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Flash News

Luxembourg - Corporate Tax reform for 2009

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On 16 December 2008, Luxembourg Parliament enacted the 2009 tax reform by adopting the various tax measures provided for in bills no. 5924 and 5913[1].

Broadly speaking, the final version of these two laws is in line with the initial bills which were put forward to Parliament earlier this year (see in this respect our two previous Flash News alerts dated September & October 2008). This tax reform for 2009 will prove to create a more favourable tax framework for corporate entities by implementing the following measures:

- Abolition of capital duty as from 1st January 2009;
- Exemption from withholding tax on dividends paid to treaty country "corporate" shareholders (under certain conditions);
- Amendment of the IP regime (inclusion of domain names as from 1st January 2008, and net wealth tax exemption for qualifying IP under certain conditions);
- Decrease in the corporate income tax rate by 1% (i.e. combined rate for Luxembourg city will be 28.59% as from 2009);
- Various measures to promote philanthropy.

The tax aspects relating to IFRS (initially introduced in bill no. 5924) have been removed from the law and will be included in a separate bill which should be issued during the spring 2009. Further, the provision on the non-deductibility of the tax on automotive vehicles has also been removed from the law.

This Flash News alert only focuses on the taxation of business entities. More specifically, only the abolition of capital duty is outlined below, since the other measures, already discussed in our previous Flash News alert, have not been subject to significant amendments other than those listed above.

Repeal of capital duty

Capital duty will be abolished as from 1st January 2009. As a consequence, the general registration duty regime will govern all transactions previously falling within the scope of the capital duty law.

Based on the new law, the registration duty regime has been modified as follows:

- A fixed registration duty of EUR 75 (initially set to between EUR 50 and EUR 100 in the bill) on transactions involving Luxembourg entities (i.e. incorporation, amendments to the articles of association and transfer of seat to Luxembourg) has been introduced;
- For Luxembourg real estate assets, contributions made to a company remunerated by shares will be subject to a proportional registration duty of 0.5%[2] (and not 1.2% as provided for in the initial proposal) and a transcription tax of 0.5%. Contributions remunerated by means other than shares remain subject to a proportional registration duty of 6% (and a transcription tax of 1%). However, transfers made within the framework of a corporate reorganisation would be exempt from any proportional registration duty under certain conditions.

1 Subject to confirmation by the Council of State that no second hearing is required

2 Although the commentaries on the bill refer to a 0.6% rate, it is our understanding that, based on the new provisions of the law, the applicable rate would be 0.5%

Moreover, the law clarifies a certain number of concepts (i.e. definition of shares - “droits sociaux” -, inclusion of absorptions of wholly-owned subsidiaries within the transactions characterised as corporate reorganisations).

It should be noted that the law does not include an explicit provision concerning the consequences of the abolition of capital duty with respect to the so-called five-year “claw-back” period. However, according to the initial commentaries on the bill, it is implicitly understood that, unless a “triggering event” occurs prior to 1 January 2009, transactions may not be subject to capital duty anymore.

According to the commentaries on the bill, the lawmakers wanted to ensure that taxpayers are not subject to higher taxes as a consequence of the reintroduction of the general registration duty regime. Based on the new law, this should generally be the case.

These measures are welcome, as they will enhance Luxembourg’s international tax competitiveness. Following this trend, market players are hopeful that more favourable tax measures will be enacted in the coming years.

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