

# EYe on Luxembourg Tax

## Cross-border recovery of tax claims in the EU

On 12 September 2011, a Luxembourg Bill on mutual assistance for the recovery of claims relating to certain taxes, duties and levies between the Member States of the European Union (Bill n° 6326, hereafter "the Bill") has been published. This is in order to implement a European Directive on that matter. The implementation deadline for Member States is 31 December 2011. As a consequence, the law should be passed before that date, and be effective for 1 January 2012.

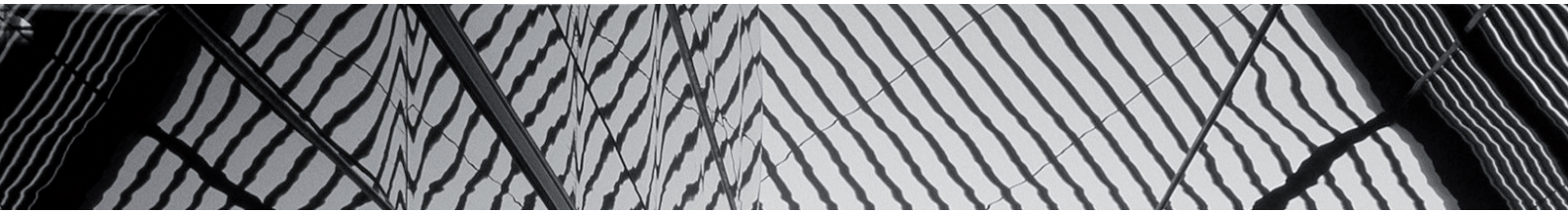
### Background

The recovery rules related to taxes and duties have an exclusive territorial scope. As such, a State is not entitled to recover the taxes due under its own legislation in another country. In the context of increasing international transactions, mutual assistance between the Member States for the recovery of each others' claims with respect to certain taxes and other measures contributes to the proper functioning of the internal market.

At a European level, the first provisions on mutual assistance for the recovery of tax claims could be found in the Directive 76/308/EEC dated 15 March 1976 which has afterwards been extended, amended and then codified by the Directive 2008/55 EC dated 26 May 2008.

The rules laid down in the latter Directive have, however, been considered as insufficient to respond to the evolution of the European market. In order to extent the scope of mutual assistance, to make assistance easier and to facilitate it in practice, it was thought to replace the existing system by the new Directive 2010/24 EU dated 16 March 2010 (hereafter "the 2010 Directive"). This Directive provides for clearer rules and a wider information exchange between Member States.

In Luxembourg, mutual assistance for the recovery of tax claims is currently ruled by the law of 20 December 2002. Due to the significant changes brought by the 2010 Directive, the Luxembourg government proposed to abolish this law and to replace it by a new one. In this context, the Bill was issued on 12 September 2011.



## Scope

The Bill foresees common rules that have to be applied by the tax administrations for the recovery of:

- ▶ Tax claims arising in another Member State and for which assistance is required to Luxembourg
- ▶ Tax claims arising in Luxembourg and for which assistance is required to another Member State

One of the main changes proposed is the enlargement of the scope for mutual assistance.

The material scope of the Bill is identical to the one of the 2010 Directive and encompasses all taxes and duties of any kind levied by or on behalf of the State or of its territorial or administrative subdivisions (e.g. municipalities), administrative penalties, fines, fees and surcharges linked to receivables for which mutual assistance may be requested, fees for certificates and similar documents issued in connection with administrative procedures related to taxes and duties as well as interest and costs relating to the receivables for which mutual assistance may be requested.

For example, the following are covered: Income Taxes, Municipal Business Tax, Net Wealth Tax, Value Added Tax and excise duties on processed tobacco, alcohol, mineral oils.

The Bill, however, does not cover social security contributions and criminal penalties.

The persons targeted by the Bill are individuals and legal persons, but also an association of persons recognized as having the capacity to perform legal acts without having the status of a legal person and any other legal arrangement of whatever form and nature, being a legal person or not, owning or managing assets which, including income derived therefrom, are subject to any of the taxes covered.

Accordingly, almost all categories of taxpayers should be covered by the Bill and expose them to the different forms of assistance as provided by the 2010 Directive.

## Forms of mutual assistance

Mutual assistance could take different forms going from information requests to assistance in the recovery.

### Exchange of information

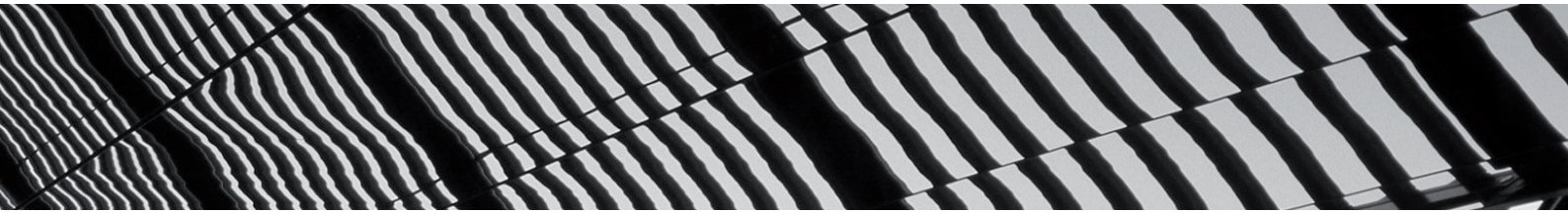
The Bill provides that, upon request, “the requested authority shall provide any information which is foreseeably relevant to the applicant authority (i.e. authority from the country requesting assistance) in the recovery of its claims”. In this respect, it is specified that the Luxembourg authorities could not refuse to supply information on the sole ground that such information is held by a bank, another financial institution, nominee or person acting in an agency or fiduciary capacity or because it relates to ownership interests in a person.

The Bill enumerates the cases where the Luxembourg authority is not obliged to supply information:

- ▶ When the Luxembourg authority would not be able to normally obtain this information in relation to similar claims arising in the Grand-Duchy of Luxembourg
- ▶ When commercial, professional or industrial secrets might be disclosed
- ▶ When the security or public policy of the Grand-Duchy of Luxembourg might be compromised

When seeking the information requested, the Luxembourg authorities will have to follow the procedure implemented by the law dated 31 March 2010 approving double tax treaties and foreseeing the procedure applicable for the exchange of information upon request.

An exchange of information without prior request is also foreseen in case of the refund of taxes (other than VAT). When a tax has to be refunded to a person established or residing in another Member State, the tax authorities may inform the tax authorities of the other State of such a refund.



#### Notification procedure

The Bill also provides for a simplified notification procedure. The tax authorities of a Member State may request the tax authorities of another Member State to notify to the taxpayer all documents which refer to a tax claim. This notification has to be accompanied by a standard form which must include the purpose of the notification, a description of the documents and the nature of the tax claim concerned as well as information on the office where further information can be obtained or on the possibilities to contest the payment obligation. This notification procedure is open to a State only when that State is not able to notify directly the documents to the taxpayer or when a direct notification would give rise to disproportionate difficulties.

#### Assistance in the recovery of tax claims

A State may also request assistance for the recovery of its tax claims. Such a request is, however, subject to the following conditions: The claim is subject to an instrument permitting enforcement in the Member State from which the claim arises

- ▶ The claim and/or the instrument permitting its enforcement in the applicant Member State is not contested in that Member State. The Bill, however, provides for an exception: The applicant authority may request the recovery of the contested claim if the legislation of the requested State allows such action. If the result of the contestation is subsequently favorable to the tax payer, the applicant State will be liable for the reimbursement of the sums contested
- ▶ The applicant State should first apply for its own appropriate recovery procedures. The Bill, however, provides for exceptions: When there is no asset for the recovery in the applicant State, and that the latter State has information indicating that the taxpayer has assets in the requested State or when the application of its own recovery procedures by the applicant State should give rise to disproportionate difficulties

As for the notification of documents, the use of a standard document has been foreseen for the request of recovery. Furthermore, a uniform instrument allowing enforcement in the requested State has to be attached to any request for recovery. Basically, the instrument includes the content of the initial instrument permitting enforcement. It will be the sole basis for the recovery of tax claims in the requested State.

Regarding the execution of the request, the Luxembourg authorities shall treat a tax claim for which a recovery request has been made as a Luxembourg tax claim, and shall use the same procedures as the ones applicable for the recovery of a similar Luxembourg tax claim. The recovery of tax claims shall be made in Euro.

#### Additional measures

Above the specific measures describing the forms of assistance available, the Bill clarifies other questions such as the State competent in case of disputes, the case where a State decides to amend its initial request and the possibility to request precautionary measures.

The Bill also foresees that Luxembourg is not obliged to provide assistance for tax claims below €1,500.

In order to speed up and facilitate the assistance process, the Bill provides for the use of electronic standard forms, unless this is impractical for technical reasons. This request shall be made or translated into one of the official languages of the requested State.

## Conclusion

This new Bill, aiming at implementing European measures, should provide Luxembourg and, more generally, Member States with more efficient instruments to collect taxes and duties. Firstly, it should ensure that all taxpayers, whatever their status, be covered by these new rules. Also, the new procedure rules aim at facilitating in practice the request of assistance. Especially, the use of standard instruments should help to avoid any translation or recognition issue for the requested State, and hence should ensure swiftness, efficiency and uniformity in the assistance process.

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## Contacts

### John Hames

*Partner*

+352 42 124 7256

[john.hames@lu.ey.com](mailto:john.hames@lu.ey.com)

### Ludwig Siegel

*Manager*

+352 42 124 7235

[ludwig.siegel@lu.ey.com](mailto:ludwig.siegel@lu.ey.com)

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