

Flash News

New tax measures in Luxembourg for 2021

On 17 December 2020, draft law no. 7666 (2021 budget law) has been adopted by the Luxembourg Parliament and subsequently transposed into law on 19 December 2020.¹ The tax section of the law does not contain a comprehensive tax reform as initially planned, but will just replace some old rules and introduce new measures in certain areas.

Regarding taxes the law includes the following main elements:

- Introduction of the taxation of real estate income at the level of Luxembourg investment funds;
- Prohibition for a SPF to indirectly hold real estate through transparent entities;
- Increase of registration duty and transcription tax in the case of a contribution in kind of Luxembourg real estate into Luxembourg entities;
- New depreciation rates for residential buildings;
- New depreciation rates for energetic valuable renovation;
- Abolishment of the old “stock option regime”;
- Introduction of a participating premium for employees;
- Electronic tax card;
- Clear rules as to fringe benefits and compensations for impatriates;
- Reduction of the subscription tax for investment funds investing in ecological projects;
- Introduction of a CO₂ tax;
- New rules with respect to the super-reduced VAT rate applicable to energetic restoration and the “régime de franchise”;
- Fiscal unity.

We are pleased to summarize hereafter the major tax changes which in general became effective on 1 January 2021.

¹ Published in Mémorial A – No. 1061 on 23 December 2020

Real estate

A new tax in Luxembourg: real estate levy to be paid by certain investment funds

As from 1 January 2021 a new tax is introduced, targeting investment funds investing in Luxembourg real estate assets. However, investment funds having the legal form of partnership or FCP remain out of scope.

The new real estate levy ("*prélèvement immobilier*") concerns the following corporate investment vehicles:

- the undertakings for collective investment („UCI”);
- the special investment funds („SIF”); and
- the reserved alternative investment funds („RAIF”)

Other Luxembourg or foreign corporations holding Luxembourg real estate are not concerned by this new levy.

The basis for the 20% annual levy is the realized gross rental income (excluding VAT) and the capital gain on sale of real estate owned directly or indirectly (via transparent entities) by the investment vehicle. However, the levy is only applicable if the real estate is situated in Luxembourg.

In case of indirect holding, should the investment vehicle dispose its interest in a transparent entity down in the chain, the levy will also be applied to this capital gain, but limited to the corresponding value increase of the underlying real estate located in Luxembourg.

The real estate levy is not deductible when determining the taxable income.

A respective declaration has to be submitted to the tax authority by 31 May of the year following the tax year and the tax has to be paid by 10 June. For the year 2021, concerned funds need therefore to file their declaration until 31 May 2022 at the latest and pay the real estate levy until 10 June 2022. The declaration has to be annexed by a report issued by an independent auditor validating the calculation of the income from real estate. In addition, all investment vehicles covered by the law are to inform the tax authority until 31 May 2022 on the Luxembourg real estate assets they held in 2020 and 2021. Important to note that providing information is also required on the non-detention of any Luxembourg real estate during that period.

The non-compliance with the filing requirements can trigger a fine up to EUR 10,000.

No more indirect real estate investment by SPF via transparent entities

Private wealth management companies („SPF”) are already not allowed to directly hold real estate assets. This long-existing prohibition is now expanded to indirect holdings via one or more Luxembourg or foreign transparent entities. SPFs are however still allowed to invest in real estate through corporate entities. This measure would be effective as of 1 July 2021.

Subscription tax returns prepared for SPF must now be filed electronically.

Contribution of real estate assets

In order to restrict the practice of share deals versus asset deals, the new law increases the rates of the registration duty and transcription tax on the contribution of Luxembourg real estate to the capital of a Luxembourg commercial or civil company in exchange for shares or similar interests.

The new rates, applicable as from 1 January 2021 are 2.4% (previously 0.6%) for the registration duty and 1% (previously 0.5%) for the transcription tax. Accordingly, for real estate located in Luxembourg-City, the increased registration duty will amount to 3.6% (previously 0.9%).

Accelerated amortization and special allowance for new real estate rented out for residential purposes

For newly built real estate, rented out for residential purposes, the accelerated amortization is reduced to 4% over 5 years (before it was 6% over 6 years). The accelerated amortization is equally applicable in case of renovation of an old dwelling, provided that the renovation expenditure exceeds 20% of the acquisition cost (or cost price) of the real estate.

However, a grandfathering rule is foreseen that allows to apply the old rules (6% accelerated amortization rate for real estate over 6 years) if the real estate is purchased or built before 1 January 2021. The same applies to renovations.

Under certain conditions, costs for energetic restoration on residential buildings may be amortized at a rate of 6% if the restoration was completed less than 9 years prior to the respective tax year.

Besides the option of accelerated amortization, the law introduces a new tax allowance linked to investments in Luxembourg residential real estate (“*abattement immobilier special*”). The amount of the tax allowance is 1% calculated on the same basis as for the accelerated amortization, but limited to EUR 10,000 per annum. In case of collective taxation, both partners can benefit from the deduction.

Taxation of employees

Substantial changes in employee remuneration

As from 1 January 2021, the so called “stock option regime” is not applicable anymore. The respective circular letter L.I.R. No. 104/2 dated 29 November 2017 - is repealed as from that date.

At the same time, a new exemption is introduced on participating premiums paid to employees (“*prime participative*”). This participating premium qualifies as income from employment. This income can benefit from a 50% tax exemption (but limited to 25% of the gross annual remuneration) provided that certain conditions are fulfilled. These conditions include that the beneficiary is an employee and is affiliated to the social security system, if not in Luxembourg, then in a country with which Luxembourg concluded a bi- or multilateral social security agreement. In addition, the employer must hold a proper accounting and prepare financial statements whereby the aggregated amount allocated to the employees as participating premium cannot exceed 5% of the previous year’s annual profit of the company. At the moment of the set-up of the scheme, the company is obliged to file a report to the competent tax office with a list of the beneficiaries.

The integral part of the participating premium paid to the employees represents tax deductible costs at the level of the employer.

Impatriate regime

The taxation of reimbursement by the employer of costs related to employees moving to Luxembourg used to be governed by circular letter L.I.R. n°95/2 dated 27 January 2014. As from 1 January 2021 an amended set of rules is inserted into the exemption chapter of the income tax law.

The main changes introduced by the new law are the following:

- The minimum gross annual salary (excluding boni and fringe benefits) the impatriate must earn to benefit from the tax exemption is increased from EUR 50,000 to EUR 100,000.
- The list of the reimbursed charges qualifying for the exemption is complemented by a lump-sum allowance (“*prime d’impatriation*”) paid by the employer to the employee for the recruitment. 50% of such allowance is exempt from income tax, however this lump-sum allowance cannot exceed 30% of the gross annual salary. In addition, the recruited person needs to be a foreign skilled employee who was not tax resident in Luxembourg, subject to tax in Luxembourg or living within a distance of 150 km to the Luxembourg border during the last 5 years.
- The impatriate can benefit from this preferential regime up to 8 years following the year of his/her arrival, compared to 5 years until the end of 2020.

Former conditions related to the employment are at the same time removed. No more clause expecting from the employer to hire in a sector where recruitment is difficult, or that the expert hired must put at the disposal of other employees of the company his/her specific knowledge. Finally, the obligation to employ at least 20 full-time employees is also removed.

Electronic tax card

The Luxembourg tax administration will introduce a new online platform in an attempt to facilitate the payroll administration. Via this platform, the employer will be able to have a direct access to the tax card of their employees. The employer will however have the responsibility to connect at least once a month to this platform and update the information on the employees in case any modification occurs. Further details, also on the transitional rules, are contained in the Grand-Ducal Decree dated 19 December 2020 executing Art. 143 LIR.²

Tax measures to protect the environment

Reduced subscription tax for funds with sustainable investments

As an incentive to invest in sustainable and green projects (defined in Art. 3 of EU Directive 2020/852 dated 18 June 2020), investment funds can benefit from a reduced rate of subscription tax (“*taxe d’abonnement*”). The rate depends on the percentage of investment in sustainable assets compared to the total net asset value (NAV). The reduced rate starts at 0.04% of NAV when green assets represent at least 5% of total assets and decreases to 0.03%, 0.02% and 0.01% of NAV should the respective investments in sustainable assets represent at least 20%, 35% and 50%. The percentage of sustainable investments needs to be confirmed by an annual report of an independent auditor.

In cases where a fund has compartments, the ratio is established by compartment.

CO₂ tax

Another measure aiming to protect the environment via fiscal means as from 1 January 2021 is the introduction of a new type of excise duty, called CO₂ tax. The tax is due on fuel and diesel for vehicles, as well as on fuel used for heating and cooking.

The tax rates will be fixed in a Grand-Ducal Decree.

² Published in Mémorial A – No. 1067 on 23 December 2020

Other amendments

VAT rules

In the context of encouraging sustainable energetic restoration, the minimum age of residential buildings required for the application of the super-reduced 3% VAT rate on such restorations is reduced from 20 to 10 years.

Another amendment in the VAT law is the increase of the threshold of annual turnover to benefit from the simplified administrative measure for small enterprises from EUR 30,000 to EUR 35,000 ("*régime de franchise*").

Fiscal unity

Following the decision of the ECJ (C-749/18 of 14 May 2020), the law on fiscal unity has been amended to allow a group benefiting from "vertical consolidation" to form a new group integrated through "horizontal consolidation", without any negative tax consequences for the individual members of the tax consolidation group, subject to certain conditions and up to the fiscal year 2022.

For further information, do not hesitate to contact one of our team members, who will be glad to assist you at any time:

Michael Probst	(Partner)	Phone: +352 26 86 63-318
Matthias Gutknecht	(Partner)	Phone: +352 26 86 63-330
Asbed Chahbazian	(Partner)	Phone: +352 26 86 63-315
Christel Begué	(Director)	Phone: +352 26 86 63-325
Alexia Christodoulou	(Director)	Phone: +352 26 86 63-321

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