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Luxembourg Newsflash - 20 April 2023

Luxembourg government proposes amendments to tax procedures

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On 28 March 2023, the government submitted to Parliament Bill of law no. 8186 amending the General Tax Law and introducing new provisions about transfer pricing and accounting. The changes will take effect upon publication of the law in the Official Journal, with some provisions applicable from 1 January 2024 or from the 2024 fiscal year.

Source: [Bill of law no. 8186](#)_

The following are among the most significant changes.

o **Tax dispute procedure involving Head of the direct tax authorities**

1) **Pre-litigation stage – new procedure for filing a claim - applicable as from 1 January 2024**

- Currently, a taxpayer can contest a decision taken by the tax authorities by submitting a claim (réclamation) to the Head of the direct tax authorities within 3 months. The bill of law aligns the conditions for submitting a claim with those applying in the lower administrative court:
 - A claim will have to be made by written request signed by the claimant or their representative.
 - Subject to inadmissibility, the request must contain:
 - o full name and address of the claimant;
 - o clear identification of the decision against which the request is directed;
 - o objective of the request;

- o summary of the facts and arguments invoked;

- o power of attorney of the representative of the taxpayer (if any, as a taxpayer may act in person, and is not obliged to secure representation by, e.g. a lawyer, accountant or auditor); and

- o list of documents that the claimant intends to rely on.

2) Time limit for filing a claim with the lower administrative court in absence of the direct tax authorities' response - applicable as from publication in Official Journal

Under the current law, a decision of the Head of the direct tax authorities can be challenged in the lower administrative court within 3 months of notification. If the Head of the direct tax authorities does not issue a decision within 6 months of the filing of a claim contesting a tax assessment or requesting discretionary relief (*remise gracieuse*), the taxpayer can commence an action in the lower administrative court, at any time and without any time limit.

Under the bill of law, if the Head of the direct tax authorities does not respond within 6 months, a new 12 month period will begin, during which the taxpayer may start an action in the lower administrative court. If the Head of the direct tax authorities orders measures in preparation for trial, this period is extended by 6 months.

o Accounting obligations

1) Sanctions for failure to file on time - applicable as from 1 January 2024

Under the bill of law, the tax authorities can ignore annual accounts filed late with the trade and companies register if the filing was required by law. In this situation, the tax authorities can reassess the profits of the entity concerned based on their own calculation, under the unilateral taxation procedure (*taxation d'office*).

Note that the legal entities concerned must deposit their duly approved annual accounts with the trade and companies register within 1 month after their approval and, at the latest, 7 months after the end of the financial year.

2) Electronic format - applicable as from publication in Official Journal

The bill of law provides that, if accounting books, documents or information exist in electronic form, they must be provided, if requested by the tax authorities, in a legible and directly intelligible electronic format that conforms with the original. This new requirement is part of the taxpayer obligation of cooperation.

o Transfer pricing

1) New procedure for bilateral and multilateral APAs made under double tax treaties - applicable as from publication in Official Journal

The bill of law proposes a new procedure, different from the advance tax confirmation (including the advance pricing agreement or "APA"), specifically for bilateral and multilateral APAs under double tax treaties:

- The request must be made in writing to the Head of the direct tax authorities.
- The bilateral or multilateral APA will be concluded between the competent authorities of the relevant states within the legal framework of the relevant Mutual Agreement Procedure ("MAP").

- The direct tax authorities will set an administrative fee, ranging between €10,000 and €20,000 depending on the complexity of the request.
- A Grand Ducal regulation will set out the procedures applicable to bilateral and multilateral APAs, and to the collection of the fee.

2) Tax assessments following a MAP or an arbitration decision initiated under a double tax treaty - applicable as from publication in Official Journal

Where an agreement or an arbitration decision initiated under the MAP clause of a double tax treaty applies to a taxpayer, the bill of law clarifies that tax assessments can be reissued, withdrawn or modified, provided the conditions and obligations imposed by the agreement or arbitration decision are met.

This new provision gives legal backing to the provisions of the **11 March 2021 circular_** clarifying the procedure for implementation of MAPs in Luxembourg's double tax treaties.

3) Transfer pricing documentation Applicable as from tax year 2024

Associated enterprises subject to transfer pricing rules will have to provide appropriate transfer pricing documentation to the Luxembourg tax authorities upon request (as part of their cooperation obligations). A Grand Ducal regulation will detail the scope and documentation required, in accordance with the minimum standards of BEPS Action 13.

The draft Grand Ducal regulation_ proposes that a Luxembourg Constituent Entity of a MNE Group (as defined under the Luxembourg country by country reporting law of 23 December 2016) will have to prepare a local file. They will also have to prepare a master file if they meet certain thresholds relating to net turnover.

o Inter-administration cooperation

1) Between the Direct tax authorities and the CSSF - applicable as from publication in Official Journal

According to the bill of law, the aim of inter-administration cooperation is to reinforce the exchange of information between the Direct tax authorities and the CSSF in order to facilitate their respective duties, including prevention of inconsistencies in declarations from taxpayers under CSSF supervision and cooperation in relation to CRS and FATCA obligations (without verifying clients' tax compliance). The proposed cooperation will not compromise tax or professional secrecy.

2) Between the Direct tax authorities and the CAA - applicable as from publication in Official Journal

The same kind of cooperation will also take place between the Direct tax authorities and the Commissariat aux Assurances ("**CAA**").

o Other measures

1) Tax assessments based on unilateral taxation procedure Applicable as from tax year 2024

The bill of law introduces strict conditions for challenging a tax assessment based on the unilateral taxation procedure (*taxation d'office*):

- A taxpayer will be unable to request the amendment or withdrawal of a tax assessment based entirely on unilateral taxation by the tax office.

According to the official commentary on the bill of law, this rule will apply where the taxpayer has failed to fulfil their obligation to submit a tax return. However, if unilateral taxation only affects certain elements of the taxable base, the taxpayer will still have the right to file a request to amend or withdraw the tax assessment.

- A taxpayer will only be able to contest the tax assessment if they can prove that the income or wealth assessed to tax exceeds the actual income or wealth by more than 10%.

2) Time-barred claims - applicable as from publication in Official Journal

The conditions for taxpayers to benefit from leniency when they miss a claim deadline will be amended. Currently, it is sufficient to demonstrate that the taxpayer is not at fault for missing the deadline. However, the bill of law will restrict leniency to cases of *force majeure*.

3) Tax debt recovery – instalment payment plan for exit tax: suspension of statute of limitations - applicable as from publication in Official Journal

For exit tax payable by instalments over 5 years (under certain conditions), the bill of law suspends the statute of limitations during the instalment payment plan. This is to ensure full payment of the tax due.

4) Tax provisions subject to formal request - applicable as from publication in Official Journal

The bill of law clarifies that, for tax provisions that only apply upon request (such as investment tax credit), the request will have to be made via the tax return and can no longer be granted via a claim.

Next steps

The bill of law will now follow the usual legislative process through Parliament. It is worth noting that, although the bill of law aims to simplify and modernise procedures for taxpayers, the modifications proposed are quite limited and seem to further restrict taxpayer protection. Arguably, a complete overhaul of the General Tax Law would have been preferable.

How can we help?

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