UPDATE

New Luxembourg Tax Reforms Aim to Boost International Business and Investment Appeal

Introduction

Since coming to power in October 2023, the Luxembourg coalition government is increasingly demonstrating its commitment to enhancing Luxembourg's tax regimes.

They have introduced a series of draft laws in this regard and which aim to introduce improvements across investment funds, corporate taxation, individual taxation and family wealth companies.

In this update, we summarise the specific proposed changes and what they could mean for your business and for investors.

New Legislation

Draft law No. 8388 ("The First Draft Law") was published on 23 May 2024 and includes an amendment to the Luxembourg tax code clarifying the conditions required for a redemption of a class of shares to qualify as a partial liquidation ("Share Class Repatriations"), a simplification of the minimum net worth tax ("NWT") brackets applicable to Luxembourg entities and a new election to treat tax exempt dividends and capital gains as taxable.

Draft law No. 8414 ("The Second Draft Law") was published on 17 July 2024 and includes further proposed tax measures. These include a new exemption for actively traded UCITS ETF Funds, reducing the corporate income tax rate applicable to Luxembourg corporations, expanding the profit-sharing bonus regime for employees, a new and improved impatriate tax regime, tax exemptions on bonuses for young professionals and several updates to the tax-exempt family wealth management company.

Codifying the Share Class Repatriation Regime

The First Draft Law will codify the conditions which allow for the redemption of a class of shares to be considered as a partial liquidation for Luxembourg tax purposes and therefore not being subject to withholding tax. 'Share Class Repatriations' have been utilised in Luxembourg corporate structures over the years as a repatriation mechanism for distributing profits to shareholders.

The First Draft Law imposes the following conditions for qualifying for such treatment:

a) the redeemed class of shares must be cancelled within six months of redemption;
b) each class of shares must have distinct economic rights defined in the articles of incorporation (such as: preferential dividends, exclusive profit rights for a determined period, return linked to performance of directly / indirectly held assets or activities, etc.); and
c) the redemption price must reflect the "fair market value" (arm's length standard) based on provisions found in the articles of incorporation (or a reference to such document in the articles).

The First Draft Law also specifically mentions that such share class redemption will be subject to anti-abuse rules applicable in Luxembourg.

Simplifying the Minimum Net Worth Tax Regime

With the aim to simplify Luxembourg's minimum net worth tax regime, the First Draft Law proposes new minimum NWT brackets. Under the proposed changes, the minimum NWT is now capped at EUR 4,815 (down from the existing maximum cap of EUR 32,100).

The new simplified brackets are as follows and are based on the value of total assets on the balance sheet of a Luxembourg company:

• EUR 0 to EUR 350,000 of total assets: minimum NWT amounts to EUR 535,
• More than EUR 350,000 and up to EUR 2,000,000 of total assets: the minimum NWT due would be EUR 1,605, or
• More than EUR 2,000,000 of total assets: The minimum NWT due would be EUR 4,815.

Election to Tax Certain Exempt Dividends and Capital Gains

The First Draft Law also provides that Luxembourg taxpayers can elect to waive the exemption applicable to dividends and capital gains. The legislative notes state the purpose of such waiver is to allow taxpayers to better manage their losses considering the 17-year limit on tax loss carry-forwards.

The taxpayer must elect to waive these exemptions on an annual basis. However, only taxpayers with shareholdings qualifying for the minimum Euro amount acquisition value thresholds of EUR 1.2 million for dividends and EUR 6 million for capital gains can make such an election, i.e. the alternative test of minimum 10% ownership threshold is excluded from the waiver possibility.

Exemption from Subscription Tax for Actively Traded ETF Funds (UCITS)

The Second Draft Law would exempt actively managed UCITS ETFs from the annual subscription tax normally applicable to UCITS and would ensure that Luxembourg not only maintains but enhances its competitiveness as the leading jurisdiction for investment funds within the European Union.

The Second Draft Law provides that the exemption will apply as from the first day of the quarter beginning after the publication of the law (once voted on by the Luxembourg Parliament) in the Official Journal of the Grand Duchy of Luxembourg. Assuming the bill is voted through and published before year end, the exemption should enter into force as of 1 January 2025.

Reducing the Corporate Income Tax Rate

The Second Draft Law includes a 1% reduction in the Luxembourg corporate income tax rate, reducing the standard rate for corporate income tax for income above EUR 200,000 from 17% to 16%.

This proposed reduction will result in the aggregate Luxembourg corporate income tax rate to be reduce from 24.94% to 23.87% for companies resident in Luxembourg City after taking into account the municipal business tax and solidarity surcharge.

New and Improved Impatriate Regime

The Second Draft Law will repeal the old impatriate regime for highly skilled foreign employees who relocate to Luxembourg and replace it with a simplified and more robust version.

The new impatriate regime allows for a 50% exemption of the gross annual remuneration, including benefits paid-in-kind, which is capped at EUR 400,000.

The new impatriate regime maintains the conditions for high valued employees to benefit including (non-exhaustive list):

• The impatriate must take up residence in

Luxembourg and for the five proceeding years did not live within 150 km of the border or was not otherwise subject to Luxembourg personal income taxation;
• The impatriate must earn an annual fixed remuneration (salary base) of at least EUR 75,000;
• The impatriate must have acquired in-depth specialisation in the sector or their employment;
• Other conditions apply (including special conditions for seconded employees).

Expanding the Profit-Sharing Tax Regime for Employees

The Second Draft Law contains provisions for improving Luxembourg's profit-sharing regime (*prime participative*) for attracting and retaining talent. The proposal includes allowing companies to pay employees a profit share of up to 7.5% of the company's accounting profits of the prior year (compared to the existing 5% limitation) and enables the employee to benefit from a 50% tax exemption on such profit sharing for up to 30% of the employee's total remuneration from the company (up from the current limitation of 25%).

New Young Employee Tax Exemption on Bonuses

The Second Draft Law provides for a new young employee bonus exemption which allows a tax exemption of up to 75% on the bonus amount payable to a qualifying employee.

The requirements applicable to the new regime include that the employee must be under 30 years old, engaged in their first employment contract, and total annual remuneration does not exceed EUR 100,000.

Updates to the Tax-Exempt Family Wealth Management Company (SPF)

The Second Draft Law provides for a series of changes to the tax-exempt family wealth company (SPF) particularly aimed at ensuring compliance with the regime's requirements including:

• enhanced identification requirements in the articles of incorporation;
• new guidance on how to determine the 0.25% annual subscription tax;
• mandatory electronic filings for annual compliance certificate; and
• increased fines for any abuses or noncompliance with the regime's requirements.

There is also a proposal to increase the minimum annual subscription tax from EUR 100 to EUR 1,000.

Take Aways

All the aforementioned tax measures demonstrate the new Luxembourg coalition government's commitment to focusing on tax reform measures that not only maintain but enhance Luxembourg's competitiveness as an optimal location for international business and investment.

These measures should also reinforce Luxembourg's reputation as a stable and predictable jurisdiction.

Further Information

For further information and assistance, please reach out to your usual Maples Group contact or the contact below.

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