

TAX NEWS 2017 FOR COMPANIES

On 14th December 2016, the Luxembourg parliament adopted the bill regarding the upcoming **tax reform**. The changes impacting companies will enter into force as from **1st January 2017** provided that the obligation for a second vote is waived. The text adopted regarding corporate taxes has not been subject to any substantial changes when compared to the initial provisions of the bill no. 7020.

The main provision among these reforms remains **the decrease of the corporate income tax rate to 19% as from 2017 and to 18% as from 2018**. The limitation to carry **tax losses forward for 17 years is also confirmed**. Simultaneously, the bill regarding the country-by-country reporting, initially submitted under no. 7031, has been adopted on 13 December. This measure complements a series of new tax measures by introducing new declarative obligations for some taxpayers.

Summary

- ▶ Decrease of the corporate income tax rates
- ▶ Increase of the minimum net wealth tax
- ▶ Limitation regarding tax losses carried forward
- ▶ Increase of the tax credit for investment
- ▶ Transfer of family businesses
- ▶ Deferral of linear depreciations
- ▶ Abolition of registration duties upon disposal of receivables
- ▶ Continuation of the net wealth tax reserve in case of merger and migration
- ▶ Deferred taxation for foreign exchange gains
- ▶ Tax fraud
- ▶ Country-by-country reporting

Decrease of corporate income tax rates

The law provides for a progressive decrease of the corporate income tax ("CIT") rate, currently set at 21%.

Applicable rates as from 01.01.2017

Total taxable income	CIT due
≤ to EUR 25,000	= Total taxable income * 15%
EUR 25,001 - EUR 30,000	= EUR 25,000 * 15% + Portion of taxable income exceeding EUR 25,000 * 39%
> to EUR 30,000	= Total taxable income * 19%

Applicable rates as from 01.01.2018

Total taxable income	CIT due
≤ to EUR 25,000	= Total taxable income * 15%
EUR 25,001 - EUR 30,000	= EUR 25,000 * 15% + Portion of taxable income exceeding EUR 25,000 * 33%
> to EUR 30,000	= Total taxable income * 18%

Hence, the aggregate CIT/municipal business tax ("MBT") rate of **29.22%** in force in **2016** – for companies whose registered office is located in Luxembourg-city – would decrease to **27.08% in 2017** and **26.01% in 2018**.





Increase of minimum NWT

The minimum net wealth tax (“NWT”) of EUR 3,210 applicable to “financial” companies will increase up to **EUR 4,815** as from 2017. As a reminder, this minimum tax applies to companies whose financial fixed assets, intercompany receivables and cash at bank (accounts 23, 41, 50 and 51 of the Standard Chart of Accounts) exceed 90% of the total balance sheet as well as an amount of **EUR 350,000**.

However, the various minimum NWT rates applicable to the other companies (based on their total balance sheet) remain unchanged.

Limitation regarding tax losses carried forward

The law introduces a restriction regarding the period over which tax losses are allowed to be carried forward both for CIT and MBT purposes:

- tax losses incurred during financial years closing after 31 December 2016 will only be carried forward for maximum 17 tax years. However, the amount of losses that can be used each year to offset benefits is not limited, unlike initially suggested at the time of the early announcements of the government.
- tax losses incurred during financial years closing between 1 January 1991 and 31 December 2016 may still be carried forward indefinitely.

Based on the commentaries on the articles of the bill, financial years lasting less than 12 months will be considered as a whole financial year for the calculation of the 17-year period. Also, tax losses will have to be used in order of seniority. It will therefore be impossible to use first the losses to which the new restrictions apply.

Real estate companies should especially be impacted by this new provision since these companies are often in a loss position when realizing new investments due to the joint effect of the deduction of loan interest charges, depreciations and operational fees.

Increase of the tax credit for investment

The applicable rates regarding the tax credit for investment will increase as from 2017:

- The complementary tax credit for investment will increase from 12% to 13%.
- The global tax credit for investment will increase from 7% to 8% for the portion of investments ≤ EUR 150,000.
- The global tax credit for investment related to fixed assets having an environmental impact authorized to benefit from a special depreciation will increase from 8% to 9% for the portion of investments ≤ EUR 150,000.

The law also provides that the tax credit for investment may be granted to eligible assets implemented within the territory of the EEA **provided that such investments are recorded in the balance sheet of a Luxembourg establishment**. This measure does not introduce a new provision but merely codifies an existing measure.

Transfer of family businesses

The transfer of family businesses to the next generation or to a third party should be facilitated to the extent that the latent capital gains on the immovable properties (lands and buildings) would not be revealed. Please note that this measure **does not concern companies but only non-incorporated businesses**. It mainly aims the businessman who sells its business (goodwill) but would retain the ownership of the immovable properties to rent them to its successor.



Deferral of linear depreciations

The law allows taxpayers to **defer linear depreciations in the future** (until the financial year during which the usual utilization period of the asset in question ends, at the latest). The commentaries on the articles of the bill present this measure as a tool offering **more flexibility to taxpayers** and aimed at improving the investment climate.

Abolition of registration duties of 0.24% upon disposal of receivables

As from 1st January 2017, the 0.24% registration duty related to notarial deeds indicating the contribution/transfer of receivables will not be applicable anymore.

Continuation of the net wealth tax reserve in case of merger and migration

As a reminder, provided that certain conditions are met, companies may allocate part of their benefits to a **special NWT reserve for minimum period of 5 years** which allows them to decrease their NWT tax charge for the year. Nevertheless, when this reserve is not maintained in the balance sheet for the required minimal period, in particular in case of liquidation of the company, **the NWT charge for the year increases correspondingly**. The law aims to clarify the consequences of an early dissolution of that reserve.

By way of exception, the NWT charge of the company does not increase:

- when the assets of the company are transferred to one or more taxpayer(s) within the context of a merger as long as the reserve is maintained or continued by the absorbing company (whether the merger is performed on the basis of the market value or the book value) ;
- when the company transfers its registered office and its central administration abroad and ceases to be a resident taxpayer, in which case the reserve must be maintained or continued by the foreign company.

Deferred taxation for foreign exchange gains

This measure concerns **all Luxembourg companies whose share capital is not expressed in euro**. The tax charge incurred from the conversion into euro of the assets expressed in the same foreign currency as the share capital may be deferred in the future provided that the taxpayer introduced a corresponding written request with the Direct Tax Authorities.

In practice, the measure mainly concerns companies whose financial statements are prepared using a foreign currency but that chose not to determine their taxable income using said currency (i.e., foreign currency used as functional currency for tax purposes).

This mechanism offers **a deferral similar to the standard deferral mechanism ("remploi")**. Hence, the foreign exchange gains realized on certain assets invested in the foreign currency of the share capital could be transferred to another asset invested in that same currency.

The acquisition price or cost price of the asset to which the exchange gain is transferred would then be decreased accordingly and this reduction itself would be materialized through the booking of a corresponding reserve in the balance sheet under the entry "foreign exchange gain" whose amount would be equal to the gain for which taxes have been deferred.

Tax fraud

The text that has been adopted introduces **the concept of aggravated tax fraud** which is criminally prosecuted due to its severity. In that case, the amount of taxes evaded must be significant either when compared to pre-determined lumps sums or when reaching a certain amount proportionally to the annual tax due.

Country-by-country reporting

This measure is directly linked to the BEPS project and the implementation the directive UE 2016/881 and provides for the obligation to file **a specific declaration** for groups **whose consolidated total turnover is ≥ to EUR 750 million** for financial years opening as from 1st January 2016.

In particular, this declaration will include data regarding the turnover, benefits/losses generated, taxes due, share capital, benefits not distributed, number of employees, tangible assets for each jurisdiction in which the multinational group carries on its activities.

This measure aims to reinforce tax transparency and to match the level of activity / benefits realized / taxes paid by the multinational group in each jurisdiction. This country-by-country reporting will also provide basic information to the tax authorities of the different jurisdictions, that may be used to assess the group transfer pricing policy on a high-level basis.

Each entity of the group should also be identified by the following elements: denomination, country of tax residence, activities.

A declaration should be filed in Luxembourg as soon as **the ultimate parent company of the group is tax resident in Luxembourg**. The filing will be performed on an annual basis within 12 months of the closing of the tax year.

All information included in the declaration will then be communicated to the jurisdictions part to this exchange agreement and in which the various entities of the group are:

- either tax resident
- or taxed due to the presence of a permanent establishment

The deadline for **this automatic exchange is 15 months** as from the last day of the tax year of the group and is extended to 18 months for the first declaration.

The fine in the absence of filing, late filing, incomplete or inaccurate filing that can be imposed by the tax office may amount **to EUR 250,000 maximum**.

Feel free to contact **Delphine Deichtmann** for additional information (delphine.deichtmann@ifgroup.lu).

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