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NEWSLETTER
KPMG Luxembourg

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New individual and corporate tax measures

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On 17 December 2015, the Luxembourg Parliament voted a set of tax measures affecting both individual and corporate taxpayers. These will generally apply as from 2016, with only a few rules applying retrospectively as from 2015.

These rules were submitted to Parliament through 3 different bills (i.e., bills 6847, 6891 and 6900) in August and October this year. Some of these rules have been slightly amended (essentially further to comments from the State Council) compared to their initial version.

This newsletter summarizes the main provisions which have been enacted by the Parliament. For a comprehensive overview of all the new measures, please refer to our previous newsletters:

- For previous coverage on the bill 6847, please see our [Luxembourg Tax News 2015-18](#) dated August 2015;
- For previous coverage on the bills 6891 and 6900, please see our [Luxembourg Tax News 2015-26](#) dated October 2015.

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Transposition of the amendments to the EU Parent-Subsidiary Directive

The new law transposes the recent changes made by the European (EU) Commission to the EU Parent-Subsidiary Directive by introducing a general anti-abuse rule and an anti-hybrid rule into the Luxembourg domestic participation exemption regime (i.e., namely in articles 147 (2) a and d, and 166 (2) 1 LITL).

As a result, profit distributions falling within the scope of the Directive will no longer be tax exempt in Luxembourg [based on article 166 (2) 1 LITL] if (1) such distributions are deductible by the payer located in another EU Member State or if (2) the transaction is characterized as abusive (i.e., not “genuine”) within the meaning of the Directive. Similarly, dividends paid to EU companies may also be subject to withholding tax if the transaction is considered as abusive.

The new rules have been transposed strictly, in line with the wording and scope of the Directive. The initial version of these provisions has been modified in order to more explicitly clarify the fact that these measures do not apply to dividend distributions from / to non-EU companies and / or not covered by the EU Parent-Subsidiary Directive. This exclusion thus notably concerns the following situations:

- Dividend distributions made to a foreign corporate entity that is resident in a treaty country and that is fully subject to a tax similar to Luxembourg corporate income tax (even if this entity is located in an EU country), based on article 147 (2) e LITL;
- Dividend received from a foreign corporate entity that is fully subject to a tax similar to Luxembourg corporate income tax (even if this entity is located in an EU country), based on article 166 (2) 3 LITL.

This strict transposition of the Directive is welcomed as it aligns Luxembourg domestic law with the EU legislation, thus contributing to the achievement of a level playing field at EU level, while also ensuring the tax competitiveness of the Luxembourg tax framework.

Enlargement of the scope of the fiscal unity regime

In order to comply with EU law, the current tax unity regime is extended to tax groups formed by sister companies without their parent company being part of the tax unity, i.e., thus introducing the concept of “horizontal” fiscal unity.

The text of the bill has also been amended to enlarge the scope of the eligible subsidiaries (for both the horizontal and vertical tax unity regimes), to domestic permanent establishments of any foreign company fully subject to tax corresponding to the Luxembourg corporate income tax. The initial version of the bill restricted the eligibility of the tax unity regime to permanent establishments of companies located in the European Economic Area.

The new provisions on the fiscal unity regime apply as from the tax year 2015.

Changes to the minimum CIT and NWT rules

In order to put Luxembourg tax law in conformity with EU legislation, the minimum corporate income tax (CIT) is replaced by a minimum new wealth tax (NWT) under similar conditions (with some exceptions).

The new legislation on the minimum NWT has been adopted by the Parliament after a slight modification to the original text of the bill regarding the calculation method applying to the minimum NWT for the transition year 2016.

The new law also introduces a digressive NWT rate where the net taxable wealth of corporate taxpayers exceeds a certain threshold. Thus, the NWT rate is reduced to 0.05% for the part of the unitary value exceeding €500 million, whereas the part of the unitary value equal or below €500 million remains taxable at the current rate of 0.5%.

Repeal of the Intellectual Property regime (Art. 50bis LITL)

As recommended by the OECD in the BEPS Action 5 report (issued on 5 October 2015), the existing IP regime is repealed as from 1 July 2016, with some grandfathering rules applying to taxpayers already benefiting for this regime (under certain conditions).

Introduction of a temporary tax amnesty regime

A temporary tax amnesty regime is introduced for the years 2016 and 2017. To benefit from this measure, taxpayers will have to spontaneously file an amended tax return and pay the tax due plus a penalty of 10% (of the tax due) if reported in 2016, or of 20% if reported in 2017. The measure was initially restricted to the benefit of Luxembourg resident taxpayers, but this condition was removed from the final version of the text, as approved by the Parliament, further to a comment from the State Council.

Other tax measures voted by the Parliament

The other tax measures enacted by the Parliament are as follows:

- Enlargement of the scope of the investment tax credit
- Broadening of the scope of application of the exit tax deferral
- Extension of the tax credit available for hiring unemployed persons
- Step-up in basis mechanism for individuals becoming Luxembourg residents
- Option to be taxed in Luxembourg for the entire calendar year for individuals being Luxembourg residents for only part of the year
- Adoption of new revaluation ratios for inflation applicable on sale price (long-term gains).

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