ATOZ ALERT

Draft law introducing measures for reviving building construction sector as from 2024 presented to Parliament

14 February 2024

Background

On 9 February 2024, a draft law introducing various measures to revive the building construction sector was published (the "**Draft Law**"). It follows an announcement of the government dated 31 January 2024. According to the government's communication, these measures are designed to boost the construction sector and facilitate access to housing, by tackling both economic and structural housing problems. The Luxembourg property market is indeed currently at a virtual standstill. These measures concern individuals and the construction industry, as well as investors.

The aim of this first package of measures is threefold: to strengthen the construction industry and craftmanship in order to maintain jobs in the sector; to increase the supply of housing; and to support people in acquiring or renting accommodation. All but one of the measures were announced in the coalition programme of the newly elected government published on 20 November 2023.

The package includes tax and non-tax measures with short, medium and long-term effects. Hereafter, we detail the tax measures to be introduced. Some are limited to 2024, while others are structural.

Measures applying for 2024

Effective retroactively from 1 January 2024, the following measures will apply for 2024 only:

TEMPORARY INCREASE OF THE "BËLLEGEN AKT" TAX CREDIT FOR INDIVIDUALS

Given the measures announced in the coalition agreement, the Draft Law provides that the "Bëllegen Akt" tax credit for the purchase of real estate intended for residential use will be increased from 30,000 to 40,000 euros per individual for property acquisitions documented by notarial deeds between 1 January 2024 and 31 December 2024.

INTRODUCTION OF A NEW "BËLLEGEN AKT" TAX CREDIT FOR INVESTMENT IN RENTAL HOUSING

According to the Draft Law, a new "Bëllegen Akt" tax credit for investment in rental housing will also be introduced. The amount of this tax credit is set at 20,000 euros per individual acquirer. It is intended solely for sales in future state of completion (*Ventes en état future d'achèvement* - VEFA) documented by notarial deeds executed between 1 January 2024 and 31 December 2024.

The Draft Law sets that to qualify for this new tax credit, the purchaser must undertake to rent out the property for a minimum period of two years, except in cases of force majeure, and the property must be effectively occupied within four years following the date of the notarised deed of acquisition. In addition, the purchaser will be required to register the rental agreement with the tax authorities (*Administration de l'enregistrement, des domaines et de la TVA*). If these conditions are not met, the purchaser will, in principle, be required to reimburse the entire credit granted for the acquisition concerned, increased by legal interests.

Since the new tax credit will be introduced in the course of the year, purchasers will be allowed to request retroactive application if they go to the relevant tax office to sign a declaration of acceptance setting out the legal conditions.

TEMPORARY DECREASE OF THE TAX RATE FOR CAPITAL GAINS

Under the Luxembourg tax law, individual taxpayers are taxed on speculative profits on real estate assets (i.e. when the assets are sold within a two-year period following their acquisition) at the marginal rate and, if the real estate assets are sold more than two years after their acquisition, at a rate corresponding to half of the global rate (i.e. average rate resulting from taxation of all the taxpayer's income).

In order to mobilise properties, the Draft Law provides that the tax rate for non-speculative capital gains realised on the sale of built and unbuilt real estate property forming part of the private assets of individuals in 2024 will be temporary reduced to a quarter of the global rate.

For the purpose of determining the temporal applicability of this measure, net income is taxable in the year of disposal of the real estate property, regardless of the date of payment of the sale price. The date on which the property is realised is the date of the notarial deed, the date of the judicial ruling in lieu thereof or the date of the administrative deed in lieu thereof.

This measure was already applied between 2016 and 2018. At the time, this measure stimulated the supply of building land and housing, and also contributed to an increase in real estate property sales.

- As from tax year 2025

To accelerate the incentive effects of the planned quarter-rate measure and to curb speculation, the government also proposes in its Draft Law to amend the deadline within which a real estate alienation is considered as speculative and to extend it to five years, instead of two currently, as from tax year 2025.

FISCAL NEUTRALISATION OF CAPITAL GAINS TRANSFERRED IN ACCOMMODATION USED FOR SOCIAL RENTAL MANAGEMENT OR BELONGING TO ENERGY PERFORMANCE CLASS A+

The Draft Law sets up the legal framework and conditions in respect of a new tax-neutral regime for capital gains transferred on replacement assets. This measure is an addition to the measures announced in the coalition programme of the government. As a result, real estate capital gains reinvested in accommodation used for social rental management purposes (*Gestion locative sociale*) or in accommodation belonging to energy performance class A+ will be eligible for the tax neutral regime. A Grand-Ducal regulation[1] will specify the conditions for benefiting from this tax neutrality.

INCREASE OF THE RATE AND THE DURATION OF ACCELERATED DEPRECIATION FOR REAL ESTATE INVESTMENTS ALLOCATED TO RENTAL HOUSING

With the same aim of revitalising demand for real estate investments allocated to rental housing, the Draft Law aims to re-introduce[2], in terms of the amount and duration of application, a deduction - subject to a ceiling - for depreciation of 6% for a period of six years and for eligible buildings or parts of buildings. The properties in scope are those which are built for rental purposes and for which the taxpayer has signed a deed of sale in future state of completion (VEFA) between 1 January 2024 and 31 December 2024. The maximum annual amount that can be deducted in this respect is capped at 250,000 euros. This amount is reached when the allowance is calculated on depreciable values of 6,250,000 euros.

The measure is granted for maximum seven tax years, i.e. for the tax year during which the properties or parts of properties are completed (in proportion to the number of full months during which they are considered to have been completed) and for the following six years.

This new special deduction for construction (*abattement construction special*) cannot be cumulated with the existing special deduction for investments in real estate not older than five years and allocated to rental housing (*abattement immobilier special*) to the extent it concerns the same building or part of building.

Measures applying for an unlimited period

The following measures, applicable as from tax year 2024, will apply for an unlimited period:

INCREASE OF THE EXEMPTION FOR NET INCOME FROM SOCIAL RENTAL MANAGEMENT

According to the Draft Law, the exemption for net income earned from the rental of accommodation through organisations involved in social rental management will be increased from 75% to 90%.

EXTENSION OF CAPITAL GAINS TAX EXEMPTION TO THE HOUSING FUND

Currently, the law dated 22 October 2008 exempts capital gains (speculative or not) realised by individuals upon the sale of real estate properties sold to the State, municipalities and local authority associations. This exemption is maintained but introduced in a specific provision of the Luxembourg income tax law and its scope will be extended for capital gains (speculative or not) realised by individuals upon the sale of real estate properties sold to the Housing Fund (*Fonds du Logement*). This exemption will, however, not be available for real estate properties sold via the exercise of a legal right of pre-emption[3].

INTRODUCTION OF A PARTIAL EXEMPTION FOR PREMIUMS PAID BY EMPLOYERS FOR RENTING ACCOMMODATION

The Draft Law provides for a partial exemption for premiums paid by employers to young employees for the purpose of renting accommodation. This measure will be available for young employees (i) who are under 30 years of age at the beginning of the tax year during which they obtain the payment of a premium for which the exemption of 25% is

[1] Not yet available at the time this article was written.

[2] The accelerated amortisation rules applicable to rental housing investments was reduced from 6% to 4% as from tax year 2021.

[3] Note that, under the law dated 22 October 2008, this exception is limited to non-built real estate properties sold by exercising a legal right of pre-emption.

requested, and (ii) whose annual income does not exceed 30 times the monthly qualified social minimum wage[4] (*salaire social mensuel minimum qualifié*). In addition, the amount of the premium qualifying for the exemption will be capped at the amount of rent paid by the employee and at a maximum of 1,000 euros per month, of which 25% is exempted.

Therefore, if the rent paid by the employee is 750 euros, for example, the maximum amount of rental premium benefiting from the exemption that the employer can pay to the employee is the same amount of 750 euros. The exemption for such rental premium is then limited to 25% of the amount of 750 euros (i.e. 187.5 euros/month). The maximum amount paid by the employer is then limited by a second threshold of 1,000 euros per month. As a result, the 25% exemption no longer applies to the portions of a premium that exceed a monthly amount of 1,000 euros. For example, if an employer pays a rent allowance of 2,000 euros to an employee, the above-mentioned 25% exemption only applies up to the maximum monthly amount of 1,000 euros of the rental premium (i.e. 250 euros/month).

A Grand-Ducal regulation[5] will specify the detailed rules of application of this measure.

This exemption is justified by the difficulty that some employers may encounter in practice in attracting suitable candidates, given the cost of rental accommodation, which is often considered a decisive factor in the decision of whether or not to accept a job in Luxembourg. This measure is positive for young talent attraction in Luxembourg, however, it would be interesting to let the employee decide what to do with the premium, allowing them to rent accommodation or to buy accommodation. This would probably help to attract talent but also to retain it. It would also help young workers to finance their mortgage, which is also one of the aims of the Draft Law as described further.

INCREASE OF THE AMOUNT OF MORTGAGE INTEREST DEDUCTIBLE

Finally, the Draft Law aims to introduce structural measures to help individuals finance their mortgage. For this purpose, the Draft Law provides that the amount of deduction of mortgage interest for houses occupied by the owner (or to be occupied by the owner) will be increased by one third by a Grand-Ducal regulation[6].

According to the government, the relevant amounts, to be multiplied by the number of persons in the taxpayer's household, will thus rise from:

- 3,000 to 4,000 euros for the first five years of occupancy,
- 2,250 to 3,000 euros for the subsequent five years (six-ten years),
- 1,500 to 2,000 euros thereafter.

Conclusion

The new measures proposed by the Luxembourg government in order to address the current Luxembourg building construction sector issues are positive and welcome. However, most of them are temporary and only address the urgency of the current crise. This overall situation outlines the need for a global reform of the real estate tax system in Luxembourg, as we have already stressed in one of our previous articles according to which the ongoing Luxembourg property tax reform was too slow to efficiently address the housing challenges.

[4] Which amounted to 92,553.3 euros on 1 September 2023 (30 x 3,085.11 euros), corresponding to 2.5 times the annual qualified social minimum wage.

[5] Not yet available at the time this article was written.

[6] Not yet available at the time this article was written.

Do you have further questions?

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