

Luxembourg government proposes "welcome" tax updates

Insights - 31/05/2024

The Luxembourg government presented a new draft law (n° 8388) to the Parliament on 23 May 2024. Introducing significant changes in the Luxembourg tax landscape, it aims to enhance certainty and flexibility in specific domains.

This draft law proposes modifications to:

- i. the amended General Tax Law of 22 May 1931 (Abgabenordnung - AO)
- ii. the amended law of 16 October 1934 concerning the net wealth tax (Vermögenssteuergesetz - VStG)
- ii. the amended Luxembourg income tax law dated 4 December 1967 (LITL)

This article will focus on the three major modifications.

Clarifications of the Buy-Back regime of classes of shares

The draft law is based on recent case laws and provides that the redemption of an entire class of shares (or corporate units), followed by its timely cancellation (the **Buy-Back**), is considered as a partial liquidation which is **not** subject to Luxembourg withholding tax under the following cumulative conditions.

- **Timing of implementation:** the classes of shares are established at the time of the incorporation or during a subsequent share capital increase of the company
- **Redemption:** the redemption relates to an entire class of shares
- **Different economic rights:** each class of shares has economic rights, as defined in the entity's articles of association, that are distinct from those of other classes
- **Cancellation:** a corresponding share capital reduction is following the redemption within six

months

- **Price:** the redemption price is determinable based on criteria set in the entity's articles of association (or any other document referred to in the articles), reflecting the estimated fair market value of that class at the time of redemption
- **Reporting:** the Buy-Back made by an individual having a significant stake in the company (more than 10% during the five previous years) must be disclosed by said company in its annual income tax return
- **No abuse:** the Buy-Back is not subject to the general anti-abuse regulations

Simplifications to the minimum net wealth tax regime

The VStG currently provides that companies whose financial assets, transferable securities and cash deposits exceed 90% of the total balance sheet and whose balance sheet total exceeds €350,000, are subject to an annual minimum net wealth tax (NWT) amounting to €4,815. Other companies will be subject to a progressive minimum NWT, varying between €535 and €32,100 depending on their balance sheet total.

On 10 November 2023, the Constitutional Court of Luxembourg declared the minimum NWT regime in force partially unconstitutional for companies whose financial assets, transferable securities, and cash deposits exceed 90% of the total balance sheet and whose balance sheet total is between €350,000 and €2 million. Following this decision, the Luxembourg government proposes to simplify the minimum NWT regime for taxpayers with financial assets exceeding 90% of their total balance sheet, while potentially lowering the tax burden for others, thereby increasing competitiveness.

According to the Draft Law, the minimum NWT would be:

- €535 when the total balance sheet is less than or equal to €350,000
- €1,605 when the total balance sheet is between €350,000 and €2 million
- €4,815 when the total balance sheet exceeds €2 million

Introduction of an optionality for dividends and capital gains tax exemptions

The draft law aligns with other EU States and introduces an annual opt-out option in relation to the (full or partial) participation exemption regime on dividends (Articles 166 and 115.15a LITL) and capital gains.

From 2025, this option will be available every year for each qualifying participation held and could prove useful to companies carrying tax losses forward.

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