Married taxpayers: time to choose your tax class!

6 October 2017

In brief

During the press conference held on 3 October 2017, the tax authority released more details on the implementation of the tax reform.

Married taxpayers, whether resident in Luxembourg or not (subject to certain conditions), can now inform the tax authority of their choice of either collective or individual taxation.

This decision will be reflected directly in their 2018 tax cards and when they file their tax returns later.

In detail

Luxembourg tax residents

From 1 January 2018, married resident taxpayers will remain subject by default to joint taxation under Tax Class 2.

However, they now have the possibility to opt for individual taxation ("pure" individual taxation or individual taxation with reallocation of income), which will trigger the application of Tax Class 1 for both spouses (dependent children will have no impact on the tax class). This option should be carefully thought out, as it may lead to higher tax liability, and must be requested jointly (the signatures of both spouses are required).

The choice can be made:

- electronically via guichet.lu (no need to have a LuxTrust certificate); or
- by sending a request to the competent tax authority.

Files transmitted electronically will be given priority by the tax authority.

Non-Luxembourg tax residents

From 1 January 2018, married non-resident taxpayers will by default be subject to individual taxation under Tax Class 1 (instead of the more favourable Tax Class 2).

However, subject to certain conditions (please refer to our previous Flash News of 1 August 2017)[1], married non-resident taxpayers can request to be treated as Luxembourg tax residents, subject to either:

- joint taxation under Tax Class 2, at a fixed rate proposed by the tax authority (in principle, based on the household's worldwide income); or

- individual taxation under Tax Class 1 (with or without reallocation of income), at a fixed rate (dependent children will not have an impact).

Taxpayers requesting joint taxation will have to file a Luxembourg tax return. In this context, the household's worldwide income will be taken into consideration to determine the tax rate, and both spouses will be jointly liable for paying income tax.

Administrative formalities for non-Luxembourg tax residents

In the coming days, non-resident married taxpayers should receive (if they have not already received) a letter from the tax authority specifying a proposed tax rate to apply to the 2018 tax card.

On this basis, non-resident married taxpayers can:

1. do nothing: Tax Class 1 will apply on their tax card; or

2. accept the tax rate proposed by the tax authority (only possible if a rate is specified in the letter from the tax authority); or

3. provide the tax authority with information regarding their incomes (the tax authority should then determine a fixed rate) and state whether they want to be taxed jointly or individually (with or without reallocation).

Options 2 and 3 are available to non-residents if they meet the conditions to be treated as Luxembourg tax residents.

To get the right tax card, the tax authority strongly recommends that non-residents make their choice before 31 October 2017. If not, Tax Class 1 will apply on their 2018 tax card.

The tax position taken by non-resident taxpayers regarding their tax cards does not have to be final: they have until 31 March 2019 to potentially review their choice. For example, if a non-resident taxpayer does not make a choice now (and therefore Tax Class 1 is applied at payroll level), they could later choose to be taxed jointly for the purpose of their tax return (if the conditions to be treated as a Luxembourg tax resident are met).

The choice can be made:

- electronically via guichet.lu (no need to have a LuxTrust certificate); or

- by sending a request to the competent tax authority.

Files transmitted electronically will be given priority by the tax authority.

When making their request, married taxpayers must specify their income.

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[1] One of the main conditions requires that non-resident taxpayers derive 90% of their worldwide income in Luxembourg – condition to be fulfilled by one spouse only (except for Belgian tax residents, where a threshold of only 50% of household professional income must be met). In this respect, a new provision may be introduced (subject to approval by the Luxembourg Parliament): for non-residents carrying out their activities outside Luxembourg, the first 50 workdays not taxable in Luxembourg would be treated as Luxembourg workdays taxable in Luxembourg for the purpose of fulfilling the 90% taxation condition.

In conclusion

For married taxpayers, it's time to make a decision, which might have a serious financial impact.

Non-resident married taxpayers must be aware that they have very little time (by 31 October 2017) to react and make the best decision depending on their situation.

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