

Abolition of capital duty in Luxembourg: another step forward!

dated 9 September 2008

The Luxembourg authorities are currently preparing a bill in order to transpose the EU capital duty Directive of 12 February 2008 (Directive 2008/7/EC) into Luxembourg domestic legislation. According to the draft bill (in its current version as of to date which has not yet been presented to Parliament), capital duty would be repealed in Luxembourg as from 1 January 2009.

This draft bill confirms the previous announcements made by the Luxembourg government in May 2008 in the traditional state of the nation address during which the Prime Minister specified that capital duty would be repealed as from 2009.

Based on the draft bill, the main changes foreseen with respect to capital duty and registration duties would be as follows:

- Abolition of capital duty as from 2009;
- Introduction of a fixed registration duty (EUR 50 or EUR 100) that would be applicable on transactions involving Luxembourg entities (i.e. incorporation, amendments of by-laws and transfer of seat to Luxembourg);
- For Luxembourg real estate assets, contributions made to a company and remunerated by shares would be subject to a proportional registration duty of 1.2% and a transcription tax of 0.5%. Contributions remunerated by other means than shares would remain subject to a proportional registration duty of 6% and a transcription tax of 1%. However, transfers made within the framework a corporate reorganisation would be exempt from any proportional registration duty under certain conditions.

The commentaries on the draft bill also clarify the consequences of the abolition of capital duty with respect to the so-called five-year “claw back” period. Based on the current capital duty legislation, contributions of shares may be exempt from capital duty under certain conditions. One of these conditions is that the company receiving the shares contributed commits to holding these shares for five years. According to the commentaries on the draft bill, the capital duty exemption would be granted permanently. In other words, compliance with the five-year claw back period would no longer be required after January 2009.

Also in line with the May 2008 announcements regarding the promotion of philanthropy, the tax rate applicable to gifts made to foundations and other not-for-profit organisations would decrease from 6% to 4% under certain conditions.

Luxembourg was one of the last European Member States that continues to levy a capital duty on the raising of capital and the marketplace has been waiting eagerly for its abolition. The further developments shall therefore be watched very closely as, if the draft bill is enacted, it would enhance Luxembourg's international tax competitiveness.

Contacts

For further information, please contact the following PricewaterhouseCoopers Luxembourg Tax experts:

Wim Piot

Partner
+352 49 48 48-2569

wim.piot@lu.pwc.com

Valery Civilio

Partner
+352 49 48 48-3170

valery.civilio@lu.pwc.com

PricewaterhouseCoopers

400, route d'Esch, B.P. 1443
L-1014 Luxembourg
Telephone +352 49 48 48-1
Facsimile +352 49 48 48-2900

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