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Luxembourg Newsflash - 19 December 2019

Luxembourg 2020 budget law introducing new tax measures and law implementing ATAD II passed

Today, the budget law for 2020 and the law implementing into domestic law Council Directive (EU) 2017/952 of 29 May 2017 (“ATAD II”) have been passed by the Luxembourg Parliament.

All tax measures are essentially identical to the draft provisions as proposed by the Luxembourg government. For more details on the bills submitted to the Luxembourg Parliament, please refer to [our newsflash ATAD II implementation in Luxembourg](#) and [our newsflash Budget 2020](#). As for the latter in particular, there are no essential changes to the sun-setting rule concerning pre-2015 advance tax confirmations, i.e. immediate action by taxpayers may be required.

Law implementing ATAD II

Today, the Luxembourg Parliament has passed the law implementing ATAD II. The new measures, which amend Article 168ter of the Luxembourg Income Tax Law (“LITL”) and implement a new article 168quater LITL, will apply to financial years starting as from 1 January 2020 except for the rules on reverse hybrids which will apply as from 1 January 2022.

The final text is essentially identical to the draft provisions proposed by the Luxembourg government and does not generally take into account the modifications proposed by the Chamber of Commerce. With respect to the comments made by the State Council, the following proposed modifications have been taken into account:

- the term “entity”, which is notably used to determine whether there is an associated enterprise, is now specifically defined for the purpose of the rule as including any entities as defined in Articles 159 (basically, tax resident collective entities), 160 (non-tax resident entities realising taxable income in Luxembourg) and 175 (tax transparent entities) of the LITL;
- the text concerning the application of the anti-hybrid rule that is included in the Luxembourg participation exemption rule (Article 166 LITL) in priority to the new anti-hybrid rule has been clarified;
- the text of Article 168quater on reverse hybrids has been amended to clarify that only the share of income that falls in the scope of the rule will be subject to corporate income tax in Luxembourg (i.e. not all income arising to the Luxembourg reverse hybrid).

The specific measures that have been introduced to address the unintended consequences for investment funds remain unchanged (in particular, the acting together concept which in principle does not apply to an investor that holds directly or indirectly less than 10% in the interest of the fund and that is entitled to less

than 10% of the profits of the fund, as well as the reverse hybrid rule which does not apply to collective investment funds).

2020 budget law

Amongst the main measures of the budget law for 2020, it is worthwhile highlighting that advance tax confirmations (“**ATC**”) granted by the Luxembourg tax authorities before 1 January 2015 (i.e. under the administrative procedure in force until 31 December 2014) will no longer be binding after the end of the 2019 financial year. Taxpayers that are concerned by this measure will be able to introduce a new request in compliance with the current administrative procedure. The tax authorities clarified in a newsletter of 3 December 2019 that such taxpayers may do so as long as the transactions have not yet produced full effect at the time of expiry of the ATC. With respect to taxpayers that have a diverging financial year end (i.e. those taxpayers which have a financial year end diverging from the calendar year end), the tax authorities further accepted that such taxpayers may file an ATC request before the closing date of their 2020 financial year end, to the extent that the transactions have not yet produced full effect at the time of expiry of their 2019 financial year end.

The other tax measures included in the law may be summarised as follows:

- extension of the super-reduced VAT rate to writers, composers and singers, as well as to the royalties received by them;
- update of the revaluation coefficients for real estate for the determination of capital gains realised thereon by individuals;
- increase in certain taxes on petrol and energy.

How can we help?

The law implementing ATAD II, which constitutes a fair implementation of the ATAD II, offers pragmatic solutions for the fund industry. However, given the complexity of the new rules, their exact impact should be carefully monitored by all taxpayers having cross-border operations.

The termination of ATCs dating from before 1 January 2015 does not include any transitional measures and the concerned taxpayers should immediately assess the necessity of filing a new ATC request and check whether there is a necessity to restructure operations.

The Tax Law partners and your usual contacts at Arendt & Medernach will be at your disposal to assist you therewith.

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