

Tax changes for 2018 approved by the Luxembourg Parliament

January 10, 2018

In brief

On October 11, 2017, the Luxembourg Finance Minister presented Bill No. 7200 (Bill) to Parliament. The Bill's principal subject was the government's detailed proposed 2018 budget for revenues and expenditures. The Bill also contained measures that would amend the tax legislation.

On December 14, 2017, the Luxembourg Parliament approved these measures, and they will become law. The main tax changes are:

- (i) widening the investment tax credit regime to include purchased software and certain 'sustainable mobility' assets
- (ii) confirming the tax-deductibility of business start-up and R&D costs
- (iii) adding more flexibility to the tax regime for nonresident individual taxpayers, with new measures effective in 2018, and
- (iv) offering a EUR 2,500 tax rebate to individuals buying hybrid electric cars.

In detail

Corporations

Tax credits for investments

The regime's scope now includes the software acquisition, provided that this software has not been acquired from an associated entity (as defined under article 56 LITL).

The above measure only relates to software acquisition and does not include software created by the taxpayer itself. Instead, the revenues from such software potentially can benefit from partial tax exemption under Luxembourg's new IP regime, expected to take effect on January 1, 2018.

Conversely, a taxpayer claiming tax credits for software investments also cannot benefit from the 2018 IP regime on revenue derived from such software (thus preventing potential double tax advantages).

This new measure provides a separate tax credit for software investments. Although the amount that taxpayers can claim partly mirrors the rules for calculating the existing wider overall investment tax credit, the tax credit for software is set at 8% of the investment cost up to EUR 150,000 in a tax period, and 2% for any investment exceeding EUR 150,000.

However, one additional restriction applies: the credit may not exceed 10% of the tax due for the tax year during which the software acquisition occurs. Any credits not available because of this restriction may not be carried over to a subsequent period. Such potential credits are permanently lost.

In addition, in order to further incentivize sustainable mobility, some specific car types will be eligible assets for all components of the tax credits for investment regime. To be eligible, the vehicles must be:

- passenger cars

- 'zero emissions', running exclusively on electricity or hydrogen cells
- classified as M1, having a passenger compartment designed exclusively for the carriage of passengers and having not more than nine seats (including the driver's seat), and
- first registered after December 31, 2017.

Operating expenses for R&D and start-up activities

The legislation on deductibility of R&D and start-up costs is amended to extend and clarify the scope of the rules (article 46, 7. LITL) thus confirming that certain types of costs are automatically tax deductible. Beginning in the 2018 tax year, unless the taxpayer (either a corporate entity or an individual entrepreneur) capitalizes the cost in its accounts, all expenses of the following kinds are now automatically deductible:

- start-up costs/set-up costs
- costs related to R&D and
- costs related to concessions, patents, and licenses.

Capital companies subject to tax

New corporate forms are part of the changes to Commercial Law, including the *société par actions simplifiée* (SAS or the simplified corporation), and the *société à responsabilité limitée simplifiée* (Sàrl-S or the simplified private limited liability company). The SAS and Sàrl-S both now explicitly are included in the list of types of 'capital company' for the purposes of corporate income tax (article 159, paragraph 1 A. 1., LITL). Any such entity having its statutory seat or central administration in Luxembourg is treated

automatically as a resident taxpayer, subject to corporate income tax.

The same changes have been made in the Municipal Business Tax Law, the Net Wealth Tax Law and the Valuation Law.

Shareholders cancelling a participation

A corporate reorganization sometimes may result in a corporate shareholder having a shareholding cancelled (for example, through a company being merged into its shareholders). In this situation, the shareholder is liable for tax on any gain realized on the shareholding being cancelled, with the gain being computed by reference to the 'going concern' value to the shareholder at the time of the transaction (see article 171 paragraph 1, LITL). However, the shareholder can apply the participation exemption regime.

The amended legislation (article 171 paragraph 3, LITL) clarifies that in these specific circumstances the participation exemption is available even if the 12-month minimum holding period condition is not satisfied. The previous wording simply required the participation being disposed must be a holding exceeding 10%. The new legislation clarifies that all other conditions for application of the participation exemption (apart from the holding period) also must be satisfied.

Personal tax measures

Married taxpayers and individual taxation

Resident and nonresident married taxpayers now are, beginning with tax year 2018, able to opt for individual taxation of their income. This measure was included in the tax

reform legislation passed in December 2016.

New: The request for individual taxation must be submitted by both spouses no later than March 31 of the year following the tax year concerned (such as, by March 31, 2018 for the 2017 tax year.) The request normally is irrevocable and triggers the obligation for each spouse to file an income tax return (article 3ter, al.1, LITL), with taxation of the income being based on tax class 1.

As an exception, if the request has been made before or during the tax year concerned, the taxpayers can amend or revoke the request by March 31 of the following year.

Nonresident taxpayers

New measures are entering into force in January 2018 regarding the tax class applicable for married nonresident taxpayers. Currently, married nonresident taxpayers may benefit from tax class 2, provided that more than 50% of the household professional income is taxable in Luxembourg.

In tax year 2018, nonresident married taxpayers will fall into tax class 1 (article 157ter, paragraphs 1 and 2 LITL). However, they may opt to be taxed with their tax rate being determined based on their household worldwide income (i.e., treated as Luxembourg resident taxpayers), provided that at least 90% of that year's worldwide income of one member of the household is taxable in Luxembourg. In this case, nonresident married taxpayers are required to file a Luxembourg income tax return, and to report their worldwide income (and deductible expenses).

New: In determining the 90% threshold, a flexibility rule has been introduced under which employment income related to the first 50 days worked abroad (and for which the taxation rights are allocated to a foreign country based on an applicable income tax treaty) can be treated as Luxembourg taxable income.

New: Luxembourg nonresident married taxpayers now can choose to be treated as Luxembourg resident taxpayers even if the 90% threshold is not reached, provided that foreign taxable income derived by one of the taxpayers does not exceed EUR 13,000.

New: The same option and conditions apply to a nonresident single taxpayer. A non-Luxembourg resident taxpayer can choose to be taxed having his rate determined based on worldwide income, and the taxpayer must meet either the 90% threshold or derive less than EUR 13,000 of income taxable abroad.

Withholding tax on salary

Processes related to the 'tax card' (*fiche de retenue d'impôt*) have been modernized. A new

paragraph is added to article 143 LITL. The tax authorities can send an electronic version of the 'tax card' directly to the employer. If the tax authorities do this, the employee then is dispensed from the obligation to provide the 'tax card' to the employer.

Sustainable mobility for individuals

A tax rebate of EUR 2,500 for 'sustainable mobility' is available for the acquisition of a hybrid electric passenger car having CO₂ emissions lower than 50gCO₂/km (amendment to Article 129d LITL) after December 31, 2017.

As a reminder, since January 1, 2017, a rebate of EUR 5,000 is also available for newly-registered 'zero-emission' passenger cars which run exclusively on electricity or hydrogen batteries. A rebate of EUR 300 also can be claimed for the acquisition since January 1, 2017 of a new bicycle with or without pedaling assistance. These rebates only are available to buyers aged at least 18 years old at the acquisition date and who have not had a similar rebate during one of the last four tax years. The vehicle or

bicycle can be used for private purpose only.

Disposal of immovable property more than 2 years after its acquisition

When capital gain is realized by an individual on the disposal of immovable property located in Luxembourg (other than the main residence) more than two years after its acquisition, such gain has benefited from a temporary favorable tax treatment. In 2017, such a gain is to be taxed at 1/4 of the taxpayer's overall tax rate. This favorable tax treatment is extended in order to benefit qualifying capital gains realized during the 2018 tax year.

VAT

There is one important change to the VAT law. The fund management exemption is extended to the service of management of collective internal funds of life insurance companies. These funds are deemed to be equivalent to other types of collective investments, mainly UCITS, and therefore should benefit from the same exemption with regard to qualifying management services.

Let's talk

For a deeper discussion of how this may affect your business, please contact:

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