

Luxembourg minimum net wealth tax declared unconstitutional

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On 10 November 2023, the Constitutional Court of Luxembourg declared the minimum net wealth tax regime in force partially unconstitutional.

Before delving into the details of the judgement, a basic understanding of the Luxembourg net wealth tax regime is required.

Understanding the existing net wealth tax regime

The net wealth tax regime can be divided into two categories: the normal net wealth tax and the minimum net wealth tax.

Normal net wealth tax (NWT)

As per paragraph 8 (1) of the amended law of 16 October 1934 (also known as the "*Vermögenssteuergesetz*" - VStG) concerning the NWT, Luxembourg companies are subject to the normal NWT at the following rates:

- 0.5% for net wealth below EUR 500 million.
- 0.05% for net wealth exceeding EUR 500 million.

These rates are applicable to the worldwide net wealth of the taxpayer, unless a double tax treaty or a specific legal provision (such as an exemption for certain categories of assets) states otherwise.

Minimum net wealth tax (MNWT)

According to paragraph 8 (2) VStG, Luxembourg companies whose financial assets, transferable securities, and cash deposits exceed 90% of their total balance sheet and with a balance sheet total exceeding EUR 350,000, are subject to an annual MNWT of EUR 4,815.

Other companies are subject to a progressive MNWT, ranging from EUR 535 to EUR 32,100, depending on their balance sheet total.

The Constitutional Court judgement

The Constitutional Court stated that the annual MNWT of EUR 4,815 is not compliant with Article 15 of the current Luxembourg Constitution, which provides for the principle of equality before the law for all Luxembourgers (individuals and legal entities).

This principle of equality extends to tax matters through the principle of tax contribution according to the taxpayer's contributory capacity.

The Constitutional Court stated that such principle of contributory capacity is not respected for companies whose financial assets, transferable securities, and cash deposits exceed 90% of the total balance sheet and whose balance sheet total is between EUR 350,000 and EUR 2,000,000 (the **Eligible Companies**). The Court also ruled out that, as a matter of principle, when comparable tax payers fall under two different schemes, the most favourable one should apply.

In conclusion, pending legislative reform, the Constitutional Court provided for a favourable decision for Eligible Companies which should then be subject to a progressive MNWT of EUR 1,605 instead of the EUR 4,815.

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