Luxembourg

Luxembourg tax changes to be introduced in 2015 and 2016

Samantha Schmitz-Merle,
Atoz – Taxand

On October 14, the Luxembourg Government presented its 2016 Budget, containing certain tax measures to be introduced in 2015 and 2016. A progressive reduction of the Luxembourg corporate income tax rate has also been announced for 2017 but no further details have been provided.

Minimum corporate income tax to be replaced by minimum net wealth tax

Since the European Commission considers the Luxembourg minimum corporate income tax (CIT) rules not to be in line with the EU Parent-Subsidiary Directive, the government intends to abolish the Luxembourg minimum CIT from 2016 and to replace it with a minimum net wealth tax (NWT) of the same amount.

The objective here is to make Luxembourg's minimum tax rules EU-compliant and at the same time ensure that companies which have been subjected to the minimum CIT rate to date will remain subject to the same amount of minimum tax in the future.

To achieve this, the regime applicable to SICARs (*société d'investissement en capital à risque*), securitisation companies, SEPCAVs and ASSEPs (legal entity pension funds) will be amended so as to subject these companies to the minimum NWT only.

The amounts of minimum NWT remain the same as based on the minimum CIT rules, except that an increased amount of minimum NWT will apply, under certain conditions, to companies with a total balance sheet exceeding €30 million.

The new rules to be introduced as of 2016 are as follows:

- A minimum NWT of €3,210 will apply if the financial assets of the company represent more than 90% of its total balance sheet and more than €350,000;

Or, in case the company does not meet the conditions above,

- A variable minimum NWT will apply (from €535 minimum to €32,100 maximum), depending on level of the total balance sheet.

So far, the maximum amount of minimum CIT was €21,400.

These changes will apply from 2016.

Net wealth tax rules to be amended

The government intends to amend the NWT rules as follows:

- The 0.5% NWT rate will remain applicable on net wealth which is lower than or equal to €500 million; and
- A 0.05% NWT will become applicable on the part of the net wealth which exceeds €500 million.

To illustrate with an example, a net wealth of 1,500,000,000 will be taxed as follows:

- The first tax bracket of 500,000,000 will be subject to 0.5% NWT; and
- The second tax bracket of 1,000,000,000 (1,500,000,000 – 500,000,000) will be subject to 0.05% NWT

$$\text{NWT} = (500{,}000{,}000 \times 0.5\%) + (1{,}000{,}000{,}000 \times 0.05\%) = 2{,}500{,}000 + 500{,}000 = €3{,}000{,}000$$

Luxembourg IP regime to be repealed

Following the release of the BEPS package by the OECD on October 5, Luxembourg, as announced earlier this year, will repeal its intellectual property (IP) regime as of July 1 2016 and will at the same time introduce some transitional rules until 2021. A replacement regime in line with the OECD so-called modified nexus approach, as defined in the report on Action 5 of the BEPS Action Plan, is not introduced yet, but may be introduced at a later stage.

IP 80% exemption regime to be repealed

The 80% exemption regime which applies to income arising from qualifying IP assets and capital gains on the sale of such assets is being repealed as of July 1 2016.

A transitional period will run until June 30 2021, during which the exemption regime will remain applicable.

However, the regime will no longer apply from December 31 2016 if the IP is acquired between January 1 2016 and July 1 2016 from a related party, except if it is acquired from a party which benefitted from the Luxembourg IP regime or a corresponding foreign IP regime at the time of the transfer.

The Luxembourg tax authorities will communicate to foreign tax authorities on IP structures put in place after February 6 2015 (that is, they will disclose the identity of the taxpayer benefitting from the regime). The information will be provided by the tax authorities either three months after the date as from which the information has become available or one year after the filing of the related tax return by the taxpayer, whichever date comes first.

IP 100% NWT exemption regime

The 100% exemption which applies to qualifying IP assets for NWT purposes will be repealed as of January 1 2017.

A transitional period will run until January 1 2021, during which the NWT exemption will remain applicable.

However, the NWT exemption will no longer apply as from January 1 2018 if the IP is acquired between January 1 2016 and July 1 2016 from a related party, except if it is acquired from a party which benefitted from the Luxembourg IP regime or a corresponding foreign IP regime at the time of the transfer.

The Luxembourg tax authorities will communicate to foreign tax authorities on IP structures put in place after February 6 2015 (that is, they will disclose the identity of the taxpayer benefitting from the regime). The information will be provided by the tax authorities either three months after the date from which the information has become available or one year after the filing of the related tax return by the taxpayer, whichever date comes first.

Tax amnesty regime to be introduced

A tax amnesty regime will be introduced for the period starting January 1 2016 and ending on December 31 2017.

In case a taxpayer voluntarily amends a prior tax return, no sanction will apply other than one of the two following:

- If the rectified tax return is filed in 2016, the tax due will be increased by 10% of the amount of tax on the assets or income which had not been reported; or
- If the rectified tax return is filed in 2017, the tax due will be increased by 20% of the amount of tax due on the assets or income which had not been reported.

Step up in value to be introduced for individuals

In order to remove potential situations of double taxation, the following step-up rule will be introduced: substantial shareholdings (that is, a participation of more than 10%) in a Luxembourg company owned by non-resident individuals, as well as convertible loans issued by the company will, at the time the non-resident becomes Luxembourg resident, be valued at the fair market value.

This rule will, however, not apply if the non-resident individual has been a resident of Luxembourg for more than 15 years during the period preceding the transfer of its tax residence to Luxembourg and has been a non-resident for a period of less than five years.

In practice, substantial shareholdings are the only significant assets (other than real estate or business assets) that give rise to taxation of long term capital gains in Luxembourg. Consequently, this rule has the effect of allowing a 'step up' for tax purposes, when a non-resident individual becomes resident in Luxembourg.

This means that Luxembourg gives up its right to tax the latent gains realised over the period preceding the transfer of the residence to Luxembourg.

This new rule applies from 2015.

New option for individual taxpayers to be taxed as a Luxembourg resident for the whole year

An option is introduced as from 2015 for individual taxpayers who were not Luxembourg resident during the whole year to opt to be taxed in Luxembourg as if they had been Luxembourg resident during the whole year. The main objective is to allow any excess wage tax levied at source to be refunded.

Samantha Schmitz-Merle (samantha.merle@atoz.lu)
Atoz – Taxand
Tel: +352 26 940 235
Website: www.atoz.lu