Deloitte.

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ICEbreakers: Unlocking Luxembourg

Hot topics

New BEPS-compliant IP regime proposed: The new regime would be applicable as from fiscal year 2018 and would apply to certain intellectual property (IP) rights, mainly patents and copyrights on software created, developed or improved after December 31, 2007. The regime would adopt the OECD-recommended nexus approach, so that only expenditure incurred by the taxpayer based on DEMPE functions would be considered (through the nexus ratio) in determining the net IP income (acquisition costs would not be considered). The regime would maintain an 80% exemption on the net income derived from the commercialization/disposal of eligible IP rights, as well as a full exemption of such rights from net wealth tax.

Transfer pricing regulations: The 2017 budget law, supplemented by guidance, includes new rules relating to transfer pricing that apply as from January 1, 2017. These include, for financing structures, the abolition of the minimum requirements relating to equity at risk (1%, capped at EUR 2 million), as well as the minimum margin, and requiring the conditions between “controlled transactions” and “transactions between third parties” to be comparable.

Anti-Tax Avoidance Directive (ATAD): The ATAD II extends the scope of the ATAD to hybrid mismatches (i.e. hybrid entities, hybrid permanent establishments (PEs) and hybrid instruments leading to either a deduction without an income inclusion or a double deduction) involving non-EU jurisdictions, and encompasses forms of hybrid mismatches not covered by the ATAD. The article on hybrid mismatches has been amended, and the article in the ATAD II must be transposed into Luxembourg law by December 31, 2019 and to be applicable as from January 1, 2020 (the provisions relating to reverse hybrid mismatches must be applied as from January 1, 2022).

OECD multilateral instrument (MLI): Luxembourg, one of the countries that signed the MLI on June 7, 2017, has indicated it intends to adopt the following provisions:

- *Minimum standards*: The introduction of a preamble stating that the treaty should not create opportunities for non-taxation through tax evasion or avoidance; measures to counter treaty abuse (Luxembourg will adopt the principal purpose test only option);
- *Measures to improve dispute resolution*
- *Transparent entities*: Income derived by/through a tax transparent entity or arrangement will be considered income of a resident of a contracting state to the extent the income is treated as the income of a resident of the state for purposes of taxation by that state.
- *Elimination of double taxation*: The residence state will not apply the exemption method in cases where the source state already has applied the treaty to exempt income or capital from tax (applicable only to certain treaty articles).
- *Artificial avoidance of PE status*: The exception from PE qualification for preparatory or auxiliary activities will be broadened.
- *Arbitration procedure*: A procedure can be launched if the mutual agreement procedure does not resolve the issue within two years.

The MLI provisions will apply only if both parties to a treaty sign the MLI and opt for the same provisions (reciprocity). A ratifying law is required and is expected in Luxembourg by 2018 to allow an application date in 2019.

Legislative updates

- The indirect tax authorities have issued a circular reminding taxpayers that, as from January 1, 2017, **company directors** are subject to Luxembourg VAT if the place of taxation is in Luxembourg.
- The Court of Justice of the European Union (CJEU) has ruled that Luxembourg’s regime on the application of the VAT exemption for **independent groups of persons** is not in line with the EU VAT directive. According to the CJEU, only services rendered by a group to its members that are directly necessary for their exempt (or nonbusiness) activities fall within the scope of the exemption.

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Tax treaty developments

- The **new treaty** with Serbia applies as from January 1, 2017 and the treaties with Brunei, Hungary, Uruguay and Ukraine will apply as from January 1, 2018.
- A tax treaty was signed with **Cyprus** on May 8, 2017, but the treaty is not yet in force.
- An **amendment** to the treaty with Belgium has been signed (i.e. allowing a 24-day tolerance regarding the taxation of the days physically worked outside the state of employment).
- A **protocol** to the treaty with Moldova has been agreed and is awaiting signature.
- The government is **negotiating** a number of new treaties: Australia, Democratic Republic of Congo, Iran, Ivory Coast, Kosovo, New Zealand and Turkmenistan.

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For more information on the Luxembourg tax system, please visit Deloitte International Tax Source (www.dits.deloitte.com) and/or Deloitte tax@hand (www.taxathand.com).