

Luxembourg - Corporate Tax reform for 2009 – Further update

20 January 2009

As mentioned in our previous Flash News Alert dated 17 December 2008, Luxembourg Parliament introduced a significant number of new tax measures in the law of 19 December 2008 (the “Law”).

Further to this Law, the Luxembourg tax authorities issued an administrative circular on 31 December 2008, relating to the abolition of capital duty and the application of the general registration duty regime.

The administrative circular clarifies a number of aspects, including:

Contributions of Luxembourg real estate assets

According to the Law, contributions of Luxembourg real estate assets to a company, where those contributions are remunerated by shares, are now subject to a proportional registration duty (unless they fall within the scope of a corporate reorganisation). The circular confirms that in such a case, the applicable registration duty will be 0.6% (and not 0.5% due to a specific 2/10th surcharge) and a transcription tax will be levied at the rate of 0.5%.

Capital duty and five-year “claw-back” period

The circular confirms the position already expressed in the commentaries on the bill regarding the consequences deriving from the abolition of capital duty on the so-called five-year “claw-back” period.

No capital duty will be due retroactively for transactions governed by article 4-2 of the capital duty law (and which were exempt from capital duty) if a “triggering event” occurs after 1st January 2009. Compliance with the so-called five-year “claw-back” period is therefore no longer required.

Finally, the circular also mentions that capital duty will still be levied (together with the fixed EUR 75 registration duty) on transactions for which capital duty becomes due before 1st January 2009, even if those transactions are only registered with the Luxembourg tax authorities after that date.

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