



Corporate tax measures applicable as of 1st January 2013

Increase in the contribution to the employment fund, from 5% to 7%. This surtax, which is applied to the amount of corporate income tax, causes 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) is increased to € 3 000 (€ 3 210 if one includes the contribution to the employment fund of 7%).

But the amount of the tax is not the only point of change, as the scope is significantly widened. Until 2012, this tax only applied to entities:

- whose activities did not require a ministerial licence (business license) 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 exceeded 90% of the balance-sheet total.

Now, this tax applies to all entities which have their statutory seat or place of effective management in Luxembourg and exceed the 90% ratio. So regulated entities like SICARs for example, or those submitted to the business license are submitted to this tax as from 1st January 2013.



However, Luxembourg permanent establishments of foreign companies are not in the tax scope.

Finally, the tax base is clarified. Indeed, are explicitly included the "debts owed by affiliated companies and companies with which the collective body is linked by virtue of a participating interest". Therefore, intra-group debts have to be included in the calculation of the 90% ratio.

Similarly, "units or shares in joint ventures generally shall be deemed to be included in accounts 231 and 233 of the standard chart of accounts". Units or shares in transparent companies have to be included in the balance sheet and cannot 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 will be taken into account for the purposes of calculating the 90% ratio.

Generally speaking, with a view to greater clarity, the 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 for example only € 6 000 tax would have been payable by reference to the taxable income after applying tax credits.

From a practical point of view, in order to limit any potential breach of double tax treaties / EU directives, the minimum tax will be considered as an advance payment of taxes. This advance will be chargeable against any future corporate income tax liability superior to the minimum tax, with no time limit. However, the advances will not be reimbursed.



Likewise, according to the direct tax administration commentaries (http://www.impotsdirects.public.lu/archive/newsletter/2012/nl_21122012/index.html) the assets generating incomes taxable abroad according to a double tax treaty, are not to be taken into account when determining the total balance sheet figure. This measure has a significant impact for the real estate sector insofar as immovable properties located abroad will not be taken into account in the balance sheet total. Only buildings located in Luxembourg will be concerned. This crucial interpretation aims at preserving the competitiveness of the financial sector.

It must also be underlined that the minimum tax won't be reduced by the offset of the tax credits called "bonifications". However, tax credits linked to foreign withholding tax should remain chargeable against the minimum tax as the law only expressly refers to "bonifications".

Finally, 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, the holding company will have to pay the minimum tax that would have been to pay by each company of the group if no consolidation had existed. Nevertheless, this amount is capped to 21.400 € (including the contribution to the employment fund).

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.

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 exceeding the amount of the minimum tax. Nevertheless, the amount of corporate income tax to take into account is still the one before setting off tax credits. So finally, the tax payers entitled for example to investment tax credits are not penalized and will see no impact on their net worth tax reserve.

➤ VAT

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

Exemptions for small businesses: the threshold for VAT registration for a business is raised from € 10 000 to € 25 000.

CONTACT

Delphine Deichtmann

+352 47 68 47- 443

Delphine.Deichtmann@ifgroup.lu

121, avenue de la Faïencerie

L-1511 Luxembourg

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