

Non-resident taxpayer: more flexibility for the tax reform

1 August 2017

In brief

On 27 July 2017, Pierre Gramegna, Luxembourg Finance Minister, announced amendments to the new taxation rules for married non-resident taxpayers introduced by the 2017 Tax Reform. The main purpose of these amendments is to relax eligibility requirements for tax class 2 applications.

Background

Further to the 2017 Tax Reform and from 1 January 2018, new measures will enter into force regarding the applicable tax class for married non-resident taxpayers and the taxation regime (individual or joint taxation).

Currently, married non-resident taxpayers may enjoy tax class 2 where more than 50% of the professional income of the household is taxable in Luxembourg.

According to the Tax Reform and as from tax year 2018, tax class 2 will only be granted to non-resident married taxpayers provided that more than 90% of the worldwide income of one member of the household is taxable in Luxembourg. Should this condition be met, they can opt to be treated as Luxembourg tax residents and benefit from the tax class 2. However, the household's worldwide income will then have to be declared in Luxembourg and will be taken into consideration for calculating the tax rate applicable to Luxembourg taxable income, potentially triggering an increased tax liability compared to the current situation.

The tax reform also introduces the possibility for married taxpayers to opt either for joint or individual taxation ("pure" individual taxation or individual taxation of "reallocation" of income between spouses). Taxpayers shall opt for tax class 2 and make their choice regarding the taxation regime before the beginning of the related tax year (i.e. before 31 December 2017 regarding 2018 taxation). The choice of the taxpayer is irrevocable.

New amendments

On 27 July 2017, The Finance Minister announced that the following measures will be implemented in order to facilitate access to tax class 2 to non-resident married taxpayers and to provide more flexibility for taxpayers:

- A non-resident married taxpayer with less than 90% of worldwide income taxable Luxembourg will nevertheless be allowed to opt for tax class 2 provided that his/her total net income taxable outside Luxembourg does not exceed EUR 13,000 for the considered tax year.
- For tax year 2018, non-resident married taxpayers will be allowed to opt for joint or individual taxation at any time until 31 March 2019.

It is expected that a Circular Letter will be released by Luxembourg Tax Authorities in the coming weeks to clarify the numerous areas of uncertainty resulting from the Tax Reform which have not yet been clarified.

In conclusion

Relaxed conditions for enjoying tax class 2 for non-resident married taxpayers are welcome. The new EUR 13,000 threshold will likely allow those with limited foreign taxable income to keep the benefit of tax class 2. However, it is still expected that the Luxembourg tax bill will increase in most cases for married non-resident taxpayers due to either worldwide income being taken into account for the reserve of progressiveness or to the loss of tax class 2 where conditions are not met.

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