

Luxembourg: 2019 year-end corporate tax action items

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With tax year 2019 ending soon, this Alert summarizes the Luxembourg corporate tax developments that may require action before year-end.

Expiration of pre-2015 rulings

The Budget Law 2020 introduces a new provision according to which advance decisions issued before 1 January 2015 will cease to have effect at the end of the tax year 2019.¹ A taxpayer will thus be able to rely on the principles set forth in an advance decision issued before 1 January 2015 for the last time in the framework of its 2019 tax return. Given that the 2020 net wealth tax is generally assessed on the unitary value determined based on the annual accounts as at 31 December 2019 (see below for more details on net wealth tax), implications of the expiration of such advance decisions should be assessed prior to year-end.

The new provision foresees the possibility of submitting a new tax ruling request, in line with the procedure currently in place for tax rulings. Therefore, *taxpayers are advised to assess the basis and need to file such request for any tax year subsequent to 2019.*

Net wealth tax 2020

The net wealth tax is assessed on the latest annual accounts preceding 1 January 2020 (i.e., generally 31 December 2019). The net wealth tax is levied at a rate of 0.5% on an amount of taxable net wealth called the unitary value (corresponding basically to the sum of assets less liabilities and provisions at a given date as valued according to the provisions of the Luxembourg Valuation Law) up to and including €500 million. If the unitary value exceeds this threshold, the net wealth tax equals the sum of the following:

- ▶ €2.5 million (which corresponds to a rate of 0.5% applied to the amount of €500 million)
- ▶ 0.05% of the taxable amount exceeding €500 million

Resident companies must pay a minimum net wealth tax equal to either of the following:

- ▶ €4,815 if the sum of financial assets, transferable securities, cash and receivables owed by affiliated companies exceeds 90% of their balance sheet and €350,000
- ▶ An amount ranging from €535 to €32,100, depending on their balance sheet total

It should be noted that certain assets are exempt for the computation of the unitary value, such as qualifying participations (at least 10% of the capital of qualifying domestic or foreign subsidiaries), qualifying intellectual property rights or assets for which the taxation right is allocated under the provisions of a double taxation treaty to another country (e.g., assets held through a foreign permanent establishment or real estate located abroad).

Taxpayers are advised to review their net wealth tax exposure for 2020 and consider if they can possibly reduce the net wealth tax 2020 (up to the amount of corporate income tax for 2019) by the creation of a net wealth tax reserve (equivalent to five times the reduction requested) that must be maintained for five years in the accounts.

Fiscal unity requests

Groups with more than one company in Luxembourg should assess the benefits of entering into a fiscal unity. In addition, existing fiscal unities should evaluate the impact of the new interest limitation rules.

Conditions for companies to form a fiscal unity

A Luxembourg company and its wholly owned (at least 95% of the capital, which may be reduced to 75% in exceptional situations) Luxembourg subsidiaries may form, under certain conditions, a “vertical fiscal unity.” The fiscal unity allows the affiliated subsidiaries to combine their respective tax results with the tax result of the parent company of the consolidated group. To qualify for fiscal unity, the parent and its wholly owned subsidiaries must be resident capital companies that are fully subject to tax. A permanent establishment of a nonresident capital company fully subject to a tax comparable to Luxembourg corporate income tax also qualifies as a parent company of the group.

Companies may also, upon conditions, form a “horizontal fiscal unity.” The horizontal fiscal unity can be formed by two or more Luxembourg-resident companies owned by the same nonresident parent, provided that the parent company is resident in a European Economic Area state and fully subject to a tax comparable to Luxembourg corporate income tax. In addition, Luxembourg permanent establishments of a nonresident company, regardless of its tax residence, are allowed to be included in a fiscal unity, provided that this company is fully liable to a tax corresponding to Luxembourg corporate income tax.

Companies will have to apply the regime for at least five years or the benefits of the regime will be clawed back.

Interest limitation option for existing fiscal unities

The interest limitation rule introduced by the Luxembourg law of 21 December 2018 implementing the European Union (EU) Anti-Tax Avoidance Directive (ATAD) and applicable for tax years starting on or after 1 January 2019 will apply to existing fiscal unities, unless all the members express their wish to apply the interest limitation rules on a stand-alone basis in a common written request to be filed before the end of the first financial year to which the interest limitation rule applies for the first time.²

As a result, companies whose financial year corresponds to the calendar year and that do not want to apply the interest limitation rule at fiscal unity level would have to file such request by 31 December 2019.

New requests to apply fiscal unity as from financial year 2019

The application of the fiscal unity regime is subject to the filing of a common written request, to be introduced by all the companies that wish to become part of such fiscal unity by 31 December 2019 (for companies with accounting periods corresponding to the calendar year). The newly introduced interest limitation rules will apply automatically to all new fiscal unities, unless the companies, in the aforementioned written request to form a fiscal unity opt to apply the interest limitation rules to each company individually.

Abolition of existing exit tax provisions

The Luxembourg law implementing the EU ATAD also amended the existing exit taxation regime (including provisions relating to inbound transfers). These provisions will be applicable for tax years starting on or after 1 January 2020.

The new regime replaces the current unlimited deferral of exit tax by a payment of the exit tax debt in equal installments over a maximum period of five years (subject to certain conditions being met). Furthermore, for specific

inbound transfers of assets, the valuation corresponds to the amount determined by the exit state, unless this value does not reflect the going concern value. In parallel, specific outbound transfers will be considered as taxable alienations of such assets at fair market value.

As a result, *the current exit taxation provisions only apply until 31 December 2019.*

Application of functional currency

Companies drawing up their annual accounts in a foreign currency are, under conditions, entitled to declare their taxable income by converting the amounts determined in such foreign currency into Euro at specific foreign exchange rates, rather than having to maintain a EUR-denominated tax balance sheet (functional currency method). Companies incorporated during 2019 that wish to apply the functional currency method need to file a written request by the end of their first accounting year. As a result, *companies incorporated in 2019 and whose financial year corresponds to the calendar would have to file such request by 31 December 2019.*

Endnotes

1. For a more detailed discussion, see EY Global Tax Alert, [Luxembourg Government submits draft Budget Law 2020 to Parliament - Pre-2015 tax rulings to expire with tax year 2019](#), dated 15 October 2019.
2. For a more detailed discussion, see EY Global Tax Alert, [Luxembourg reduces tax rates and allows interest limitation rules to apply to fiscal unities](#), dated 6 May 2019.

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