

ATOZ ALERT

Budget 2023 - Tax measures

13 October 2022

On 12 October 2022, the 2023 budget draft law (the “**Draft Law**”) was presented to Parliament. As expected during this period of crisis and uncertainty, only some targeted tax measures will be introduced as from 2023. In addition, some existing measures will be amended in order to clarify or amend their scope of application. This ATOZ Alert provides an overview of the main tax changes to be introduced. However, the proposed measures may still evolve throughout the legislative process.

Reverse hybrid rule: scope of application clarified

With retroactive effect as from tax year 2022, the Draft Law amends the wording of article 168^{quater} of the Luxembourg Income Tax Law (“LITL”) in order to clarify the scope of application of the reverse hybrid rule.

A reverse hybrid is an entity that is treated as tax transparent under the laws of the jurisdiction where it is established but as a separate entity (i.e. opaque) under the laws of the jurisdiction(s) of the investor(s).

Based on the reverse hybrid rule of Article 168^{quater} of the LITL (in force since tax year 2022), Luxembourg tax transparent entities are subject to corporate income tax (“CIT”) on the portion of their net income that is not otherwise taxed under this law or the laws of any other jurisdiction, where one or more non-resident associated enterprises which hold in aggregate a direct or indirect interest of 50% or more of the voting rights, capital interests or entitlement to profit in such entity, are located in a jurisdiction or jurisdictions which regard the Luxembourg entity as opaque.

The Draft Law clarifies that the reverse hybrid rule will only apply if the non-taxation of the income realised by the investor through the Luxembourg entity is due to the difference in the qualification of the Luxembourg entity. The commentary to the draft law specifies further that the income realised by an investor benefiting from a subjective exemption in its state of residence will therefore be out of the scope of the reverse hybrid rule.

This clarification is very welcome and also in line with the way the rules on hybrid entities and hybrid instruments are applied. Even though the commentary only refers to the case of a non-taxation of the income due to a subjective exemption of the investor, other situations of income exemptions not due to a difference in the qualification of the Luxembourg entity (as transparent vs. opaque) should also be out of the scope of the reverse hybrid rules, such as when investors are located in a jurisdiction with no concept of tax transparency/tax opacity.

New deadline for filing tax returns: 31 December

Based on the Draft Law, the new deadline for filing individual and corporate tax returns will be 31 December instead of currently 31 March.

The change will apply for the first time in relation to:

- the 2022 income tax return, the 2022 corporate income tax return and the 2022 municipal business tax return, which will have to be filed on 31 December 2023 at the latest; and to
- the 2023 net wealth tax return (based on the net wealth as of 1 January 2023), which will also have to be filed on 31 December 2023 at the latest.

§ 167 of the general tax law will be amended accordingly.

As far as individuals are concerned, the provisions of the LITL dealing with the request to be made by partners (Article 3*bis* of the LITL), married resident taxpayers (Article 3*ter* of the LITL) and married non-resident taxpayers (157*ter* of the LITL) when opting for the individual vs. joint taxation will be amended. As from tax year 2022, the deadline for filing these requests will no longer be 31 March but 31 December instead.

Profit sharing bonus (*prime participative*): specific measure introduced for tax consolidation

The profit sharing bonus regime (*prime participative*, Article 115-13a of the LITL) introduced last year will be amended in order to take into account the situation of employers which belong to a tax consolidated group within the meaning of article 164*bis* of the LITL.

Based on the regime currently in force, the total amount of profit sharing bonus paid by the employer to its employees cannot exceed 5% of the accounting profits of the employer as of the end of the accounting year preceding the allocation of the profit sharing bonus. The purpose of the amendment to be introduced by the Draft Law is to grant, on an annual basis, the possibility to compute the 5% threshold based on the positive algebraic sum of the results of the members of the consolidated group to which the employer belongs, provided that a tax consolidation existed during the year during which the profit sharing bonus is granted as well as during the year immediately preceding the year during which the year in which the profit sharing bonus was granted.

The conditions for the application of the profit sharing bonus regime regarding the type of income to be realised by the employer and the requirement to maintain regular accounts during the tax year when the bonus is granted as well as during the immediately preceding year, will have to be met by each member of the consolidated group. A joint request of all members of the consolidated group will have to be filed by the integrating entity.

Impatriate regime improved

To attract more talents to Luxembourg, with effect as from 1 January 2023, the Draft Law will amend Article 115-13b of the LITL so as to extend the scope of application of the impatriate regime. The minimum annual remuneration required for an impatriate to benefit from the regime will be reduced from EUR 100,000 to EUR 75,000.

Real estate taxation measures

The application of the 4% accelerated depreciation for buildings used for rental housing will be limited to two buildings or parts of buildings used for rental housing, acquired or constituted after 31 December 2022 during

the entire taxpayer's tax liability period in Luxembourg. This modification will be implemented by way of a Grand-Ducal regulation. This is a further restriction of this deduction that was widely considered to be too favourable in the context of increasing housing prices.

The definition of the annual rental value of a dwelling will be amended so as to make sure that the valuation of the dwelling takes place as soon as the owner can freely dispose of it.

Finally, a long-awaited reform of property taxes has also been published which we will return to soon in another specific newsletter.

Tax credits for individuals

The maximum amount of tax credit for single parents will be increased from EUR 1,500 to EUR 2,505. In addition, the maximum income up to which taxpayers can benefit from this credit will be increased from EUR 35,000 to EUR 60,000.

Following the increase in the qualified and unqualified minimum social wage as planned for 2023, the income brackets will be increased as follows:

- the tax credit will amount to EUR 70 per month if the monthly gross salary is between EUR 1,800 and EUR 3,000 (currently between EUR 1,500 and EUR 2,500);
- the tax credit will amount to $70/600 \times (3,600 - \text{the gross (fictitious) monthly salary})$ if the monthly gross salary is between EUR 3,000 and EUR 3,600.

VAT

With effect as from 1 January 2023, new photovoltaic installations will benefit from the super-reduced 3% VAT rate.

Do you have further questions?



KEITH O'DONNELL
Managing Partner,
International & Corporate Tax
keith.odonnell@atoz.lu
T + 352 26 940 257



SAMANTHA SCHMITZ
Chief Knowledge Officer
samantha.schmitz@atoz.lu
T +352 26 940 235