

Flash News

Luxembourg – new tax measures for corporations and individuals for 2015

17 October 2014

On 15 October 2014, the Luxembourg Parliament published its “Zukunftspak” (bill n°6722 – “Measures for the Future of Luxembourg”) as well as bill n°6720 (the “Budget Law”), both of which include proposed new tax measures for corporations and individuals. These proposals demonstrate the wish of the Government to retain and build on Luxembourg’s reputation for tax stability while at the same time complying fully and positively with international initiatives towards increased transparency, and the fight against tax fraud.

Subject to enactment by Parliament, these measures, summarised below, will become law as from 1 January 2015. However, the practical aspects of the “Zukunftspak” measures will then be finalised over a longer period, with various implementing Grand-ducal Decrees needing to be issued.

Proposed new tax measures applicable for 2015

1. Corporations

- The corporate income tax rate is not being increased. No indications of any other changes were given.
- A new general transfer pricing regime, conforming more explicitly with international principles and more particularly with the arm’s length principle in line with OECD Tax Model Convention, will take effect next year to reinforce the current legislation. The provisions would provide for adjustments of profits where transfer prices do not reflect the arm's length principle. In addition, the current legislation would be amended to clarify that the current disclosure and documentation requirements for taxpayers to support their tax return positions also apply with respect to transactions between associated enterprises. In the absence of proper transfer pricing documentation, this may result in a reversal of the burden of proof towards the taxpayer.
- For the direct tax system, a revised and unified system for advance tax confirmations will come into force. The aim remains to provide taxpayers with legal certainty on their transactions, while offering a uniform and egalitarian treatment between taxpayers and, importantly, increasing the transparency of the Luxembourg tax system. Fees, of a maximum of EUR 10,000 will apply to cover the administrative and operation expenses of the tax administration. The procedure will be further detailed in a Grand-ducal Decree.

- The minimum corporate income tax rules are clarified, and in practice will reduce the amounts payable by many small or partially dormant entities. Currently, all corporate entities having their statutory seat or central administration in Luxembourg and where the sum of their fixed financial assets, transferable securities and cash at bank exceeds 90% of their total gross assets, must pay at least the minimum corporate income tax of EUR 3,210 (including the solidarity surtax). This amount applies only to entities with balance sheets having the above characteristics.

The Budget Law refines the scope of application of this minimum tax. In 2015, it will apply only when two cumulative conditions are fulfilled. The sum of fixed financial assets etc must exceed both 90% of the total gross assets and EUR 350,000. Hence all entities with total gross assets not exceeding EUR 350,000 will in 2015 be liable to pay only the EUR 535 minimum corporate income tax due by entities whose balance sheets do not mainly comprise financial assets.

- Following criticism by the CJEU of several jurisdictions regarding the differing tax treatments that they apply to resident and non-residents receiving dividends subject to withholding taxes, and in order to comply with European law, the Budget Law proposes modification of the relevant Luxembourg legislation. This will now give the same treatment for both residents and non-residents, meaning that residents in a tax-loss situation will no longer be able to reclaim the relevant withholding taxes.

2. Individuals

- Introduction of an additional 0.5% contribution named “for the future of children” (“Contribution pour l’avenir des enfants”) payable by individual taxpayers.

This additional contribution applies on the following incomes:

- Professional and replacement income (pension, unemployment income,...) decreased by an amount corresponding to $\frac{1}{4}$ of the Luxembourg minimum social wage;
- Patrimony income (income from movable or immovable assets)

As the 1.4% dependency contribution, this contribution for the future of children is assessed on a basis that is not capped and it is not tax deductible.

3. VAT

- The current reduced, intermediary and standard VAT rates will be increased by 2 percentage points to become respectively 8%, 14% and 17% as from 1 January 2015.

The super-reduced rate of 3% will not be increased but its application is revised in the following points:

- The 3% rate will apply to restaurant services rendered also outside of restaurant premises but the supply of alcoholic beverages served will be excluded from the 3% rate. These supplies will become subject to 17%.
 - The VAT rate on construction of housing as main residence of the owner remains 3%. VAT on construction of housing for rent will become 17%. There will be a transitional period till the end of 2016 in which the 3% rate can still be applied by persons who have requested an approval of its use from the authorities before 1 January 2015.
 - The 3% rate will apply to shoes, accessories and clothes destined for children under the age of 14 years.
- A new procedure to claim periodical VAT refunds will be introduced for VAT registered businesses. The VAT authorities will be bound by deadlines in which the VAT refund claims should be considered and during which additional information should be requested from the taxpayer, if necessary. The non-observance of these deadlines will trigger a right to default interest payment in favour of the taxpayers with respect to their legitimate VAT recovery claims. In the event of refusal, the taxable person can initiate administrative and judicial appeal proceedings.
 - As from 1 January 2015, the place of taxation of telecommunication services, electronically supplied services, radio and broadcasting services provided to EU private customers will shift to the country of the customer.

Within the framework of these changes, the definition of “telecommunication services” as mentioned in the VAT Directive will be introduced in the Luxembourg VAT Code.

- Along with the obligation to provide accounting information and documents, if requested by the tax authorities, the taxable persons should also be able to provide data from their cash registers or stock records.

4. Common Reporting Standard

Luxembourg has indicated its desire to be one of the “early-adopter” jurisdictions to use the OECD’s Common Reporting Standard (CRS) issued on 21 July 2014. The CRS seeks to establish a global methodology for the sharing amongst tax authorities of relevant data in relation to financial assets.

Starting in 2017 for data relating to 2016, relevant data would then be automatically exchanged. This means that financial institutions (including banks, investment vehicles as well as insurance undertakings) must establish relevant procedures, processes and systems in 2015 in order to be able to capture relevant data as from 1 January 2016.

Another Flash News will be released once further details are available, giving the scope of the necessary forthcoming regulations.

5. Additional contribution to employment funds

Municipalities where the annual amount of municipal business tax collected exceeds three times the national average will have to make some additional level of contribution to employment funds. The measure will be detailed in a Grand-ducal Decree.

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