

## Cooperation among authorities and measures to combat tax fraud and tax evasion

### Bill no. 5757

Dated 22 December 2008

Luxembourg Parliament passed bill no. 5757 into law on 17 December 2008. The main purpose of the new act is to:

- Combat tax fraud and tax evasion;
- Clarify and strengthen the legal framework governing cooperation and exchange of information among tax authorities and other government bodies; and
- Lighten the administrative burden for taxpayers.

The main measures provided for in the new law are outlined below.

### Main tax measures

#### Cooperation and exchange of information among tax authorities and other government bodies

The law clarifies and strengthens the legal framework governing cooperation and exchange of information among the *Administration de l'enregistrement et des domaines*, the *Administration des contributions directes* and the *Administrations des douanes et accises*, as well as between these tax authorities and other government bodies (e.g. social security authorities) or judicial authorities. Where practicable, the information should be exchanged electronically. The various tax authorities will also be able to perform simultaneous or joint tax audits.

These changes are made with the view of improving control over the government's key taxes, i.e. corporate and personal income tax, VAT and registration duties. The new measures should also help cut red tape (e.g. by keeping taxpayers from having to provide different tax authorities with the same information) through improved communication of information in and between the various authorities.

#### Corporate income tax: "self assessment" procedure

Up until now, the tax authorities have been able to issue a tax assessment notice within 5 years following the end of the calendar year but, once issued, the tax assessment notice was, in principle, final (unless new facts came to light).

Under the new law, tax offices may now issue a tax assessment notice based on the tax return filed by the taxpayer (for limited liability companies only), without having to perform an immediate review of the file. The tax offices will then still have a five-year period to perform a tax audit and issue a final tax assessment notice, if required.

Based on the commentaries on the bill, this is designed to speed up the taxation process. However, this may create uncertainty for taxpayers who may have to wait until the end of the five-year period to consider their tax assessment notice to be final.

This system may be new in Luxembourg, but it is already applicable in some other EU member states (e.g. France, Belgium, Germany, etc), even if the standard statute of limitations is sometimes shorter in those countries (e.g. 3 years in France or in Belgium).

## VAT: measures to improve tax audit procedures

Various provisions have been introduced in the VAT law to improve how the tax is levied and applied.

Among other things, the list of information and documents to be submitted to the tax authorities during a tax audit has been modified and a fine for failing to produce those documents has been introduced (from €50 to €1,000 a day). If tax evasion is involved, a penalty of 10% of the tax due has been introduced. It will apply to anyone who has put in place a transaction ("*manoeuvre*") for the purpose of evading the tax due or recovering it fraudulently or irregularly. Finally, the conditions of access to the taxpayers' professional premises (during the course of a tax audit) have been extended.

These measures coincide with new proposals by the European Commission to enhance international cooperation between member states to help combat VAT and excise duty fraud. As a result, additional measures can be expected to be implemented in Luxembourg in the future to improve the exchange of information between member states.

**Based on the commentaries on the bill, the new law is designed to make the various authorities more efficient while preserving the personal rights of taxpayers and protecting tax secrecy. Once the new provisions have been in operation for a few years, their effects will need to be analysed to assess whether those goals have been achieved.**

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