compensation (including the warrants);
- The unitary value of an option/warrant cannot exceed 60% of the value of the underlying unit of the warrant; and
- Eligible employees are employees who are considered as “highly skilled” in the meaning of article L-211-27 of the Luxembourg Labor Code (i.e. “cadres supérieurs”). In this respect, the Circular relies on the Labour Code and provides an extract of the Article stating that “highly skilled” employees should hold key roles and responsibilities, and should be entitled to a higher salary than the other employees falling under the Collective Bargaining Agreement.

## (iii) Stringent reporting deadlines

The Circular provides (a) further clarification of the deadline for the communication (hereafter, “**grant notification**”) for the stock-option/warrant plans set up in 2016 and 2017, as well as (b) the new information to be reported by the employer in the future, hence as from 2018.

a) All stock-option/warrant plans should comply with the grant notification, which has to be made electronically via an Excel form to be downloaded from the Luxembourg Tax Authorities’ website. In case the grant notification has not yet been made by the respective employers, the Circular provides the following deadlines:

- For stock-option/warrant plans set up in 2016: the grant notification should be sent on 31 January 2018 at the latest, and
- For stock-option/warrant plans set up in 2017: the grant notification should be sent on 31 March 2018 at the latest.

The non-completion of the above-mentioned requirements will result in permanent withdrawal of the right to benefit from the favourable lump-sum valuation of the benefit in kind in the future.

b) All stock-option/warrant plans implemented as of 1 January 2018 should also comply with the grant notification, which should be sent to the Luxembourg Tax Authorities in a timely manner, i.e. **at each granting date** of the options/warrants.

The grant notification should also include the estimated yearly **gross salary** of the beneficiary, excluding the options/warrants. In case of failure to communicate at granting date, the Luxembourg Tax Authorities will (i) tax the total amount received in options/warrants without applying the 30% lump-sum valuation and (ii) deny the application of any discount (from 5% to 20%).

As per the Circular, the two months notification prior to the grant of options/warrants, as defined under the Circular 104/2/bis dated 28 December 2015 is no longer required.

## **Additional information**

The Circular can be found under the following link:

<http://www.impotsdirects.public.lu/content/dam/acd/fr/legislation/legi17/lir-104-2-29112017.pdf>

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