

NEW CORPORATE TAX INCENTIVES FOR LUXEMBOURG AS FROM 1ST JANUARY 2009

■ Direct and indirect taxes

Luxembourg has recently enacted two new tax laws both dated 19 December 2008¹ with the aim of significantly enhancing the tax regime applicable to Luxembourg companies.

The most relevant tax measures introduced by these laws have taken effect on 1st January 2009 and mainly concern (i) the abolition of capital duty, (ii) the extension of the dividend withholding tax exemption and (iii) the decrease of the corporate income tax rate.

■ Repeal of capital duty

Fixed registration duty

The 0.5% capital duty levied on contributions made to Luxembourg companies has been abolished as from 1st January 2009. It has been replaced from 1st January 2009 by a fixed registration duty of EUR 75 levied on (i) incorporation of commercial and civil companies having their registered office or their central administration in Luxembourg, (ii) amendments of the articles of association of such companies as well as on (iii) the transfer to Luxembourg of the registered office or the central administration of such companies.

Such fixed registration duty also applies to contributions made within the framework of a corporate restructuring (e.g. contribution of all assets and liabilities or of part of undertaking) provided that the contribution, mainly in consideration for shares issued by the company benefiting from the contribution.

Claw-back period

Confirmation has also been given that the so-called 5 year "claw-back" rule (applicable in the case of non-compliance with certain conditions for capital duty exemption under the former law) may be disregarded as from 1st January 2009 if the conditions were complied with until 31 December 2008. This will therefore allow flexibility for international group intending to repatriate certain assets (e.g. shares in EU companies) acquired by Luxembourg companies in the framework of contributions carried out during the few years before 1st January 2009.

■ Extension of the dividend withholding tax exemption

As from the 1st January, dividends distributed by a Luxembourg company to any foreign parent company resident in countries with which Luxembourg has signed a double tax treaty is subject to a withholding tax rate of 0%. Such withholding tax exemption is granted subject to the following conditions to be met by the parent company:

- it is subject to a similar corporate income tax in its jurisdiction;
- it holds at least 10% of the shareholding of the Luxembourg company or the acquisition price of its shareholding amounts to at least EUR 1.2 million; and
- it holds or commits to hold the shares for at least an uninterrupted period of 12 months.

¹ Luxembourg law of 19 December 2008, published in the Memorial A, N° 198, dated 23 December 2008 and Luxembourg law of 19 December 2008, published in the Memorial A, N° 207, dated 24 December 2008

As Luxembourg currently benefits from more than 50 double tax treaties, this will therefore allow tax-efficient repatriation of profits to parent companies resident in a foreign eligible jurisdictions (such as the US or – more recently – Honk Kong).

■ Reduction of the corporate income tax rate

From 1st January 2009, the corporate income tax rate has been decreased from 22 to 21% (20% in case of taxable income up to EUR 15.000). This results in a new aggregate income tax rate (income tax plus municipality tax and unemployment fund benefit) of 28.59% whereas the former applicable global rate amounted to 29.63% (for Luxembourg-City).

■ Double tax treaties

- Luxembourg has recently considered entering into new double tax treaties with the following foreign countries.

New double tax treaties in force

Hong Kong - The double tax treaty signed on 2 November 2007 has been adopted by a law of 19 December 2008, published on 24 December 2008. This treaty has come into force with retroactive effect as of 1 January 2008 for Luxembourg taxes and 1 April 2008 for Hong-Kong taxes.

United Arab Emirates – The double tax treaty signed on 20 November 2005 has been adopted by a law of 29 May 2009, published on 16 June 2009.

India – The double tax treaty signed on 2 June 2008 has been adopted by a law of 5 June 2009, published on 16 June 2009. This treaty will be effective as from 1 January 2010.

Republic of Azerbaïdjan – The double tax treaty signed on 16 June 2006 has been adopted by a law of 29 May 2009, published on 17 June 2009. This treaty will be effective as from 1 January 2010.

New double tax treaties signed and submitted to the Parliament for purpose of ratification

Moldavia - The double tax treaty signed on 11 July 2007 has been submitted to the Parliament through a bill of law n°5980 dated 12 January 2009 for purpose of ratification.

Georgia - The double tax treaty signed on 15 October 2007 has been submitted to the Parliament through a bill of law n° 5992 dated 16 February 2009 for purpose of ratification.

New double tax treaties signed

Albania - A double tax treaty has been signed on 14 January 2009.

New double tax treaty initialed

Kirghizstan – The double tax treaty has been initialed on 2 December 2008 but has not yet been signed.

- In the framework of the recent decision of the Luxembourg government to accept the OECD standards on international tax cooperation notably in order to move into the category of “Jurisdictions that have substantially implemented the internationally agreed tax standard”, a bill of law n° 6072 dated 1 October 2009 has been submitted to the Parliament concerning the approval of double tax treaties and protocols amending existing double tax treaties signed with the following foreign countries. Luxembourg’s leadership in this process has been recognized by OECD and it aims to reach 20 such treaties and protocols by the end of the year.

Double Tax Treaties – Signed on:		Protocols – Signed on:	
Armenia	23 June 2009	Austria	7 July 2009
Kingdom of Bahrein	6 May 2009	Belgium	16 July 2009
Lichtenstein	26 August 2009	Denmark	4 June 2009
State of Qatar	3 July 2009	Finland	1 July 2009
Monaco	27 July 2009	France	3 June 2009
		Iceland	28 August 2009
		The Netherlands	29 May 2009
		Norway	7 July 2009
		Switzerland	25 August 2009
		Turkey	30 September 2009
		United Kingdom	2 July 2009
		United States of America	20 May 2009

Beyond this bill of law, an additional protocol has been signed on 10 November 2009 with **Spain**.

■ IP Box incentive

Favoring R&D activities and positioning the Grand-Duchy of Luxembourg as one of the major locations for intellectual property management in Europe, the tax law dated 19 December 2008 (see above) has clarified and extended the statute that came into force on 1st January 2008 providing, among others, for an exemption of 80% on income derived from certain qualifying intellectual property rights by expressly including domain names. This exemption applies in connection to the income tax of Luxembourg commercial taxpayers.

The main aspects of the statute

- Exemption equal to 80% of the net positive income or capital gain respectively deriving from (i) the use or the license of author’s right on software, of patent, trademark, design or domain name or (ii) the disposal of such IP rights;
- Patents registered and used by the tax payer in the framework of its own activity entitles the latter to benefit from an exemption of 80% on the net positive income which would have been generated by the license of such IP right to a third party.



Conditions

- The intellectual property rights must have been acquired (or created, as the case may be) after 31 December 2007;
- Expenses in direct economic connection with the IP right and depreciation must be recorded in the balance-sheet assets of the company and as a profit pertaining to the first year for which the tax regime is applicable, to the extent that such costs have exceeded income relating to such right for a given taxation year;
- The IP rights must not have been acquired from an “associated company”*.

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