

## New minimum net wealth tax for financial companies with a total balance sheet of between EUR 350,001 and 2,000,000

In response to a Constitutional Court Decision dated 10/11/2023 (Arrêt no. 00185), the minimum net wealth tax (“NWT”) of EUR 4,815 is considered as discriminatory for financial companies with a total balance sheet of between EUR 350,001 and EUR 2,000,000 and should be replaced by the minimum NWT of EUR 1,605.

### Background

Since the year 2016, Luxembourg companies are subject to minimum NWT, where the amount of the “normal” NWT (by application of the 0,5% and/or 0,05% on the total net assets) leads to an amount of NWT lower than the determined minimum NWT.

The minimum NWT of EUR 535 applies to all companies with a total balance sheet of EUR 350,000 or below.

For financial entities with aggregated financial assets, inter-company receivables, transferable securities and cash (i.e. assets in accounts 23, 41, 50, 51) in excess of 90% of their total assets and a balance sheet total of > 350.000, the minimum NWT of EUR 4,815 applies (§8 (2) a) VStG).

For all the other companies, the minimum NWT ranges between EUR 535 and EUR 32,100 depending on their balance sheet total:

Companies with ≤ 90 % of total assets in financial assets	Minimum NWT (§8 (2) b) VStG)
≤ EUR 350,000	EUR 535
EUR 350,001 up to EUR 2,000,000	EUR 1,605
EUR 2,000,001 up to EUR 10,000,000	EUR 5,350
EUR 10,000,001 up to EUR 15,000,000	EUR 10,700
EUR 15,000,001 up to EUR 20,000,000	EUR 16,050
EUR 20,000,001 up to EUR 30,000,000	EUR 21,400
> EUR 30,000,000	EUR 32,100



## Constitutional Court Decision (10/11/2023)

Until now, taxpayers with a total balance sheet of between EUR 350,001 and EUR 2,000,000 were either liable to the minimum NWT of EUR 1,605 or of EUR 4,815 (if considered as financial entities).

This difference in treatment between taxpayers in comparable situations, and the conformity of §8 (2) a) VStG with the equality principle, was initially brought to the Lower Administrative Court by a Luxembourg company (April 2023).

The Luxembourg Administrative Tribunal referred this case to the Constitutional Court in order to assess if § 8 (2) a) (the lump-sum minimum amount of EUR 4,815) is in line with Article 10bis (1) of the Luxembourg Constitution, which provides for an equal treatment within the meaning of the Luxembourg law.

The Court concluded that taxpayers with different balance sheet structures (financing companies or not) should not be treated as “comparable” taxpayers. However, the Court considered the additional criterion related to the total balance sheet threshold of EUR 350,000, as not rationally justified.

## Conclusion

Pending a legislative reform, financial entities will therefore be subject to the minimum NWT of §8 (2) b) VStG whenever it is more favorable for them.

Thus, financial companies with a total balance sheet ranging between EUR 350,001 and EUR 2,000,000 shall be subject to the minimum NWT of EUR 1,605, instead of EUR 4,815.

	<b>Prior Constitutional Court Decision</b>	<b>Constitutional Court Decision (10/11/2023)</b>
<b>Financial entities &gt; 90 % of total assets in financial assets</b>	<b>Minimum NWT (§8 (2) a) VStG)</b>	<b>Minimum NWT</b>
<b>Balance sheet total ≤ EUR 350,000</b>	EUR 535	<b>EUR 535</b>
Balance sheet total > EUR 350,000	EUR 4,815	No rational basis
<b>EUR 350,001 up to EUR 2,000,000</b>	Non-existing threshold (remains EUR 4,815)	<b>EUR 1,605</b>
<b>Balance sheet total &gt; EUR 2,000,000</b>	Non-existing threshold (remains EUR 4,815)	<b>EUR 4,815</b>



Our team is happy to help to determine the applicable minimum NWT due to your company in accordance with this Court Decision and to potentially claim the refund of the excessive NWT paid.

For any questions or need of support, please contact

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