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Draft Law 8388
Amendments to Luxembourg Tax Law

On May 23, 2024, the Luxembourg government published a draft law which, among others, (i) clarifies the tax treatment applicable to the redemption of classes of shares (ii) amends the minimum Net Wealth Tax (NWT) and (iii) introduces a waiver for taxpayers related to the participation exemption regime. Other tax measures included in the draft law are the digitalization of certain tax obligation such as withholding tax returns on directors' fees and the introduction of a temporary tax credit for individual taxpayers.

This flash news will focus on the first three provisions, which could be summarized as follows:

1. Minimum net wealth tax

The draft law proposes amendments to the minimum NWT in order to simplify it mainly by removing the condition linked to the composition of the balance sheet and by reducing the number of applicable brackets. This would be in line with the Constitutional Court ruling n°185/23 which ruled that the existing minimum NWT regime for companies holding financial assets is unconstitutional. As from fiscal year 2025, the minimum NWT due is proposed as follows for these activities:

- EUR 535 for a total balance sheet up to EUR 350,000;
- EUR 1,605 for a balance sheet between EUR 350,000 and EUR 2,000,000;
- EUR 4,815 for a balance sheet exceeding EUR 2,000,000.

2. Redemption of classes of shares

The draft law clarifies that the redemption or repurchase of an entire class of shares, followed by its cancellation is considered as a partial liquidation and hence, not subject to withholding tax, to the extent the following conditions are met:

- Creation of classes of shares must be either upon incorporation or during a subsequent share capital increase.
- Each class of shares must provide for different economic rights, such as preferential dividends, exclusive profit rights for a specific period, or financial rights tracking assets performance or activities of the company.
- The redemption and cancellation must be done for an entire class of shares followed by its cancellation reflecting a share capital reduction within 6 months of the redemption date.
- The redemption price should be at fair market value at the time of the repurchase and the way this price is computed shall be disclosed in the company's bylaws.

In the case of an individual holding a significant participation in the company (i.e. more than 10% of the share capital at any time during the 5 years prior to the date of the redemption), the identity of the individual should be reported in the company's annual tax return.

The Draft Law confirms that the general anti-abuse rules shall be observed.

3. Possibility to waive Luxembourg dividends and capital gains exemption

The proposed modification to articles 166 and 115.15a of the LITL introduces an option to waive the full respectively partial (50%) dividend income exemption, but only when the exemption is met by meeting the acquisition price threshold of at least €1,200,000 (i.e. meeting the minimum 10% holding, together with the other conditions, would not allow to opt for the waiver). This amendment provides greater flexibility for companies, allowing them to choose between using their loss carry-forwards or automatically benefiting from the participation income exemption based on the acquisition price.

Likewise, the draft law proposes granting companies the option to waive the capital gains exemption on qualifying participations, and just as for dividend income, limiting the option to waive only in cases when the exemption is met via the acquisition price threshold, which in the case of capital gains is at least €6,000,000.

This waiver would be available individually for each tax year and for each participation.

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

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