Luxembourg

Advanced Tax Clearance practice formalised

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The LuxLeaks affair has brought Luxembourg tax rulings or Advance Tax Clearances (ATC) to the centre stage. However, the procedures, rules and guidelines surrounding the filing of these documents have already been under review by the government for some time. In mid-October, a draft law announced a new set of measures for the future (*Zukunftspak*), which evoked, among many other issues, the subject of tax rulings in Luxembourg. The draft law has now become law and a Grand-Ducal Regulation provides some further insight into these changes. From January 1 2015, the process of filing advance tax clearances will undergo some modifications.

Formal requirements applicable to the filing of ATCs

The formal requirements are more or less a formalisation of the existing practice. The request must include the following information:

- Detailed description of the taxpayer requesting the ATC, of the other parties involved, together with a detailed description of their activities;
- Detailed description of the contemplated operation(s);
- Detailed and motivated analysis of the related legal issues; and
- Confirmation that the information provided to analyse the request is complete and accurate.

ATC Commission

If the ATC request deals with company taxation issues, the request will first be submitted for opinion to the ATC Commission (*Commission des décisions anticipées*). The Commission will be able to hear the requesting tax payer (or its representative/adviser) to obtain additional information, if needed. It is up to the ATC Commission to decide whether such a meeting is necessary or not. The ATC Commission will then provide its opinion to the tax inspector in charge, who will take the final decision. Even though the decision power remains with the tax inspector, it can be expected that the opinion of the Commission will be followed in practice, because the aim of this Commission is also to make sure that the positions taken by the tax authorities are harmonised.

Even though the new ATC procedure only applies to ATC requests filed as from January 1 2015, ATC requests filed before 2015 and which are in the process of being reviewed by the tax authorities will also be subject to a review by the new ATC committee based on the new rules.

Fee for handling of ATCs

While no fee was due to the tax authorities in the past, a fee will apply to all ATC requests filed as from January 1 2015 which deal with company taxation issues. The amount of the fee will be determined by the tax authorities upon receipt of the ATC request and will range between €3,000 and €10,000, depending on the complexity of the ATC request and the amount of work required. The fee will be payable within one month.

Legal force and validity of ATCs

The ATC is valid for a time period of maximum five tax years and will have a binding effect on the tax authorities, except in the following situations:

- The situation or operations described are not accurate;
- The situation or operations performed differ from the ones described in the ATC request;
- It appears that the ATC is not, or no longer, in line with Luxembourg, EU or international tax law;

While it is not specifically stated in the text of the law, the commentaries to the law make it clear that it is not possible to appeal against an ATC.

Publication

ATCs will be published in a summarised and anonymised form in the annual report of the direct tax authorities.

Implications

This is not a sweeping reform of the tax ruling system. Many of the changes introduced are simply a formalisation of practices already applied. That being said, the introduction of an ATC Commission could render the process more efficient in the long run. By acting as a filtering mechanism, the ATC Commission delivers a preliminary opinion to the tax inspector who then should be able to act more quickly. Furthermore, the taxpayer or representative/adviser may need to provide additional information to the ATC Commission so that the Commission may provide a complete and well-informed opinion to the tax inspector. All in all, there will be increased visibility in terms of the timing of the tax ruling process.

As before, changes in law or changes to essential features of the planned operation could render a ruling invalid. You may wish to consult with your tax adviser on a regular basis to make sure that all rulings remain valid over the course of their duration. It will also be important to take into consideration the general time limit of five years for each ATC (with possibility of extension or renewal). Your tax adviser's role is to accompany your business throughout the life-cycle of your investments and ensure that the solutions we bring are the best for you.

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