

Luxembourg Tax Alert

Proposed tax incentives for individuals would boost investment in sustainable and digital entrepreneurship

21 July 2022

On 14 July 2022, several deputies submitted a proposal to the Luxembourg Chamber of Deputies (n°8047) to boost investment in sustainable and digital entrepreneurship (hereafter “**the Proposal**”).

Luxembourg’s start-up ecosystem provides new firms with a myriad of support, including initial operational, incubation and mentoring aid. While the benefits of these measures may have been limited during the COVID-19 crisis, a well-designed personal tax incentive can motivate investors to free up private funds to this ecosystem and fulfil its future capitalization and financing needs.

This proposal aims to provide financial support from 1 January 2023 to the start-up ecosystem, with a clear focus on new sustainable and digital companies (hereafter “**the start-ups**”). Similar to the investment support mechanisms of Luxembourg’s border countries, the proposed measures will cover the start-ups’ first 5 years (for small-sized companies), or first 10 years (for medium-sized companies) of operation, until they reach a certain maturity level.

Individual investors would benefit from a tax incentive under specific conditions and limits by investing in these start-ups, to offset their potentially limited capability to remunerate shareholders at an earlier stage.

The proposal is an updated version of the so-called “*Loi Rau*” that was enacted nearly 40 years ago.

Who would be eligible?

The proposal would incentivize Luxembourg resident **individual taxpayers** to finance small- and medium-sized companies established in Luxembourg or in any European Union (EU) or European Economic Area (EEA) member states, which are committed to sustainability or digital transformation.

On one hand, the individual taxpayers would claim a **tax allowance**, qualified as an investment allowance for supporting sustainable and digital entrepreneurship, within the individual taxation framework (“*taxation par voie d’assiette*”), notwithstanding articles 145, 153, 157 to 157ter of the Luxembourg Income Tax Law.

This tax allowance would be granted **up to EUR 5,000 per year** for all eligible acquisitions of shares or units made by the taxpayer during, and held at the end of, the concerned tax year. This ceiling would be doubled for taxpayers filing jointly.

Furthermore, the tax allowance benefit would be subject to the following requirements:

- The subscribed shares or units must be part of the taxpayer's private estate.
- The eligible shares or units must be held until the end of the third tax year following the acquisition year. The alienation or early redemption of the shares or units during the minimum holding period would trigger a retrospective personal

taxation adjustment for the tax year concerned. However, this adjustment is waived if the alienation or early redemption is due to the taxpayer's death, invalidity or permanent incapacity to work.

- Taxpayers must produce evidence of the subscription price, payment and holding of the shares or units to the Luxembourg tax authorities to allow further checks of the allowance eligibility.

A Grand-Ducal Regulation would determine the tax reporting steps for the individual taxpayer to take.

This incentive would also be available to Luxembourg non-resident individual taxpayers under certain conditions.

On the other hand, the actual grant of the allowance will depend also on the fulfilment of several conditions at the level of the start-up selected by the taxpayer for the investment.

Companies in-scope of the proposal

The proposal lists two sets of conditions that companies would have to fulfil.

Before the end of the 36-month period following the acquisition of the eligible shares or units, the company must fulfil this first set of conditions:

- The company is a resident company fully taxable in Luxembourg and not treated as a resident of another state as per a tax treaty in force with Luxembourg and the latter; or
- The company has its principal place of business or place of management or administration in another EEA state and has a permanent establishment in Luxembourg.
- The company's share capital reaches the minimum amount set by the amended Commercial Companies Law, and this minimum share capital is fully paid up in cash.
- The company's shares or units are in registered form.
- The share of the company's investments in sustainable or digital economic activities, or the share of the company's turnover from sustainable or digital economic activities, represents at least 20% of its total investments or total turnover.
- The aforementioned share of investments is checked by an approved auditor, or attested by an auditor in the context of a reasonable assurance following the international standards for assurance engagements. The auditor would remit relevant certificates on the company's behalf to the Luxembourg tax authorities when filing subsequent corporate tax returns after the annual assurance or audit report is completed.
- The corporation does not use the amounts collected to grant loans or any other form of financing.
- The company does not use the proceeds for acquiring shares or stocks. However, the amounts collected may be used for directly or indirectly subscribing to newly issued shares or units in a company that would meet the conditions.

Before the end of the 12-month period following the acquisition of the eligible shares or units, the company must fulfil this second set of conditions:

- The company does not use the amounts received to reduce or repay its share capital or reimburse a share premium or any other reserve account except for retained earnings, and unless the share capital or share premium reduction or other reserves would be completed to compensate for a loss incurred.
- The company does not use the amounts collected to distribute a dividend.
- The company is either a small-sized company or medium-sized company, defined as:
 - At the balance sheet date, a **small-sized company** does not exceed at least two of the following three criteria: I. balance sheet total of EUR 4.4 million, II. net turnover of EUR 8.8 million, and III. the number of full-time employees employed on average during the financial year is 50;
 - At the balance sheet date, a **medium-sized company** does not exceed at least two of the following three criteria: I. balance sheet total of EUR 20 million, II. net turnover of EUR 40 million, and III. the number of full-time employees employed on average during the financial year is 250.
- The small-sized company was incorporated within 60 months before the acquisition date of the company, or the medium-sized company was incorporated within 120 months before the date on which the capital contribution was paid;



- On the payment date of the subscription price of the newly issued shares or units, the company has not completed any reduction in capital, share premium or other reserves, other than those for the sole purpose of compensating a loss incurred.
- The company is not subject to insolvency processes and is not in a state of cessation of payments.
- The company is not subject to a dissolution or closing judicial procedure.
- The company does not have any publicly traded securities.
- The company is not set up within the context of a merger, a demerger of companies, or a transfer of the registered office or central administration to Luxembourg.

Deloitte's view

This proposal would offer Luxembourg's entrepreneurial ecosystem some interesting opportunities to boost the development of start-ups and reinforce their activities in Luxembourg. The proposed personal tax allowance would be governed by company-level conditions that are competitive from an EU/EEA perspective, and would create a relevant incentive promoting private investors' investment efforts.

This proposal is also a clear appeal to update a successful initiative born nearly 40 years ago in Luxembourg, and offers Luxembourg a unique opportunity to diversify its economy and gather more stakeholders around a common goal to support start-ups with sustainable and/or digital activities. The proposal's evolution should be closely monitored during the legislative process.

If you have any questions about this proposed tax incentive, please get in touch:

Your Contacts

Bernard David

Partner | Tax Business Leader

T +352 45145 2799

bdavid@deloitte.lu

Thierry Bovier

Partner | International Tax

T +352 45145 4079

tbovier@deloitte.lu

Frédéric Scholtus

Director | Global Employer Services

T +352 45145 3368

fscholtus@deloitte.lu

Julien Lamotte

Partner | Financial Services Tax

T +352 45145 3336

jlamotte@deloitte.lu

Christine Casanova

Partner | Cross-Border Tax

T +352 45145 2018

ccasanova@deloitte.lu

Deloitte Luxembourg
20 Boulevard de Kockelscheuer
L-1821 Luxembourg
Grand Duchy of Luxembourg

Tel: +352 451 451

Fax: +352 451 452 401

www.deloitte.lu

Deloitte is a multidisciplinary service organisation which is subject to certain regulatory and professional restrictions on the types of services we can provide to our clients, particularly where an audit relationship exists, as independence issues and other conflicts of interest may arise. Any services we commit to deliver to you will comply fully with applicable restrictions.

Due to the constant changes and amendments to Luxembourg legislation, Deloitte cannot assume any liability for the content of this leaflet. It shall only serve as general information and shall not replace the need to consult your Deloitte advisor.

About Deloitte Touche Tohmatsu Limited:

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited ("DTTL"), its global network of member firms, and their related entities (collectively, the "Deloitte organization"). DTTL (also referred to as "Deloitte Global") and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see www.deloitte.com/about to learn more.

Deloitte provides industry-leading audit and assurance, tax and legal, consulting, financial advisory, and risk advisory services to nearly 90% of the Fortune Global 500® and thousands of private companies. Our professionals deliver measurable and lasting results that help reinforce public trust in capital markets, enable clients to transform and thrive, and lead the way toward a stronger economy, a more equitable society and a sustainable world. Building on its 175-plus year history, Deloitte spans more than 150 countries and territories. Learn how Deloitte's more than 345,000 people worldwide make an impact that matters at www.deloitte.com.

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited ("DTTL"), its global network of member firms or their related entities (collectively, the "Deloitte organization") is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser.

No representations, warranties or undertakings (express or implied) are given as to the accuracy or completeness of the information in this communication, and none of DTTL, its member firms, related entities, employees or agents shall be liable or responsible for any loss or damage whatsoever arising directly or indirectly in connection with any person relying on this communication. DTTL and each of its member firms, and their related entities, are legally separate and independent entities.

© 2022 Deloitte Tax & Consulting