A review of the corporate tax measures

Executive summary

On 14 December 2016, the Luxembourg Parliament voted and approved draft law n°7020 on the tax reform 2017, introducing amendments in the field of corporate and individual taxation, as well as in the field of indirect taxes.

Among other things and in line with the initial draft law, the Law proposes an amendment of the existing tax scales, a limitation of the loss carryforward rules (over time) and a gradual reduction of the corporate income tax (CIT) rate. The Law also includes some additional favorable measures such as an increase of the investment tax credit rates and a new deferral of depreciation.

Detailed discussion

Unless otherwise stated, the following measures enter into effect as from 1 January 2017 respectively as from fiscal year 2017.
Corporate income tax rates
In line with the earlier announcement and in order to improve companies’ competitiveness, the CIT rate is reduced from 21% currently to 19% in 2017 and to 18% in 2018. As a result, the overall nominal tax rate (for a company having its registered seat in Luxembourg-City) is reduced from 29.22% currently to 27.08% in 2017 and 26.01% in 2018.

In order to strengthen entrepreneurship and to encourage young innovative enterprises, CIT is levied at the reduced rate of 15% for taxable profits not exceeding €25,000 (as compared to 20% currently for profits not exceeding €15,000). The amount at which the maximal rate applies is increased from €15,000 to €30,000. For taxable income ranging from €25,000 to €30,001, CIT is levied at €3,750 plus 33% of the taxable income exceeding €25,000 in 2018 (39% of such excess as for the tax year 2017).

Minimum net wealth tax
The amount of minimum net wealth tax, applicable since 1 January 2016 is increased from €3,210 currently to €4,815 for companies with fixed financial assets, transferable securities, cash and receivables owed to affiliated companies exceeding 90% of their balance-sheet total and €350,000.

Loss carryforward
The loss carryforward is limited in time to 17 years for losses realized as from financial years closing after 31 December 2016, whereas no limitation in time applies in relation to losses generated between 1 January 1991 and 31 December 2016. It should be noted that the oldest losses are deemed to be used first. The measure similarly applies for CIT and municipal business tax purposes.

Investment tax credit
In order to encourage companies to implement a dynamic investment policy, the rate of the investment tax credit (ITC) for complementary investment is increased from 12% to 13% and for global investment from 7% to 8% for the tranche not exceeding €150,000. Accordingly, The ITC rate for global investment for goods qualifying for the special amortization under article 32bis of the Luxembourg Income Tax Law (ITL) is increased from 8% to 9% for the tranche not exceeding €150,000.

In addition, the ITC is granted for eligible assets that are physically used on the territory of another State which is party to the Agreement on the European Economic Area (EEA) as previously clarified in an administrative circular further to the decision of the European Court of Justice in the Tankreederei i S.A. case (C-287/10).

Temporary neutralization of exchange gains related to certain assets denominated in a foreign currency (applicable as from fiscal year 2016)
The Law widens the scope of article 54bis ITL: the deferral of taxation of foreign exchange gains resulting from assets denominated in a currency other than Euro and representing the share capital of a company is extended to any type of taxpayer upon. This provision is essentially only relevant to companies that have not made use of the option to use a foreign currency as their functional currency for tax purposes.

Business transfers
In order to facilitate the transfer of a business (either gratuitous transfers or transfers for consideration), any immovable property or part of immovable property not sold in the frame of the business transfer but which is part of the net assets transferred and necessary for the exploitation of the business can, upon conditions, be valued at book value by the transferor, resulting hence in a tax deferral of the latent capital gains.

Deferred depreciation
In order to improve the investment environment as well as to offer some additional flexibility to investors, the linear depreciation of an asset for a given financial year can, upon request, be deferred until at the latest the end of the useful life of such asset. Using this option for example allows taxpayers to pay CIT (by not recording depreciation expenses and thus deferring the realization of tax losses), and as a consequence to apply for the net wealth tax reduction foreseen by the Net Wealth Tax Law (which is not available to companies that are in a tax loss position during a given year) or to use investment tax credits or other credits that are about to expire because the 10-year carryforward period is about to expire.

Tax credit for the recruitment of unemployed persons
The temporary measure consisting in granting a tax credit for the recruitment of unemployed persons is extended until 31 December 2019.
Treatment of reversal of old “AGDL” deposit guarantee provisions (applicable as from fiscal year 2016)

The Law abolishes the deductibility of deposit guarantee provisions constituted by banks under the previous deposit guarantee scheme (Association pour la Garantie des Dépôts, Luxembourg - AGDL) but allows the tax neutral reversal of these provisions in annual tranches from 2016 to 2026, each annual tranche having to be at least equal to the annual contribution to the (new) Luxembourg Deposit Guarantee Fund and to the Luxembourg Single Resolution Fund. Any balance of the AGDL provision not yet reversed at the end of this transitional period will be added to taxable income in 2026.

Rate of withholding tax on interest paid to resident individuals

The rate of withholding tax to be applied by “paying agents,” in accordance with the “RELIBI Law” of 23 December 2005 as amended, on interest payments to individuals resident in Luxembourg, is increased from 10% to 20%.

Abolition of the registration duty upon contribution of receivables in exchange for shares

Until now, receivables contributed to a Luxembourg company in exchange for shares were exposed to a 0.24% registration duty since referred to in notarial deed. Going forward, the 0.24% registration will only apply to private deeds for which the Law foresees a mandatory registration and no longer to private deeds mentioned in or attached to deeds subject to such mandatory registration.

Mandatory electronic filing of the corporate tax returns

The Law foresees that as from fiscal year 2017, Luxembourg corporations will have to file their corporate income tax, municipal business tax and net worth tax returns by electronic means.

Increase of penalties

Incomplete or inexact information included in tax returns or for non-filing of tax returns are fined with an amount not exceeding 25% of the taxes avoided or unduly reimbursed but not less than 5% of the taxes avoided or unduly reimbursed.

According to paragraph 202 of the General Law (Abgabenordnung), tax offices can force taxpayers to meet their tax obligations (including the filing of tax returns within a given deadline) by imposing a lump sum penalty. The Law increase the amount of this penalty from currently approx. €1,240 to now up to €25,000.

Furthermore, the Law extends the definition of tax fraud and introduces a distinction between three types of tax fraud with different sanctions and competences of the administrative and judicial authorities: the simple tax fraud, the aggravated tax fraud and the tax swindle. Furthermore, the amount of the fines are significantly increased.

The Law also contains provisions to implement the tax aspects included in international requirements in the context of the fight against money laundering and the financing of terrorism. In that respect, the current money laundering infraction would be extended to criminal tax infractions.
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