

Tax Alert

Luxembourg

Luxembourg introducing new tax measures

Luxembourg has voted a number of structural tax measures aiming to rebalance the State budget over the coming years, but also to promote certain industry sectors and to sustain economical growth:

Business taxation

Effective for the tax year 2011, the following measures are applicable:

Increase of the contribution to the unemployment fund

The current contribution to the unemployment fund due by companies subject to corporate tax will be increased from 4 to 5%, leading to an effective tax rate (for companies located in Luxembourg City) to 28,80%, for a taxable income exceeding €15.000.

Introduction of a new minimum tax for certain holding companies

Taxpayers subject to corporate income tax, who do not require any business license and who own financial assets (participations, securities, cash) exceeding 90% of their total assets, which typically applies to holding companies or so-called SOPARFI, will be subject to a minimum tax of €1.500, increased to €1.575 by the 5% unemployment surcharge. Companies in a tax consolidation will suffer this tax only once at the level of the top consolidating entity.

The rules regarding available tax credits (e.g., withholding taxes and other tax credits) remain applicable. It is understood this new tax will not impact losses carried forwards.

Limitation of corporate tax deductibility of "golden handshakes"

With a view to limit excessive golden handshakes to leaving employees, voluntary departure indemnities or dismissal indemnities above €300.000 will no longer be tax deductible for employers. Taxation rules at the level of the employee remain fully applicable, while a fractioned payment over several years will be deemed to be a single payment.

To avoid retroactive application of this measure, companies whose 2011 financial year closes after 31 December 2010 but who decided to allocate an indemnity on or prior to 31 December 2010, can still fully deduct the payment.

Increase of tax depreciation for investments in "green" technology

Businesses making eligible investments aiming to protect the environment and rational usage of energy may elect for an accelerated tax amortization of 60% of the depreciation base. This rate is proposed to be increased to 80% in order to further promote such type of investments.

Increase of investment tax credit

Businesses making eligible investments in certain fixed assets, other than land and buildings, may claim a tax credit for which the allocable rates will be increased from 12 to 13% for so-called "complementary" investments and from 6 to 7% up to the eligible investment amount of €150.000, and from 2 to 3% on the exceeding amount for the so-called "global" investment.

Non income taxation of certain "Feeder" funds

The draft law aiming to implement the EU "UCITS IV Directive" into Luxembourg law contains a number of tax measures among which certain aim at further promoting Luxembourg as platform for "Feeder" funds i.e., investment funds investing into other UCIs.

Capital gains realized by non-resident investors in investment funds, in the legal form of a corporation, next to the SICAR and the SPF, will be fully exempt from Luxembourg income tax. Further, UCIs established outside Luxembourg having their effective management center or central administration located in Luxembourg, will be exempted from corporate income and municipal business tax, as well net worth tax.

Subscription tax exemption of "FTE" funds

The UCITS IV Directive draft implementation law further proposes to introduce an exemption from the subscription tax for Exchange Traded Funds (FTE), i.e. UCIs (or individual compartments of umbrella funds), of which the securities are listed on at least one stock exchange or any other regulated market recognized and open to the public and of which the exclusive purpose is to track index performance.

Subscription tax exemption of "Microfinance" funds

Aiming to promote Microfinance in Luxembourg, UCIs and Specialized investment funds (SIF's), as well as compartments of Umbrella funds (both UCIs and SIF's), of which the investment policy provides that at least 50% of their assets are invested in Microfinance institutions, or labeled as such by the Luxembourg Fund Labeling Agency, are fully exempt from the subscription tax ("taxe d'abonnement"), as of the tax year 2010.

"Microfinance" is defined as financial operation, other than consumer credits, with the purpose to assist poor populations, excluded from the traditional financing system, to finance small revenue generating activities, under the condition that such operation does not exceed €5.000.

Individual taxation

Tax rates and deductions

Effective 2011, tax rates are proposed to be increased and certain deductions proposed to be limited:

- ▶ Addition of a tax bracket on top of current marginal rate (increase of 1% to 39%), applying as from an annual taxable income of €41,793 for taxpayers in tax class 1, €33.978 for taxpayers in tax class 1A and €83.586 for taxpayers in tax class 2
- ▶ Increase of the unemployment surcharge from 2.5% to 4% (6% on income exceeding €150.000 for taxpayers in tax class 1 and 1A and €300.000 for taxpayers in tax class 2)
- ▶ Temporary crisis contribution of 0.8% on all type of income (professional income as well as passive income), levied in the same way as the current 1,4% dependence insurance contribution (a monthly deduction should be available as far as professional and replacement income are concerned). This contribution will be levied in 2011 and 2012
- ▶ Deduction for alimonies paid to former spouse will be adjusted (maximum €24.000 per year instead of €23.400)

Family allowances

Effective October 2010, family allowances for children will be limited up to the age of 18 years (a few exceptions exist however) whereas they used to be payable until the age of 27 for students. Luxembourg resident students will instead benefit from financial subsidies.

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