Overview of tax and legal developments in Luxembourg 2016 - 2017

20 December 2016

Please find hereafter an overview of the most important changes in the Luxembourg legal and tax laws in 2016 and 2017:

The reduction of the Corporate Income Tax (CIT) rate

Currently Luxembourg companies are subject to 21% CIT, 6.75% municipal business tax (MBT) in Luxembourg City and a solidarity surcharge of 7% of the CIT rate (with therefore a combined rate of 29.22%). The CIT rate for 2017 will be decreased to 19% and for 2018 it will be decreased to 18%. The combined rate will therefore slightly decrease.

The reduction from the CIT rate to below 20% will eventually also bring subsidiaries which are subject to a tax rate of 10% within the scope of the Luxembourg participation exemption (as a subsidiary has to be taxed at a rate of at least 50% of the Luxembourg CIT to be considered "comparable" taxed).

The carry forward of tax losses will be limited to a period of 17 years (only for losses generated in the fiscal year 2017 onwards).

Increase of the minimum Net Wealth Tax

The minimum net wealth tax for Luxembourg SOPARFIs (corporate taxpayers with more than 90% of their total balance sheet and more than EUR 350,000 represented by financial assets) will be increased from EUR 3,210 to EUR 4,815 as from fiscal year 2017.

Transfer Pricing: proposed (continuous) codification

So far, the 'at arm's length-principle' is embedded in article 56 of the Luxembourg Income Tax Lax (LIR). A new article 56bis LIR will now be introduced to implement the most recent re-

commendations from the OECD BEPS Project (Actions 8 - 10). It is now specifically stated that companies will have to base their pricing on a comparable transaction with similar economic characteristics.

In conjunction with updating the LIR, it is expected that the Luxembourg tax authorities will update the 2011 Transfer Pricing Circular and, more in particular, that they will provide further guidance on the equity at risk element for intra-group financing transactions. Currently, 1% equity at risk is used as safe harbor, however, most likely they will abandon this "rule of thumb" and replace it with a more economic based analysis.

The introduction of the RAIF

Earlier this year, the so called "Reserved Alternative Investment Fund" (RAIF) has been introduced. This is a new Luxembourg fund vehicle designed for promoters and investors who are looking for maximum flexibility. The main benefits of the RAIF can be summarized as follow:

- contractual flexibility (same as for the SIF and SICAR), including the availability of umbrella structures;
- efficient time to market: the process to set up a RAIF can be as short as the time to prepare the issuing of the required documentation, i.e. 10 days;
- tax neutral;
- benefits of the AIFMD-regime, because of the management by an authorized external Alternative Investment Fund Manager, based in Luxembourg or in another EU member state;
- no limitations in terms of fund strategies: the possibility to invest in any eligible alternative assets; and
- advantages of the European passport for marketing to professional investors.

This completes the tool box offered by Luxembourg to promoters and well-informed investors, who have thus at their disposal a new option for structuring private equity, real estate, hedge funds and other investments.

Modernization of Company Law

Per 23 August, 2016 the completely modernized law regarding commercial companies as well the modified Civil Code entered into force. The laws have been updated and/or now contain specific provisions with respect to amongst others the following:

- Issuance of tracker shares;
- More flexible non-voting share regime;
- Abandoning of the so-called double majority rule with respect to certain types of shareholder decisions;
- Simplified transfer of shares in a Sarl;
- Introduction of a simplified liquidation procedure;
- Introduction of a more secure framework for shareholder agreements; and
- Introduction of the "société par actions simplifiée" (SAS).

The modernization of these laws is the result of a ten-year legislative process and reinforces the current legal framework and is expected to further increase Luxembourg's attractiveness as a hub for international investments.

Country-by-Country (CbC) Reporting: first deadline 1 January 2017 over the fiscal year 2016
The law to implement the EU Directive 2016/881 has recently been approved by Luxembourg parliament. These measures lead to the obligation for the parent of large multinational enterprise groups – having a total consolidated revenue of more than € 750 million during the previous fiscal year – to prepare and submit a CbC-report with the Luxembourg Tax authorities.

The first country-by-country report in principle needs to be filed for fiscal years starting on or after 1 January 2016 and will therefore need to be filed in 2017 if the fiscal year coincides with the calendar year. Further, a Luxembourg taxpayer and member of a large multinational enterprise group must notify the Luxembourg tax authorities which entity of the multinational enterprise group will file the CbC report.

Should you wish to learn more about the above developments, feel free to contact us and we will be happy to further inform you.

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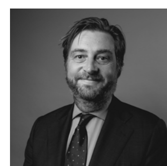

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