

New tax change on advanced rulings granted before 1 January 2015

Insights - 21/10/2019

The Draft Budget Law for the year 2020 was submitted on 14 October 2019 by the Luxembourg Government to the Parliament.

The most significant measure (insertion of a paragraph 29b in the general tax law amended on 22 May 1931) seeks to amend the validity rules of certain advance tax rulings (ATR). An ATR is a binding agreement issued by the national tax authorities to a specific taxpayer confirming the application of domestic tax laws to the taxpayer's circumstances. Until now, tax rulings granted before 1 January 2015 were not subject to any specific limitation regarding their validity period. Therefore, unless under very strict circumstances, the tax authorities could not challenge the validity and application of the confirmation given.

In recent years, when the tax administration tried to deny the application of a tax ruling, the Luxembourg courts have consistently applied the "Collart test" in order to assess if the tax authorities were bound by the agreement given. In the decision of the Council of State dated 19 November 1969 (the Collart case, n°5988), it was stated that the tax administration was not allowed to refuse the application of a tax treatment communicated in writing to a taxpayer when: (i) the information was given without reservations by a competent agent (ii) following a situation fully detailed by the taxpayer, (iii) which remained identical and (iv) had a significant influence on the taxpayer. As from 2011, most of the decisions rendered by the Luxembourg administrative courts in relation to cases of challenge of the application of an ATR by the tax administration turned out to be favourable to the taxpayers further to the application of the "Collart test".

As per the Draft law, Luxembourg taxpayers that obtained an advanced tax ruling before 1 January 2015 will no longer be able to rely on such confirmation from the Luxembourg tax administration as from fiscal year 2020. They will still be allowed to apply the tax treatment confirmed in the ATR in their annual corporate tax returns until fiscal year 2019, to the extent that such tax treatment does not conflict with applicable law and the terms of the transaction covered by the tax ruling have not changed.

For fiscal years 2020 and onwards, taxpayers that wish to obtain a (similar) confirmation from the Luxembourg tax administration will have to file a new request in accordance with the current procedure, applicable to any confirmation granted as of 1 January 2015.

As per the current procedure, tax rulings granted after 1 January 2015 are valid for a maximum period of 5 years unless one of the following occurs:

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We recommend that taxpayers affected by this amendment seek advice on the possibility / requirement to file a new tax ruling request.

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Meet the Author



Bertrand Gérardin

Partner

Luxembourg Legal Services

E: bertrand.geradin@ogier.com

T: [+352 2712 2029](tel:+35227122029)

Key Contacts



Aurélie Clementz

Partner

Luxembourg Legal Services

E: aurelie.clementz@ogier.com

T: [+352 2712 2024](tel:+35227122024)



Hadrien Brémon

Counsel

Luxembourg Legal Services

E: hadrien.bremon@ogier.com

T: [+352 27 12 20 71](tel:+35227122071)

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