MAPLES GROUP

UPDATE

New Luxembourg Tax Reforms Aim to Boost International Business and Investment Appeal

Introduction

Since coming to power in October 2023, the new Luxembourg coalition government is increasingly demonstrating its commitment to improving Luxembourg tax regimes.

They have introduced a series of draft laws aimed at improving Luxembourg tax regimes including those applicable to investment funds, corporate taxation, individual taxation and tax-exempt family wealth companies.

In this update, we summarise these specific proposed changes and what they could mean for you and overseas investors.

New Legislation

Draft law No. 8388 ("The First Draft Law") was published on 23 May 2024 and includes an amendment to the Luxembourg tax code clarifying the conditions required for a redemption of a class of shares to qualify as a partial liquidation ("Alphabet Shares"), a simplification of the minimum net worth tax ("NWT") brackets applicable to Luxembourg entities and a new election to treat tax exempt dividends and capital gains as taxable.

Draft law No. 8414 ("The Second Draft Law") was subsequently published on 17 July 2024 and includes further proposed tax measures. These include a new exemption for actively traded ETF Mutual Funds (UCITS), reducing the Luxembourg corporate income tax rate, expanding the profit-sharing bonus regime for employees, a new and improved impatriate tax regime, tax exemptions on bonus for young professionals and several updates to the tax-exempt family wealth management company.

Codifying the Alphabet Share Repatriation Regime

The First Draft Law will codify the conditions allowing for a redemption of a class of shares to be considered as a partial liquidation for Luxembourg tax purposes and therefore not subject to withholding tax. 'Alphabet Share Classes' have been utilised in Luxembourg tax structures over the years as a tax efficient repatriation mechanism for distributing profits to shareholders.

The First Draft Law's conditions for obtaining partial liquidation treatment for the redemption of a class of shares which allows withholding tax-free repatriation of profits linked to such class, consist of the following:

a) the redeemed class of shares must be cancelled within six months of redemption;
b) each class of shares has distinct economic rights defined in the articles of association such as: preferential dividends, exclusive profit rights for a determined period, return linked to performance of directly / indirectly held assets or activities; and
c) the redemption price reflects the "fair market value" (arm's length standard) based on provisions found in the articles of association (or a reference to such document in the articles).

The First Draft Law also specifically mentions that the share class redemption will still be subject to Luxembourg's anti-abuse rules.

Simplifying the Minimum Net Worth Tax Regime

Aiming to simplify Luxembourg's minimum net worth tax regime, the First Draft Law proposes new minimum NWT brackets. Under the proposed changes, the minimum NWT is now capped at EUR 4,815 (down from the existing maximum cap of EUR 32,100).

The new simplified brackets are as follows based on the value of total assets held by the Luxembourg company:

- From EUR 0 to EUR 350,000 of total assets: minimum NWT amounts EUR 535,
- More than EUR 350,000 up to EUR 2,000,000 of total assets: minimum NWT due would be EUR 1,605, or
- More than EUR 2,000,000 of total assets: minimum NWT of EUR 4,815.

Election to Tax Certain Exempt Dividends and Capital Gains

The First Draft Law also provides that Luxembourg taxpayers can elect to waive the exemption applicable to dividends and capital gains. The legislative notes state the purpose of such waiver is to allow taxpayers to better manage their losses considering the 17-year limit on tax loss carry-forwards.

The taxpayer must elect to waive these exemptions on an annual basis. However, only taxpayers with shareholdings qualifying for the minimum Euro amount acquisition value thresholds of EUR 1.2 million for dividends and EUR 6 million for capital gains can make such an election, i.e. the alternative test of minimum 10% ownership threshold is excluded from the waiver possibility.

Exemption from Subscription Tax for Actively Traded ETF Mutual Funds (UCITS)

The Second Draft Law would exempt actively managed UCITS ETFs from the annual subscription tax normally applicable to UCITS and would ensure that Luxembourg not only maintains but enhances its competitiveness as a leading jurisdiction for investment funds within the European Union.

The Second Draft law provides that the exemption will apply as from the first day of the quarter beginning after the publication of the law (once voted on by the Luxembourg Parliament) in the Official Luxembourg Legislative Record. Assuming the bill is voted on and published before year end, the exemption should go into force as of 1 January 2025.

Reducing the Corporate Income Tax Rate

The Second Draft Law includes a 1% reduction in the Luxembourg corporate income tax reducing the standard rate for corporate income above EUR 200,000 from 17% to 16%.

This new reduction will result in the aggregate Luxembourg corporate income tax rate to be reduce from 24.94% down to 23.87% when taking into account the municipal business tax and solidarity surcharge for companies resident in Luxembourg City.

New and Improved Impatriate Regime

The Second Draft Law replaces the old impatriate regime for highly skilled foreign employees who relocate to Luxembourg and replaces it with a simplified and more robust version.

The new impatriate regime allows for a 50% exemption of the gross annual remuneration, including benefits paid-in-kind, which is capped at EUR 400,000. The new impatriate regime still contains the conditions for high valued employees to benefit including (non-exhaustive list):

- The impatriate takes up residence in Luxembourg and for the five proceeding years did not live within 150 km from the border or was otherwise subject to Luxembourg personal income taxation;
- The impatriate must earn an annual fixed remuneration (salary base) of at least EUR 75,000;
- The impatriate has acquired in-depth specialisation in the sector or their employment;
- Other conditions apply (including special conditions for seconded employees).

Expanding the Profit-Sharing Tax Regime for Employees

The Second Draft Law contains provisions for improving Luxembourg's profit-sharing regime ((*prime participative*) for attracting and retaining talent. The proposal includes allowing companies to pay employees a profit sharing of up to 7.5% of the company's accounting profits of the prior year (compared to the existing 5% limitation) and enables the employee to benefit from a 50% tax exemption on such profit sharing for up to 30% of the employee's total remuneration from the company (up from the current limitation of only 25%).

New Young Employee Tax Exemption on Bonuses

The Second Draft Law provides for a new young employee bonus which allows for up to a 75% tax exemption on the bonus amount for the employee's personal income tax.

This new regime's requirements include that to benefit from this bonus exemption the employee must be under 30 years old, engaged in his first employment contract, and total annual remuneration does not exceed EUR 100,000.

Updates to the Tax-Exempt Family Wealth Management Company (SPF)

The Second Draft Law provides for a series of changes to the tax-exempt family wealth company (SPF) particularly aimed at insuring compliance with the regime's requirements including:

- enhanced identification requirements in the articles of incorporation;
- new guidance on how to determine the 0.25% annual subscription tax;
- mandatory electronic filings for annual compliance certificate; and
- increased fines for any abuses or non-compliance with the regime's requirements.

There is also a proposal to increase the minimum annual subscription tax from EUR 100 to EUR 1,000.

Take Aways

All the aforementioned tax measures demonstrate the new Luxembourg coalition government's commitment to focusing on tax reform measures that not only maintain but enhance Luxembourg's competitiveness as an optimal location for international business and investment.

These measures should also reinforce Luxembourg's reputation as a stable and predictable jurisdiction.

Further Information

For further information and assistance, please reach out to your usual Maples Group contact or the contact below.

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