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Independent law firm

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New draft bill containing different tax measures and clarifications – draft bill n°8388

On 23 May 2024, the Government submitted the draft bill n°8388 to the Parliament ("Bill") clarifying the Luxembourg tax treatment applicable to share class redemptions, amending the minimum net wealth tax regime and introducing an opt-out mechanism for the "participation exemption" regime under specific conditions. Moreover, to continue the digitalisation of the income tax authorities, certain tax returns will be subject to mandatory electronic filings, notably withholding tax returns on directors' fees.

1. Clarification of the tax treatment to share class redemptions

Pursuant to 2023 judgments from the Luxembourg administrative tribunal, the Bill clarifies that the redemption of an entire class of shares followed by its cancellation is considered for tax purposes as a partial liquidation, provided that the following conditions are simultaneously met:

1. the share class is cancelled entirely and within six months of its redemption;
2. the share classes are set-up at incorporation or during a subsequent share capital increase;
3. each class of shares has different economic rights which shall be defined in the articles of association;
4. the redemption price for a class of shares can be determined based on criteria laid down in the said articles of association or any document referred to in them and reflects the fair market value of the shares on redemption date.

The redemption from an individual holding a significant participation in the share capital must be reported in the company's income tax returns[1]. Finally, the comments to the Bill recalls that the general anti-abuse rule remains applicable to share class redemptions.

2. Simplification of the minimum net wealth tax regime

Following the decision of the Luxembourg Constitutional Court on 10 November 2023 concluding that the minimum net wealth tax ("MNWT") lump-sum taxation, based on the total balance sheet of the taxpayer and its composition, applicable to companies mainly holding financial assets is contrary to the principle of equality, the Bill introduces a revised regime where the MNWT would only depend on the total balance sheet.

With effect as from 1 January 2025, the MNWT will range between EUR 535 and EUR 4,815, irrespective of the proportion of financial assets held by the relevant taxpayer.

In addition, the Bill removes the last four brackets of the current MNWT regime varying from EUR 535 to EUR 32,100.

3. Introduction of an opt-out mechanism for the "participation exemption" regime

As from the 2025 tax year, the Bill introduces an option for corporate taxpayers to waive the Luxembourg "participation exemption" regime[2]. This option is only available when the participation threshold condition is met solely on the basis of the acquisition price of the participation, i.e. EUR 1.2 million (for dividends) or EUR 6 million (for capital gains) and not, the shareholding. In addition, corporate taxpayers will also be able to opt out for the "half-dividend privilege" corresponding to a 50% exemption for dividends under conditions.

In both situations, the options would need to be exercised individually for each tax year and for each participation. The introduction of these options should allow corporate taxpayers to use their tax losses carried forward, especially in a context where tax losses realized since 1 January 2017 can only be carried forward for 17 years.

4. E-filings of certain tax returns

As from 1 January 2025, in order to modernise the tax compliance and assessment procedures, electronic filing will be mandatory and replace paper filing of certain tax returns such as the withholding tax on directors' fees (“tantièmes”) and the withholding tax on wages and pensions.

The present newsletter is not intended to be exhaustive but rather aims solely to provide a general overview of the various modifications to be introduced by the Bill.

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[1] A participation is deemed significant notably when the individual shareholder, alone or together with his spouse or partner and minor children, has directly or indirectly held more than 10% of the share capital at any time during the 5 years prior to the date of the transfer.

[2] Council Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States.

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TAX

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