



CORPORATE TAX/PERSONAL TAX

DRAFT BUDGET 2013

The draft budget for 2013 (Draft Law No 6497), submitted on 7 November 2012 to the Chamber of Deputies by the Finance Minister, Mr Luc Frieden, is firmly rooted in a context of austerity.

The Government, in its statement of reasons for the draft law, emphasises the need, along with securing a "reduction in expenditure (...), to increase certain taxes by amending various items of fiscal legislation".

It is proposed that the tax measures be split between businesses and households. In concrete terms, the measures concerned are as follows:

Taxation of companies

➤ Direct taxes

Increase in the contribution to the employment fund, from 5% to 7%. This surtax, which is applied to the amount of corporate income tax, would cause the total tax (including municipal business tax) payable by companies having their seat in Luxembourg City to rise from 28.80% to 29.22%.

Increase in the minimum amount of corporate income tax and extension of its scope: the € 1 500 minimum tax amount (€ 1 575 if one includes the contribution to the employment fund) currently applies to entities whose activities do not require a ministerial licence (establishment authorisation) or the approval of a supervisory authority (the CSSF) and whose combined fixed financial assets, transferable securities and cash at bank, balances held in post office accounts, cheques and cash in hand exceed 90% of the balance-sheet total.



This tax would be increased to € 3 000 (€ 3 210 if one includes the contribution to the employment fund, increased to 7%). However, its tax base would also be clarified and extended, thereby putting an end to the numerous optimisations hitherto carried out. Thus, the draft law expressly makes additional provision for "debts owed by affiliated companies and companies with which the collective body is linked by virtue of a participating interest". Intra-group debts would therefore have to be included in the calculation of the 90% ratio.

Similarly, the draft law provides that "units or shares in joint ventures generally shall be deemed to be included in accounts 231 and 233 of the standard chart of accounts". Consequently, units or shares in transparent companies would have to be included in the balance sheet and could not give rise to optimisations such as the posting of the assets of such companies (for example, the substitution, in place of a company's shares units, of the real property held by the subsidiary in order to avoid attaining the 90% threshold). Accordingly, those shares or units would have to be taken into account for the purposes of calculating the 90% ratio.

With a view to greater clarity, the draft law expressly specifies the relevant accounts of the Standard Chart of Accounts, namely accounts 23, 41, 50 and 51, to which reference is to be made for the purposes of calculating the 90% ratio.

However, if the companies to which the minimum tax figure of € 3 000 applies are "Soparfis" (sociétés de participations financières = companies carrying on the business of managing participating interests), a new minimum tax amount is introduced for other entities which are not covered by the first tax.

Thus, a commercial company will pay a minimum tax amount referable to its total balance-sheet figure, as follows:



Minimum tax (including the contribution to the employment fund)	Total closing balance-sheet figure
€ 535	≤ € 350 000
€ 1 605	€ 350 001 – € 2 000 000
€ 5 350	€ 2 000 001 – € 10 000 000
€ 10 700	€ 10 000 001 – € 15 000 000
€ 16 050	€ 15 000 001 – € 20 000 000
€ 21 400	> € 20 000 000

Thus, a company that has made a loss will pay a minimum tax amount linked to the amount appearing in its closing balance sheet, for example € 5 350 for a company having a balance-sheet total of € 3 000 000.

Similarly, a company whose liability to tax on its taxable income would otherwise be lower than the minimum tax amount will be required to pay the latter amount. For example, the minimum tax of € 10 700 will be payable for a company having a balance-sheet total of € 11 000 000, whereas only € 6 000 tax would have been payable by reference to the taxable income after applying tax credits.

Moreover, tax credits (allowances) will not be capable of being chargeable against the minimum tax amount.

Lastly, the draft law expressly provides that, in cases of tax consolidation, the tax payable by the holding company "shall be increased by the (minimum) tax which would be payable, in the absence of (the tax consolidation), by each of the companies in the group". Consequently, whilst currently the minimum tax is payable only once for the entire group, at the level of the holding company, tax consolidation will not have the effect of mitigating the impact of the measures proposed.



Reduction in the investment tax credit: the tax credit rate for additional investment is reduced from 13% to 12%, whilst the tax credit rate for global investment is lowered from 3% to 2% (investment band in excess of € 150 000). However, the 7% investment tax credit rate for global investment is maintained for investments lower than or equal to € 150 000.

Reserve relating to the reduction in net wealth tax: entities which are liable to the 0.5% net wealth tax on their unit value may, in accordance with paragraph 8a of the Wealth Tax Law, obtain a reduction in, or even a total exemption from, the tax. In order to do so, they are required to set up a reserve equal to five times the amount of the tax due and to maintain it on their balance sheet for five years.

Currently, if the amount of the corporate income tax, combined with the contribution to the employment fund, exceeds the amount of the net wealth tax, the reduction in the net wealth tax is subject to a ceiling equal to the amount of the corporate income tax (before setting off tax credits).

Under the draft law, that ceiling would be reduced:

- by any tax credits, and
- by the minimum tax amount.

It should be noted that the mechanism remains similar to the level for each entity within a tax consolidation, inasmuch as, here too, such consolidation does not affect the ceiling (which is reduced by the amount of all tax credits enjoyed by all the companies comprised in the consolidation).

➤ VAT

3% VAT on housing: the tax advantage in favour of the construction/purchase off-plan/renovation of housing, currently limited to € 60 000, would revert to its 2008 level, namely € 50 000 per housing unit.



It should be borne in mind that this tax advantage applies only to housing which is occupied as a main residence, and represents the cost differential between the standard VAT rate of 15% and that actually applied, namely 3%.

Exemptions for small businesses: the threshold for VAT registration for a business will be raised from € 10 000 to € 25 000. In other words, where the turnover of a business amounts to less than € 25 000, it will not be required to charge its customers VAT.

It should be borne in mind that, in such circumstances, the business will not be able to deduct the VAT that it has itself had to pay. However, any business can opt to become registered for VAT.

Taxation of individuals

- The amount of the costs that can be deducted in respect of travelling between home and the workplace would be reduced by € 396.
- The amount deductible in respect of debt interest for special expenses would be limited to € 336 per member of the taxpayer's household, instead of € 672.
- The marginal tax rate would be increased from 39% to 40% for taxpayers whose income exceeds € 100 000 in tax class 1 and € 200 000 in tax class 2.
- Tax cards will cease to be issued by municipalities; the issuing of such cards will fall within the exclusive competence of the Administration des Contributions [Luxembourg tax authorities]. In addition, the annual tax census should be abolished.
- The contribution to the employment fund would be increased from 4% to 7% for taxpayers whose taxable income does not exceed € 150 000 (in tax classes 1 and 1a) and € 300 000 (in tax class 2). Above those amounts, the contribution to the employment fund will rise from 6% to 9%.
- L.I.R. Circular No 104/2 of 11 January 2002 on the taxation of stock option plans would have to be amended as regards its scope of application.

If the draft Law is adopted, all of the above fiscal measures will enter into force on 1 January 2013.