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Luxembourg newsflash

20 July 2023

European & Luxembourg Tax News

Several tax measures have been introduced, potentially impacting taxpayers with operations in Luxembourg. The following newsflash summarises the most important developments.

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EU – FASTER proposal: EU Commission issues draft directive on faster and safer relief of excess withholding taxes

On 19 June 2023, the EU Commission proposed new rules to make withholding tax procedures in the EU more efficient and secure for investors, financial intermediaries and Member State tax authorities.

Withholding tax relief procedures in the EU are often seen as burdensome, costly and lengthy, and can also be abused, as illustrated by the so-called "Cum/Cum" and "Cum/Ex" cases. With this context, the EU Commission issued a proposal on 19 June 2023 for a Council Directive on faster and safer relief of excess withholding taxes (the "FASTER Proposal"). The objective of the proposal is twofold:

- Facilitate cross-border investment by putting in place a common framework across the Member States for the relief of excess taxes withheld at source on dividends from publicly traded shares (non-listed shares are thus out of scope), and, where applicable, on interest from publicly traded bonds.

- Ensure fair taxation by providing Member State tax authorities with the information required to check eligibility for a reduced withholding tax rate and ensure that withholding tax refunds are granted correctly, preventing tax fraud and abuse.

The proposed measures are summarised below.

Withholding tax relief procedures to be implemented by Member States

Member States will be able to choose which of the following withholding tax relief procedures they implement (including a combination of both):

- Relief at source system under which the tax rate applied at the time of payment of dividends or interest is directly based on the applicable provisions of the relevant tax treaty or domestic law provisions.

- Quick refund system under which the refund of excess withholding tax is requested and processed within 50 calendar days from the payment date.

No relief will be provided in certain (abusive) cases, e.g., where the dividend is derived from shares acquired within two days before the ex-dividend date, or where the dividend is linked to a financial arrangement that has not been settled at the ex-dividend date.

Where the requirements for applying the above withholding tax relief procedures are not met, Member States will apply their existing standard refund procedures to relieve excess withholding taxes. In this case, the investor will have to provide relevant information to the tax authorities regarding the non-application of anti-abuse measures, unless the total dividend paid does not exceed EUR 1,000.

Who will request relief?

The CFI which maintains the investment account of an investor (referred to as the registered owner) receiving dividends or interest will request the relief on behalf of the registered owner, provided they have authorised the CFI to do this and the CFI has verified and established the investor’s eligibility for a relief procedure (due diligence obligations).

Registration requirements for CFIs

Certain large EU financial intermediaries and central securities depositories will be required to register as CFIs in the new national register of every Member State where securities issuers are located and where any of their clients have invested.

Other entities acting as financial intermediaries and meeting specific requirements, including those established in a third country jurisdiction, will also be able to join the national registers on a voluntary basis.

In practice, this means that investors will have to deal with financial intermediaries that are registered CFIs in order to benefit from the new withholding tax relief procedures.

Non-compliant CFIs will be subject to removal from the national register(s).

Reporting requirements for CFIs

CFIs will have to report information (in xml format) to the competent authority maintaining the national register in the relevant Member State(s). This includes information about:

- The recipient and the payor of the dividend or interest payment, including name, TIN and investment account number.

- The dividend or interest payment, including relevant dates, gross and net amounts, withholding tax rate applied and account number of the recipient.

- The non-application of anti-abuse measures, including holding period of underlying shares and financial arrangements not settled at the ex-dividend date.

Reporting must take place as soon as possible after the record date and within 25 days of the record date at the latest.

No reporting will be required if the total dividend paid to the registered owner does not exceed EUR 1,000.

CFIs due diligence obligations

CFIs must have adequate procedures in place to perform the relevant verifications. They will have to obtain a confirmation from the registered owner that they are the beneficial owner of the dividend or interest, and that they have not engaged in abusive financial arrangements linked to the underlying publicly traded shares. In addition, CFIs must verify, inter alia, the digital tax residence certificate ("eTRC") or appropriate proof of tax residence of the registered owner, and the registered owner's entitlement to a specific reduced withholding tax rate.

The eTRC is a digital process to be introduced by all Member States which aims to confirm EU taxpayers' tax residence. The eTRC will be issued within one working day of submitting a request (if the required information has been provided) and will in principle be valid for at least one whole calendar year.

Information to be provided by CFIs under withholding tax relief procedures

Under the relief at source system, CFIs will have to inform the withholding agent of the tax residence of the registered owner and the applicable withholding tax rate.

Under the quick refund system, CFIs will have to provide the relevant Member State with (i) the identification of the dividend or interest payment, (ii) the legal basis of the applicable withholding tax rate and the total amount of excess tax to be refunded, (iii) the tax residence of the registered owner, and (iv) the registered owner's declaration.

Sanctions

Non-compliant CFIs may be subject to penalties imposed by the relevant Member State. In addition, CFIs could be held liable for tax revenue losses incurred due to the inadequate fulfilment of their reporting or due diligence obligations, to the extent provided for under the national law of the Member State where the loss is incurred.

Next steps

The FASTER Proposal will now follow the normal legislative process at EU level.

If adopted, the FASTER measures will have to be implemented into Member States' national law by 31 December 2026 and will apply from 1 January 2027. This gives financial intermediaries time to prepare for the implementation of new processes or the adaptation of existing ones in order to comply with their future registration, due diligence and reporting obligations.

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LUXEMBOURG - Amendments to the investment tax credit rules

On 13 July 2023, the Luxembourg government presented Bill of law no. 8276 (Bill) to Parliament for amending the investment tax credit rules with the aims of supporting the digital transformation and environmental and energy transition of Luxembourg businesses, and strengthening Luxembourg's competitiveness.

The new provisions will apply from the 2024 tax year.

Summary of the current rules

Luxembourg taxpayers who make certain eligible investments can benefit from an investment tax credit (ITC) to be offset against their corporation income tax (CIT) liability. The ITC must be claimed when filing the corporate tax return for the relevant investment year.

The ITC has two pillars.

1. The ITC for global investments equals 8% of the eligible investments (depreciable tangible assets excluding buildings, livestock, mineral and fossil deposits, which are physically used within Luxembourg or within an EU/EEA jurisdiction, as well as acquired software) up to €150,000 and 2% for the excess. These rates increase to 9% and 4% respectively for investments that are eligible for special depreciation (mainly social and "green" investments). These percentages apply to the acquisition price or cost of the eligible investment, including any potential correction for tax purposes, and decreased by any subsidy.

2. The ITC for additional investments equals 13% of the net book value of the eligible depreciable assets at the end of the financial year, increased by the depreciation recorded on the qualifying assets acquired or built in the current tax year, decreased by the reference value of the eligible assets, which corresponds to the average net book value of those qualifying assets at the end of the five preceding financial years with a minimum of EUR 1,850.

The ITC can be offset against the CIT liability of the taxpayer. Any unused ITC can be carried forward for a period of ten years.

Summary of the proposed amendments

- *Tax credit for global investment to increase from 8% to 12%*

The rate of tax credit for global investment will increase from 8% to 12%, regardless of the sum invested. Reference to the investment bracket from EUR 150,000 is therefore removed. Investments eligible for special depreciation will receive a rate of 14%.

- *Repeal of tax credit for additional investment*

- *Introduction of tax credit for investments and operating expenses incurred in the context of digital transformation or environmental and energy transition*

Investments and operating expenses linked to digital transformation or environmental and energy transition will receive an 18% tax credit, other than expenditure on depreciable tangible assets, for which the rate will be 6%.

The new credit will apply to the following investments and expenses:

1. investments in depreciable tangible assets, except for buildings, agricultural livestock and mineral and fossil deposits;

2. investments in software and patents, except for those acquired from an associated undertaking;

3. expenses related to the use of or granting the use of patents or software, except when this use or granting of this use is granted by an associated undertaking;

4. expenses for advisory, diagnostic and technical support provided by external suppliers that are not related to the undertaking's normal operating expenses, such as regular tax, legal or marketing advisory services;

5. staff expenses connected directly to digital transformation or environmental and energy transition of the undertaking;

6. expenses for staff training that are directly connected to the undertaking's digital transformation or environmental and energy transition

The Bill lists specific objectives which the investments and operating expenses must meet in order to come within the scope of this new tax credit.

Thus, the digital transformation must, for example, redefine the undertaking's entire production process so as to significantly improve productivity or implement an innovative economic model in the undertaking so as to create new value for the undertaking's stakeholders.

With regard to environmental and energy transition, the Bill also highlights clear objectives to provide guidance to undertakings for their projects. To give an example, the project objective may be to significantly improve the energy efficiency of an undertaking's production process, to substantially decarbonise an undertaking's production process or even to produce or store energy produced using renewable resources to meet the undertaking's energy needs.

The new credit does not cover assets that depreciate over a period of less than 3 years, motor vehicles or investments and operating expenses intended to bring the undertaking into line with statutory environmental protection obligations.

The new credit is calculated based on the acquisition or real cost price of investments made during the financial year or on deductible operating expenses in the financial year.

When a taxpayer asks for the tax credit to be applied to investments or operating expenses that have a direct economic link to the acquisition or creation of a software or patent, the income generated by this software or patent will be excluded from the scope of the IP box regime.

The credit is granted on request (through the tax return) and is subject to a specific protocol:

- The taxpayer must obtain a certificate issued by the Minister of the Economy confirming that the investments and operating expenses over the financial year are real and compliant.

- The certificate will be issued only if the taxpayer first obtains a confirmation of the eligibility of the investments and operating expenses issued jointly by the Ministers of Finance, the Economy, the Environment and Energy.

- A certificate must be requested for each financial year in which the investments and operating expenses were incurred and, at the latest, two months after the end of the financial year in question.

- The taxpayer should make investments and incur operating expenses only after submitting the request for an eligibility certificate.

LUXEMBOURG - Bill of law amending certain provisions applicable to Luxembourg funds including subscription tax, passed

On 11 July 2023, the Luxembourg Parliament passed bill of law no. 8183 amending **certain provisions applicable to** Luxembourg funds.

Read our newsflash on the topic here_

The law contains provisions on the subscription tax reductions or exemptions applicable to undertakings for collective investment (UCIs) subject to the amended law of 17 December 2010, specialised investment funds (SIFs) subject to the amended law of 13 February 2007 and reserved alternative investment funds (RAIFs) subject to the amended law of 23 July 2016, which are now aligned.

Worthy of particular note is that the law now clearly states that the above funds must indicate separately in their subscription tax return the eligible assets to benefit from the subscription tax reduction or exemption on the value of these assets (in line with existing relevant Grand-Ducal regulation).

Furthermore, the new provisions aim to ensure greater consistency between the Luxembourg provisions and Regulation (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds.

- The relevant provisions are replaced and now specify that UCIs and individual compartments of umbrella UCIs that are authorised as money market funds in accordance with Regulation (EU) 2017/1131 will be eligible for the reduced rate of 0.01%.

- UCIs/SIFs/RAIFs as well as individual compartments of umbrella UCIs/SIFs/RAIFs that are authorised as short-term money market funds in accordance with the same Regulation will be eligible for the subscription tax exemption.

- The subscription tax exemption will also be available to:

    - UCIs and individual compartments of umbrella UCIs whose shares are reserved for investors in a pan-European Personal Pension Product established under Regulation (EU) 2019/1238 (PEPP)

    - UCIs/SIFs/RAIFs and individual compartments of umbrella UCIs/SIFs/RAIFs that are authorised as European long-term investment funds within the meaning of Regulation (EU) 2015/760 (ELTIFs)

Funds benefiting from the previous provisions are grand-fathered.

LUXEMBOURG - Bill of law approving the new double tax treaty between Luxembourg and the United Kingdom passed

On 19 July 2023, the Luxembourg Parliament passed Bill of law no. 8160 ratifying the new double tax treaty ("New Treaty") between Luxembourg and the United Kingdom ("UK").

The New Treaty contains significant amendments, in particular:

(i) Article 10 on dividends, which now includes an exemption from withholding tax in most cases,
(ii) Article 13 on capital gains, which now includes what is known as "land-rich provision", and
(iii) the New Treaty's application to Luxembourg collective investment vehicles under certain conditions (Article 4 and the Protocol to the New Treaty).

The New Treaty will enter into force once both countries have completed their notification processes.

To read our previous newsflash on the topic, including details on the application date of the relevant provisions, please click here.

Next steps

If the New Treaty enters into force in 2023, its provisions will start to apply in 2024. Luxembourg taxpayers are advised to swiftly review and assess the potential impact that the New Treaty may have on their existing or new operations and investments.

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LUXEMBOURG – Bill of law implementing public country-by-country reporting measures passed

On 19 July 2023, the Luxembourg Parliament passed Bill of law no. 8158 implementing Directive (EU) 2021/2101 of the European Parliament and of the Council of 24 November 2021 amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches (the "Directive").

The law implements the Directive exactly and aims to make public information on the corporate income tax of undertakings and multinational groups that have significant revenue and are established in Luxembourg or have subsidiaries or branches of a certain size in Luxembourg.

See below a brief summary of the new provisions.

Ultimate parent undertakings established in Luxembourg and with consolidated revenue of more than EUR 750,000,000 on their balance sheet date and for the last two financial years will be required to produce, publish and make accessible a report on corporate income tax information covering the last financial year.

Similar provisions are planned for the following:

- standalone undertakings,
- large and medium-sized undertakings established in Luxembourg and controlled by a parent undertaking that is not established in an EU Member State,
- Luxembourg branches of undertakings that do not fall under the jurisdiction of a Member State if their net revenue exceeds a certain threshold.

In particular, the information report will include a list of all subsidiaries included in the consolidated accounts of the ultimate parent undertaking that are established in the EU or in tax jurisdictions listed in annexes I and II of the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes ("EU black and grey lists"), the amount of profit and loss before income tax, the number of employees and the amount of corporate income tax due and paid. This information must be presented separately for each Member State or jurisdiction on the EU black and grey lists and in an aggregated form for other jurisdictions.

The information report will need to be submitted to the Trade and Companies Register (*Registre de commerce et des sociétés* - RCS) and will be published in the Electronic Compendium of Companies and Associations (*Recueil électronique des sociétés et associations* - RESA) within 12 months of the end of the financial year to which the report refers. In addition, this information must be published on the website of the entity concerned.

However, the new provisions include the two options proposed by the Directive. The first is the option to postpone for a maximum of five years the publication of certain information that would cause serious harm to the undertaking's commercial position. The second option is that the undertaking is not obligated to publish the report on income tax information on its website, if the report is publicly available electronically on the Trade and Companies Register website and is free of charge to all third parties in the EU.

The new provisions include criminal sanctions (fine of EUR 500 to EUR 25,000) against the entity's management bodies and permanent representatives of branches who have not produced, published or made available the information report within the time period defined by law.

The new provisions will apply for financial years starting on or after 22 June 2024. For undertakings whose financial year aligns with the calendar year, the first report on income tax information will cover the 2025 financial year and must be published before the end of 2026.

How can we help?

The Tax Law Partners and your usual contacts at Arendt & Medernach are at your disposal to advise on how the recent tax developments are likely to impact your operations in Luxembourg.

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This document is intended to provide you with general information on the subjects mentioned above.
Under no circumstances shall it constitute legal advice or replace adequate consultation with a legal advisor.