

# Tax changes for 2018 approved by Parliament

15 December 2017

## In brief

On 11 October 2017, the Luxembourg Finance Minister presented Bill No. 7200 to Parliament. The principal subject of the Bill was the Government's detailed proposed 2018 budget for revenues and expenditures. The Bill however contained some measures that would make amendments to the tax legislation.

On 14 December 2017, the Luxembourg Parliament approved these measures, and they will now become law. The main tax changes concern:

- (i) Widening the investment tax credit regime to include purchased software, and certain "sustainable mobility" assets.
- (ii) Confirming the tax-deductibility of business start-up, and R&D, costs.
- (iii) Adding more flexibility to the tax regime coming into effect for 2018 for non-resident individual taxpayers.
- (iv) Offering a EUR 2,500 tax rebate to individuals buying hybrid electric cars.

## In detail

### 1. Corporations

#### *Tax credits for investments*

The scope of the regime offering tax credits for investment is extended, to include the **acquisition of software**, provided that this software has not been acquired from any associated entity (as defined under article 56 LITL).

The above measure only relates to the acquisition of software, and does not include software created by the taxpayer itself. The revenues from such software can instead potentially benefit from partial tax exemption under Luxembourg's new IP regime, expected to take effect on 1 January 2018. Conversely, a taxpayer claiming tax credits for investment for the acquisition of software cannot also benefit from the 2018 IP regime on any revenue derived from such software (so as to prevent any double tax advantage arising).

Under this new measure, a separate tax credit is given for investment in software, although the amount that can be claimed partly mirrors the rules for calculating the existing wider overall tax credit for investment: the tax credit for software is set as 8% of the cost of investment up to EUR 150,000 in a tax period and 2% for any investment exceeding EUR 150,000. However, one further restriction applies – the credit may not exceed 10% of the tax due for the tax year during which the acquisition of software occurs. There are no measures that allow any credits that are not available because of this restriction to be deferred to a subsequent period – such potential credits are hence permanently lost.

In addition, in order to offer a further incentive for sustainable mobility, **some specific types of cars** will become eligible assets for all components of the tax credits for investment regime. To be eligible, the vehicles concerned must be:

- Passenger cars;
- “Zero emissions”, running exclusively on electricity, or hydrogen cells;
- Classified as M1, having a passenger compartment designed exclusively for the carriage of passengers and having not more than nine seats (including the driver's seat); and
- First registered after 31 December 2017.

#### *Operating expenses for R&D and start-up activities*

The legislation regarding deductibility of R&D and start-up costs is amended, to extend and clarify the scope of the rules (article 46, 7., LITL) that confirm that certain types of costs are automatically to be treated as tax deductible. As from the 2018 tax year, unless the taxpayer (either a corporate entity or an individual entrepreneur) capitalises the cost in its accounts, all expenses of the following kinds are now automatically deductible:

- a) start-up costs/set-up costs;
- b) costs related to research and development; and
- c) costs related to concessions, patents, licenses.

#### *Capital companies subject to tax*

Changes to Commercial Law have recently introduced new corporate forms, including the *société par actions simplifiée* (“SAS”) (the simplified corporation), and the *société à responsabilité limitée simplifiée* (“Sàrl-S”) (the simplified private limited liability company). The SAS and Sàrl-S are both now explicitly included in the list of types of “capital company” for the purposes of corporate income tax (article 159, paragraph 1 A. 1., LITL). Any such entity having its statutory seat or central administration in Luxembourg is automatically treated as a resident taxpayer, subject to corporate income tax.

The same changes have been made in the Municipal Business Tax Law, and in the Net Wealth Tax Law and the Valuation Law.

#### *Shareholders cancelling a participation*

A corporate reorganisation may sometimes result in a corporate shareholder having a shareholding that it has owned being cancelled (e.g. through a company being merged into its shareholder(s)). In such a situation the shareholder is liable to tax on any gain realised on the shareholding being cancelled, with the gain being computed by reference to the “going concern” value to the shareholder at the time of the transaction (see article 171 paragraph 1, LITL). The shareholder however remains able to apply the participation exemption regime.

The legislation (article 171 paragraph 3, LITL) is amended, to clarify that in these specific circumstances the participation exemption is available even if the 12-month minimum holding period condition is not satisfied. The previous wording simply required the participation being disposed of to be a holding exceeding 10% - the new legislation makes it clear that all the other conditions for the participation exemption to apply (apart from the holding period) must also be satisfied.

## 2. Personal tax measures

### *Married taxpayers and individual taxation*

Resident and non-resident married taxpayers are, as from the tax year 2018, now able to opt for individual taxation of their income (this measure was included in the tax reform legislation passed in December 2016).

**New** - The request for individual taxation must be submitted by both spouses at the latest by 31 March of the year following the tax year concerned (e.g. by 31 March 2019 for the 2018 tax year). The request is normally irrevocable, and triggers the obligation for each spouse to file an income tax return (article 3ter, al.1, LITL), with taxation of the income being based on tax class 1.

As an exception, if the request has been made before or during the tax year concerned, the taxpayers can amend or revoke the request by 31 March of the following year.

### *Non-resident taxpayers*

New measures are entering into force as from January 2018 regarding the tax class applicable for married non-residents taxpayers. Currently, married non-resident taxpayers may benefit from tax class 2, provided more than 50% of the household professional income is taxable in Luxembourg.

As from tax year 2018, non-resident married taxpayers will fall into tax class 1 (article 157ter, paragraphs 1 and 2 LITL). However, they may opt to be taxed with their tax rate being determined based on their household worldwide income (i.e. treated as Luxembourg resident taxpayers), provided that at least 90% of that year's worldwide income of one member of the household is taxable in Luxembourg. In such a case, non-resident married taxpayers would have the obligation to file a Luxembourg income tax return, and to report their worldwide income (and deductible expenses).

**New** - In determining the 90% threshold, a flexibility rule has been introduced under which employment income related to the first 50 days worked abroad (and for which the taxation rights are allocated to a foreign country based on an applicable income tax treaty) can be treated as Luxembourg taxable income.

**New** - Luxembourg non-resident married taxpayers are now offered the possibility to opt be treated as Luxembourg resident taxpayers even if the 90% threshold is not reached, provided that foreign taxable income derived by one of the taxpayers does not exceed EUR 13,000.

**New** - The same option and conditions apply to a non-resident single taxpayer, i.e. should a non-Luxembourg resident taxpayer wish to be taxed having his/her rate being determined based on worldwide income, the taxpayer must meet either the 90% threshold, or derive less than EUR 13,000 of income taxable abroad.

### *Withholding tax on salary*

Processes related to the "tax card" ("*fiche de retenue d'impôt*") have been modernised (a new paragraph is added to article 143 LITL.) The tax authorities will be allowed to send an electronic version of the "tax card" directly to the employer. Should the tax authorities do this, the employee is then dispensed from the obligation to provide the "tax card" to the employer.

### *Sustainable mobility for individuals*

A tax rebate of EUR 2,500 for “sustainable mobility” is available for the acquisition after 31 December 2017 of a hybrid electric passenger car having CO<sub>2</sub> emissions lower than 50gCO<sub>2</sub>/km (amendment to Article 129d LITL).

As a reminder, since 1 January 2017, a rebate of EUR 5,000 is also available for newly-registered “zero-emission” passenger cars which run exclusively on electricity or hydrogen batteries. A rebate of EUR 300 can also be claimed for the acquisition since 1 January 2017 of a new bicycle with or without pedalling assistance. These rebates are only available to buyers aged at least 18 years old at the acquisition date, and who have not had a similar rebate during one of the last four tax years. The vehicle/bicycle can be used for private purpose only.

### *Disposal of immovable property more than 2 years after its acquisition*

When a capital gain is realised on the disposal by an individual of immovable property located in Luxembourg (other than the main residence) more than 2 years after its acquisition, such gain has benefited from a temporary favourable tax treatment. In 2017, such a gain is to be taxed at 1/4 of the taxpayer’s overall tax rate. This favourable tax treatment is extended, to also benefit qualifying capital gains realised during the 2018 tax year.

### **3. VAT**

One important change to the VAT law is made. The fund management exemption is extended to the service of management of collective internal funds of life insurance companies. These funds are deemed to be equivalent to other types of collective investments, mainly UCITS, and should therefore benefit from the same exemption with regard to qualifying management services.

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