



Association of British and Irish Accountants
in Luxembourg

Evening Panel Discussion

Luxembourg's Tax System – a 2020 vision?

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Panel

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The Government's coalition programme (1)

- Corporate income tax rate should not be increased
- Municipal business tax – a general reform?
- VAT – rates to increase (by 2%) – but to remain the lowest standard rate in the EU
- Personal tax – recognition that Luxembourg must compete internationally and attract highly qualified individuals
 - Improve “carried interest” regime
 - No reintroduction of net wealth tax for individuals
- Subscription tax (*taxe d’abonnement*) should not be increased – will look at reforms to improve competitiveness
- SICARs to stay – also further steps taken to attract major PEq funds

The Government's coalition programme (2)

- Emphatic support for the BEPS initiative, and BEPS-related tax proposals
 - Stricter rules for physical/operational substance
 - A more transparent rulings process, and augmented technical guidance from the tax authorities
 - A transfer pricing regime nearer the OECD “norm”, including much-expanded legislation, and tax authority resourcing
 - Support (cautious) for automatic exchange of information
- A “notional interest” deduction
- Other steps to attract headquarters functions, e.g. functional currency rules formalised, group treasury cash pooling regimes

What's happened here since last December? (1)

- VAT rate increases confirmed, to be w.e.f. 1 January 2015 (extra EUR 350mi a year, still ~EUR 600mi net shortfall?)
- “Tax reform” confirmed, to take effect 1 January 2017 – plans not yet far advanced
- No notional interest deduction, at least like Belgium’s
- 2013 – a government surplus of 0.1% of GDP! Government debt was 23.1% of GDP
- Xavier Bettel – will “do everything” to improve the reputation of the financial marketplace

What's happened here since last December? (2)

- Lately Luxembourg has “shown a good willingness”, via
 - “Exchange of information” clauses in treaties (since 2011)
 - Accepting automatic exchange of information under EU Savings Directive, thus ending “bank secrecy” within the EU (April 2013, w.e.f. January 2015), and extension of the EUSD to a wider range of financial products (March 2014)
 - Dealing well with OECD “non-compliant” status on past exchange of information requests (Nov 2013)
 - Signing a FATCA Inter-Governmental Agreement with the US (March 2014)
- BUT - EU Commission “fishing expedition” for tax rulings and IP regime beneficiaries?

EU Commission – changing the P/S Directive

- EU Commission put out proposals on 25 November 2013 to amend the P/S Directive by adding a General Anti-Avoidance Rule - a “GAAR” - that would withdraw Directive benefits in the event of “artificial arrangements”
- Under this (and any subsequent extension of it under EU law or jurisprudence) any EU intermediate holding structure would be at risk, unless it could be asserted with confidence that structure was NOT in place “for the essential purpose of obtaining an improper tax advantage” - thus the GAAR would have a “blunderbuss” effect, until new ECJ cases clarified

EU Commission – changing the P/S Directive

- This all might mean that only Luxembourg “regional HQ” structures, with management from Luxembourg of the businesses of companies owned by a Luxembourg Holdco, would be GAAR-safe?
- *More “substance” needed. Good for Luxembourg – or not??*
- Will it happen? Now pushed back to Italian EU Presidency – they are keen for it to happen

BEPS – OECD “Discussion Draft” Reports

- 30 January Action 13 – Transfer Pricing Documentation and Country-by-Country Reporting (“CbCR”) (20 pages)
- 14 March Action 6 – Preventing the Granting of Treaty Benefits in Inappropriate Circumstances (“**Treaty Abuse**”) (31 pages)
- 19 March Action 2 – Neutralise the Effects of Hybrid Mismatch Arrangements (Treaty issues – 14 pages; Domestic law issues - 79 pages)
- 24 March Action 1 – Address the Tax Challenges of the Digital Economy (81 pages)

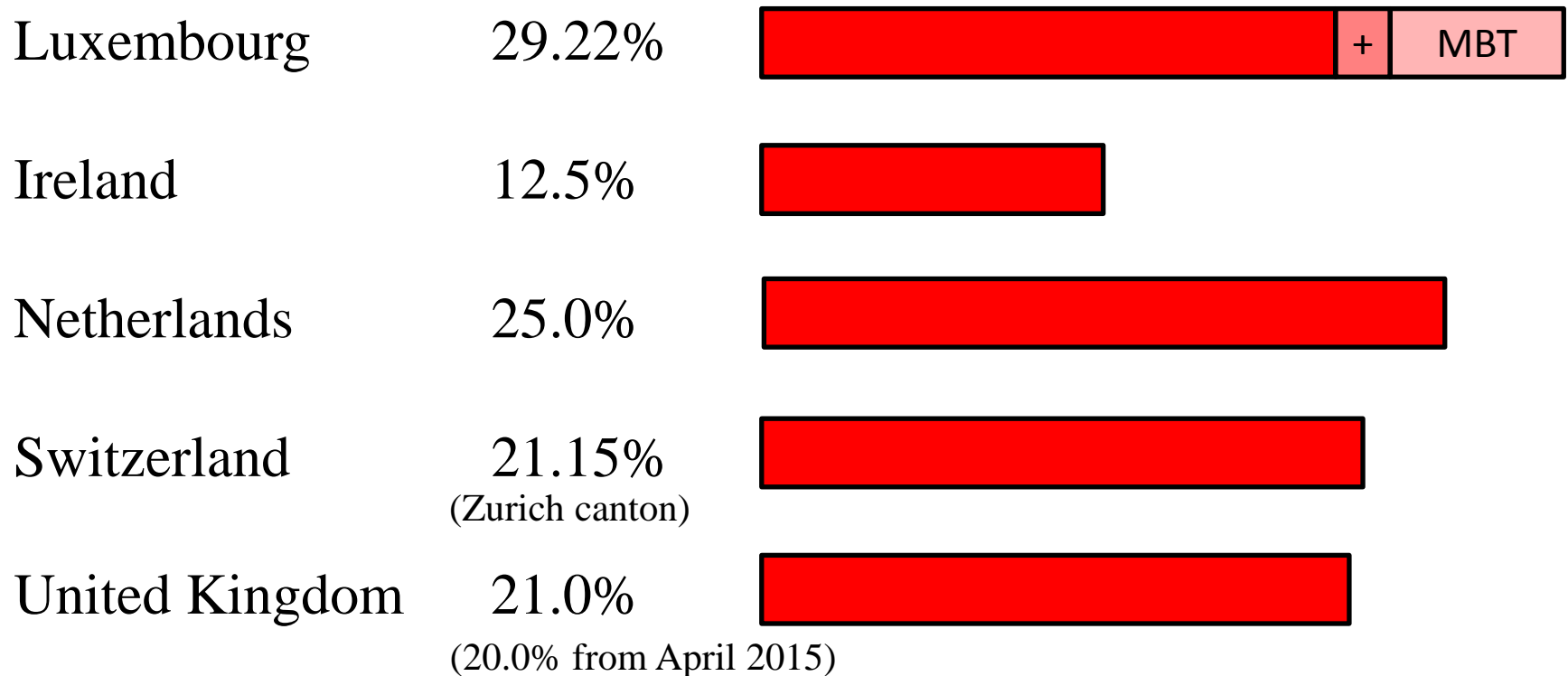
BEPS – OECD “Discussion Draft” on “Treaty Abuse”

- Far-reaching and extreme - sees any inclusion of any intermediate country in an income flow as “treaty shopping” – OECD has “gone nuclear”?
- New Model Treaty clause would contain
 - Very restrictive US-style “limitation of benefits” regime – no benefits for fund-owned structures, no “derivative benefits” rules, limited let-outs for “active trade or business” flows;
AND
 - “Main purposes” test for denial of benefits (i.e. no treaty benefits if one of the main purposes of an arrangement was getting treaty benefits) – another GAAR!
- Also has a blunt, overall “effective rate of tax” rule, to deny treaty benefits to flows to “low-taxed” branches.

BEPS – OECD “Discussion Draft” on “Treaty Abuse”

- Public consultation period – responses back to OECD by 9 April – strongly negative response
- Would deny treaty benefits to most non-publicly traded groups with foreign shareholders, and almost all PEq and RE fund structures – “turning the clock back more than 50 years”.
Contravenes EU treaties?
- Need to get back to a situation where any holding companies with “genuine economic activity” can still get treaty benefits?
- *Even then, more “substance” needed. Good for Luxembourg – or not??*

Corporate Tax Rates



Personal Tax Rates

Luxembourg	43.6% (above EUR 300.0k (married))
Ireland	48.0% (above EUR 32.8k)
Netherlands	52.0% (above EUR 56.5k)
Switzerland	~ 40% or less (varies by canton, commune)
United Kingdom	45.0% (above ~ EUR 180k)

VAT Rates

