



Luxembourg newsflash

31 December 2014

2015 Luxembourg tax news

The Luxembourg budget law for 2015 and the law introducing measures for the future (“*paquet d’avenir*”) have been adopted on 19 December 2014.

Most of the tax provisions have already been described in our tax update dated October 2014 (<http://www.arendt.com/publications/documents/taxupdate/2014.10.30%20taxupdate.pdf>) and may be summarised as follows:

Advance tax confirmations

The practice of advance tax confirmations has been formally included in the General Tax Law (*Abgabenordnung*). Accordingly, the heads of the taxation offices may, upon written and motivated request, issue an advance tax confirmation on the application of tax laws on one or more transactions contemplated by the taxpayer. The confirmations may obviously not grant an exemption or a reduction of tax. Such confirmations have a legally binding effect for a maximum period of 5 years, unless (i) the situation or operations described in the application were incomplete or inaccurate, (ii) the situation or operations eventually realised differ from those described in the application or (iii) the advance tax confirmation is no longer compliant with domestic, EU or international law. The issuance of confirmations regarding business taxation may further be subject to an administrative fee ranging between EUR 3,000 and EUR 10,000 depending on the complexity of the request and the volume or works associated therewith. The same rules apply for applications for advance pricing agreements between associated enterprises.

A Grand-Ducal decree adopted by the government on 23 December 2014 further provides details on the applicable procedure. The most salient aspects are as follows:

- applications for advance tax confirmations regarding business taxation or personal taxation are addressed in writing to the head of the competent taxation office or to the director of the direct tax authorities (*Administration des contributions directes*) if the matter does not fall under the competence of a given taxation office;
- the application must be motivated and include at least the following indications: (i) the precise designation of the applicant (name, residence and file number, if any), the parties and other concerned third parties, as well as a description of their respective activities, (ii) a detailed description of the envisaged operation(s) which have not yet produced their effect, (iii) a detailed analysis of the legal issues, as well as a duly motivated assessment of the legal situation of the applicant and (iv) the confirmation that all necessary indications to rule the application are complete and correct;

- in case the application concerns business taxation, the head of the taxation office must submit it to the Commission of Advance Tax Confirmations (“**Commission**”). The Commission assists the taxation office with the harmonised and equal application of the law. The members of the Commission are designated by the director of the direct tax authorities. The applicant may be invited by the Commission to present orally his case. After deliberation, the Commission shall transmit its advice to the taxation office for execution. The advance tax confirmation is issued by the head of the taxation office;
- the advance tax confirmations are published on an anonymous basis in the annual report of the direct tax authorities;
- the head of the direct tax authorities determines the applicable fee upon receipt of the application. The fee is payable within a month therefrom and applications are not considered until payment thereof is received. The fee is not refundable in case the applicant cancels the application or if the confirmation is negative. In case the application is introduced in the name of several taxpayers, the applicant remains liable for the payment of the fee;
- the new rules are applied to all applications introduced as from 1 January 2015. Applications which have been introduced before but are still pending on 1 January 2015 are transmitted to the Commission and examined according to the new rules described here above.

Transfer pricing

The current provision in the Luxembourg Income Tax Law (*Loi concernant l’impôt sur le revenu*) relating to profit adjustments between related enterprises has been updated in accordance with the standard wording of article 9 of the OECD Model Tax Convention. Accordingly, if (i) an enterprise participates directly or indirectly in the management, control or capital of another enterprise, or if (ii) the same persons participate directly or indirectly in the management, control or capital of two enterprises, and in either case, the two enterprises are, within their commercial or financial relations bound by conditions agreed or imposed which differ from those which would be made between independent enterprises, the profits of these enterprises are determined and taxed on the basis of the conditions agreed upon between independent enterprises. A Grand-Ducal decree to be issued should specify the actual requirements to be complied with, notably in terms of documentation.

Withholding taxes on income from movable property no longer refundable

In order to eliminate potential discriminations between resident and non-resident taxpayers, duly levied withholding taxes on income from movable property (dividends and certain types of interest) will no longer be refundable in the hands of resident beneficiaries. These withholding taxes will remain creditable.

Creation of a Luxembourg sovereign fund

The Luxembourg Future Fund has been established as a public body with a separate legal personality. The Luxembourg Future Fund may in particular establish one or more Luxembourg specialised investments funds which will be governed by the law of 13 February 2007, except that they will benefit from an exemption from subscription tax.

Minimum advance corporate income tax (“ACIT”)

the ACIT rate for 2015 has been fixed at EUR 3,000 for Luxembourg companies whose financial assets, transferable securities and cash deposits exceed cumulatively (i) 90% of their total balance sheet and (ii) EUR 350,000. All other companies are subject to ACIT on the basis of their total balance sheet as follows:

Total balance sheet	ACIT
≤ EUR 350,000	EUR 500
> EUR 350,000 and ≤ EUR 2,000,000	EUR 1,500
> EUR 2,000,000 and ≤ EUR 10,000,000	EUR 5,000
> EUR 10,000,000 and ≤ EUR 15,000,000	EUR 10,000
> EUR 15,000,000 and ≤ EUR 20,000,000	EUR 15,000
> EUR 20,000,000	EUR 20,000

The ACIT had been introduced in 2013 as a creditable but non-refundable minimum corporate income tax in order to ensure a minimum taxation of Luxembourg companies. The 2014 rate for companies whose financial assets, transferable securities and cash deposits exceeded 90% of their balance sheet was equally set at EUR 3,000 irrespective of their total balance sheet. Low-value finance or holding companies may now benefit from the lower EUR 500 ACIT.

VAT amendments

Please refer to our VAT newsflash dated 23 December 2014 available at:

<http://www.arendt.com/publications/pages/increase-in-vat-rates-in-luxembourg.aspx>

Introduction of a temporary equalisation tax of 0.5% on the income of individuals

A temporary equalisation tax is levied as from 1 January 2015 on professional and substitute income or on income from private wealth realised by individuals. The temporary tax aims to equalise the Luxembourg budget and is levied jointly by the direct tax authorities (*Administration des contributions directes*) and the social security system (*Centre commun de la Sécurité Sociale*) for the benefit of the State. For most types of income, the temporary tax must be withheld at source by the payor. The temporary equalisation tax is determined on the basis of the income taken into account for the social security contributions.

This publication is intended to provide information on recent legal developments and does not cover every aspect of the topics with which it deals. It was not designed to provide legal or other advice and it does not substitute for the consultation with legal counsel before any actual undertakings.

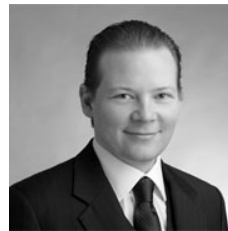
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