Luxembourg tax reform for 2019: Part II

Insights - 18/03/2019

On 5 March 2018, the Luxembourg Government filed the 2019 Finance Bill (the **Bill**) with the Chambre des Députés.

Following the 2018 general elections, the Luxembourg Government was authorised to extend certain credits and expenses of fiscal year 2018 (the "douziemes provisoires" or provisional twelfths system) for the period running from January to April 2019 through a provisional finance bill passed on 21 December 2018.

The two main measures offered by the Bill relate to a decrease of the corporate income tax (CIT) rate, as promised in the Government's coalition agreement, and an anticipated amendment to the fiscal unity regime in the context of the introduction of the interest limitation rules.

Tax rate

Currently as per article 174 (1) of the Luxembourg income tax law (LITL) CIT is levied at a rate of:

- 15% in case the net profits exceed EUR 25,000
- EUR 3,750 plus 33% of the net profits exceeding EUR 25,000 in case the net profits range between EUR 25,000 and EUR 30,000
- 18% in case the net profits exceed EUR 30,000

The solidarity surcharge of 7% of the CIT contribution is then added, along with the municipal business tax.

According to the Bill, the bracket allowing for minimum tax will be increased from EUR 25,000 to EUR 175,000. In addition to that the intermediary rate will now be EUR 26,250 plus 31% of the net profits exceeding EUR 175,000 in case the net profits range between EUR 175,000 and EUR 200,000. When the net profits exceed EUR 200,000, the rate will be 17%.

For a Luxembourg company with profits exceeding EUR 200,000, the aggregate tax rate will decrease to 24.94%[1] from 26.01%.

The new rates will already apply for fiscal year 2019.

Interest limitation and fiscal unity

As per the law dated 21 December 2018 implementing the ATAD[2] in Luxembourg law, some Luxembourg taxpayers are now subject to interest limitation rules whereby net borrowing costs incurred are deductible only up to 30% of EBITDA (i.e. taxable earnings before interest, tax, depreciation and amortization) with a de minimis threshold of fully deductible exceeding borrowing costs set at EUR 3 million.

The ATAD as adopted by the European Council gave the option to Member States to calculate exceeding borrowing costs and EBITDA at the level of a fiscal unity. But this option was not taken by the Luxembourg government when submitting the law dated 21 December 2018, meaning that currently the interest limitation rule must be applied at the level of each member of the corporate group.

However following an announcement by the Finance Minister and a motion by the Chambre des Deputés, Luxembourg practitioners and taxpayers were given some assurances on an expected adjustment to the interest limitation rule.

The Bill now provides a revamp of the article 164bis LITL in order to include the option to apply the fiscal unity at group level, effective for accounting years starting as of 1st January 2019.

Next...

The Bill is due to enter into force on 1st May 2019. We will keep you informed you on the parliamentary process and on additional tax measures brought by the Bill.

[1] No change to the solidarity surcharge or municipal business tax is contemplated here

[2] Anti-tax avoidance directive 2016/1164

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