ABIAL Tax Event

LUXEMBOURG AND INTERNATIONAL TAX DEVELOPMENTS

28 January 2021

1. LUXEMBOURG TAX REFORM:
MEASURES ANNOUNCED IN THE COALITION AGREEMENT

01 KEY MEASURES

Individuals: Individual taxation

- Concept: One single tax class (abolition of the different tax classes), taking however into account children

- Announced objectives:

  - Neutrality: A neutral taxation model which does not depend on the life style and the family status (marriage, partnership, divorce, etc.) ;
  - Fairness: abolishment of unjustified advantages, with appropriate compensatory measures and transitional phases;
  - Decrease of the tax burden of the individuals (is it really feasible for those who are currently in class 2?).

01 KEY MEASURES

Individuals: other tax measures

- Stock-options: gradual abolition;
- Employees' participation: implementation of a legal basis for the participation of employees in the profits of their companies with the objective of enhanced employee loyalty;
- Carried interest: analysis of the current regime in order to determine whether improvements are required (notably by expanding the scope in order to attract more "front office" functions) ;
- Impatriates: replace the circular by a law;
- Benefits in kind: introduction of lump sum exempt amounts and modernisation of the lunch voucher regime,

01 KEY MEASURES

Individuals: other tax measures

- Ecological taxation:
    - Further encourage the use of cars with zero or low emissions through introduction of appropriate tax measures;
    - Home working: negotiations with Belgium, France and Germany to find an appropriate tax treatment, which will ameliorate home working opportunities for frontier workers.

- Innovative companies: tax measures to increase investments made by individuals in innovative companies.
- Accommodation: increase the tax credit for an amount of EUR 20,000 on stamp duties.

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01 KEY MEASURES

Companies: tax measures for funds

- No increase of the subscription tax.

- Tax measures for sustainable and socially responsible investment funds

- Measures to counteract abuse resulting from the use of the applicable tax system for SICAV-SIFs in the Luxembourg real estate sector

01 KEY MEASURES

Real Estate

- Property Tax Reform;
- Increase of the tax credit regarding the stamp duty for first property acquisitions (« Bëllegen Akt ») according to the number of children in the household ;
- Possible increase of the maximum amount for which the super-reduced VAT rate of 3% is applicable in case of accommodation.

2. TAX MEASURES IN THE 2021 BUDGET LAW

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02 KEY MEASURES (INDIVIDUAL TAX)

Stock options/warrants

- The so-called warrant regime, which evolved from a circular introduced in 2002, has been repealed as from January 1, 2021.
- The repeal of the circular was announced in the commentary to the draft law, a repealing circular was issued on 14 December 2020.
- The entire circular was repealed.

Stock options/warrants (cont'd)

Context

- Purpose of the amendment: Cancellation of an illegitimate tax benefit, badly perceived by the public opinion.

- The 2002 circular on stock options and warrants created a specific regime but at the same time created confusion and a mismatch between two mechanisms: stock option plans and the warrant plans. The first is a bet on future performance for a company, while warrant plans are a tool to limit the taxation of bonuses (past performance).

- The main contribution of the 2002 circular was to create a lump sum valuation of freely transferable options. Most of the rules introduced by this circular were in fact mere application of the Luxembourg general tax law. Based on that, the stock option measures as described should still be valid. The main impact of the circular is the cancellation of lump sum valuation. Nevertheless, based on the principles of the Luxembourg tax law, options which are valued according to regular financial mathematics could be given a valuation based on these standards.

02 KEY MEASURES (INDIVIDUAL TAX)

Stock options/warrants (cont'd)

- Stock-option plans can be still set up in Luxembourg but without the legal and tax certainty granted by a Luxembourg circular. The timing of the taxation should be the same as well as the method to determine the taxable amount. Nevertheless, the Luxembourg tax authorities' input is much anticipated on this topic.

- Miscellaneous: DAC 6 treatment / warrants schemes are reportable based on the analysis of the LTA.

02 KEY MEASURES (INDIVIDUAL TAX)

Employee profit shares ("Prime participative")

- With effect as from tax year 2021, a new profit share regime (prime participative) has been introduced for employees and will be 50% exempt under certain conditions.

- The amount of profit shares payable in the form of a bonus and benefiting from the 50% exemption will be subject to the two following cumulative limits:

  - ✓ The total amount of profit share paid by the employer to its employees will not be able to exceed 5% of the accounting profits of the employer as of the end of the accounting year preceding the allocation of the profit share; and

  - ✓ The amount of profit share paid by the employer to an employee will not be able to exceed 25% of the annual salary (excluding the amount of profit share) of the employee concerned.

02 KEY MEASURES (INDIVIDUAL TAX)

Employee profit shares (cont'd)

- In our view, these two limits should be interpreted in such a way that should one or two of them be exceeded, only the exceeding part will be fully subject to tax and the part up to the limits will still benefit from the 50% exemption.

- This approach should also be true in respect of the tax deduction of the profit share at the level of the employer: while the draft law specifies that the profit share within the meaning of the new draft law article is tax deductible at the level of the employer, the part of the profit share which exceeds the 5% and 25% limits mentioned above should remain tax deductible at the level of the employer under the standard tax deduction rules applicable to the payment of salary and bonuses.

02 KEY MEASURES (INDIVIDUAL TAX)

Employee profit shares (cont'd)

- As soon as the profit share has been put at the disposal of the employees, the employer will have to provide the Luxembourg tax authorities with a list of all employees who benefited from it as well as with all the information needed to evidence that the conditions required to benefit from the 50% exemption are met.

- Purpose of the amendment: Supposed to replace the warrants

- Miscellaneous: warning / comments made by the UEL / answers from the LTA regarding the amount of the premium.

02 KEY MEASURES (INDIVIDUAL TAX)

Impatriate regime

- With effect as from tax year 2021, the tax regime of impatriates has been amended. It will no longer be governed by a circular but, instead, by a new article of the Luxembourg income tax law (Art. 115 13b of the ITL).

Context

- The former regime was complex and not really popular for the employers. It was conditioned initially by an LTA approval. The approval was suppressed in 2014, but this cancellation led to a detrimental legal uncertainty.

- Purpose of the amendment: Keep the benefits of the former regime and simplify the process to qualify for it.

- A “Règlement Grand Ducal” was released on 23 December 2020 in order to provide details on the eligible exempt benefits.

- A 50% exempt impatriate premium will be introduced which an employer will be able to grant under certain conditions to its employees. To benefit from the partial exemption regime, the premium should not exceed 30% of the annual remuneration of the impatriate.

02 KEY MEASURES (INDIVIDUAL TAX)

Impatriate regime (cont'd)

- Most of the conditions of the previous impatriate regime in force will remain unchanged. However, to benefit from the regime under the new rules, the impatriate will have to have an annual remuneration of minimum 100,000 euros (instead of 50,000 euros) and he/she will be able to benefit from the regime during a time period of up to eight tax years (instead of currently five tax years).

- Besides the premium, some benefits paid by the employer are tax exempt at the level of the employee, among which:
  - ✓ Moving expenses (travel and relocation expenses);
  - ✓ Some travel expenses between Luxembourg and the employee's previous country;
  - ✓ Housing allocation (submitted to conditions);
  - ✓ Tax equalisation;
  - ✓ School fees;
  - ✓ Impatriate premium.

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02 KEY MEASURES (INDIVIDUAL TAX)

Impatriate regime (cont'd)

- Most of the conditions have been kept:
  - ✓ A impatriate must have her/his regular place of abode in Luxembourg;
  - ✓ The impatriate must not have been a tax resident in Luxembourg for the last 5 years (or not having lived by 150 km from the Luxembourg border);
  - ✓ The impatriate must not replace former employees who are not considered as impatriate employees;
  - ✓ The impatriate employment must be her / his main professional activity and receive a minimum compensation of EUR 100 K;
  - ✓ In case of secondment the impatriate must have a minimum seniority of 5 years in the sector;
  - ✓ In case of new recruitment the employee must have a minimal experience in the sector.
- Concerning the conditions applicable at the level of the employer, all of them were kept except the condition of a minimal staff of 20 employees.

02 KEY MEASURES (INDIVIDUAL TAX)

SPF regime & real estate investments

- With effect as from July 1, 2021, private wealth management companies (SPFs) will not be allowed to hold real estate investments indirectly via one or more (Luxembourg or foreign) partnerships or FCPs (direct investments into real estate are already prohibited by the SPF law of May 11, 2007).

Context

- The SPF was initially designed to replace the Holding 29. Its purpose was to allow private investments through movable assets.
- At the beginning of the SPF regime, it was already forbidden to invest directly in real estate.
- The consequence of non-respect of this restriction was the loss of the SPF status. As a result, the company is submitted to all the commercial taxes (CIT/MBT).
- Purpose of the amendment: Expected impact on the Luxembourg real estate market.

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Accelerated depreciation rules for real estate investments

- The accelerated amortisation rules applicable to rental housing investments will be amended with effect as from tax year 2021.
- The amortisation rate for new real estate investments allocated to rental housing will be brought down from 6% to 4% as from tax year 2021.
- To be considered as a new residential investment, the real estate cannot be older than five years (instead of six years currently).
- These new rules will also apply to expenditures made for the renovation of old dwellings, provided that they do not exceed 20% of the acquisition price or cost of the building.
- For renovation of rental accommodation to allow use of sustainable energy, an amortisation rate of 6% of the expenses (instead of the current 4% of 20% of the renovation expenses) will apply.

02 KEY MEASURES (INDIVIDUAL TAX)

Accelerated depreciation rules for real estate investments (cont'd):

- In addition to the amendment of the amortisation rules, the budget law introduces a special deduction for investments in real estate not older than five years and allocated to rental housing ("*abattement immobilier special*").
- This deduction amounts to 1% of the value used as a basis for the calculation of the accelerated depreciation of 4%, without however being able to exceed 10,000 euros ($11,800) (i.e. 1% of 1 million euros).
- As a result, real estate investments in rental housing not older than five years will benefit from a combined amortisation and deduction as follows:

  Value

  < EUR 1.000.000: 5%

  > EUR 1.000.000: 4% plus a deduction of 10,000 euros.

Accelerated depreciation rules for real estate investments

Context

- Article 32 ter of the Luxembourg tax Law allowed a 6% amortization to rental housing investments over 6 years. It was limited to newly built assets.
- The additional special deduction is introduced by a new article in the Luxembourg Law, article 129a of the ITL.
- Purpose of the amendment: Expected impact on the Luxembourg real estate market. This specific amortisation was perceived by the market as one of the tax benefits granted by the Luxembourg tax system. This tax benefit was a real cost for the Luxembourg tax authorities which wanted to limit its impact on the Luxembourg budget.

02 KEY MEASURES (REAL ESTATE TAX)

Taxation of Luxembourg real estate investments held by certain investment funds

- With effect as from 1 January 2021, a new annual 20% real estate withholding tax ("*prélèvement immobilier*") will be levied on income and capital gains arising from real estate assets situated in Luxembourg and realised directly or indirectly by certain investment vehicles (hereafter "**Investment Vehicles**").

- The new real estate withholding tax will apply to the following Investment Vehicles:

  ✓ Undertakings for Collective Investment ("UCI") within the meaning of Part II of the law of 17 December 2010 (except Luxembourg partnerships, sociétés en commandite simple, "SCS");

  ✓ Specialised Investment Funds ("SIF") within the meaning of the law of 13 February 2007 (except Luxembourg partnerships, sociétés en commandite simple, "SCS"); and

  ✓ Reserved Alternative Investment Funds ("RAIF") within the meaning of article 1 of the law of 23 July 2016 (except certain Luxembourg partnerships, sociétés en commandite simple, "SCS"). Only those RAIFs which are exempt from corporate income tax based on article 45 of the RAIF Law and not the fully taxable ones only investing in risk capital and subject to the specific tax rules of article 48 of the RAIF law.

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02 KEY MEASURES (REAL ESTATE TAX)

Taxation of Luxembourg real estate investments held by certain investment funds

- The real estate withholding tax will only apply to the extent that the Investment Vehicle has a personality separate from those of its partners, excluding SCSps and FCPs. In addition, Investment Vehicles set up as an SCS are expressly out of the scope of the measure.
- Annual real estate **withholding tax of 20%** on :
  - ✓ **income arising from Luxembourg real estate assets** (rental income and capital gains) held directly or indirectly through tax transparent entities or through FCPs.
  - ✓ **gains** realised by the Investment Vehicle on the **disposal of an interest in the tax transparent entity or of units in the FCP** but only up to the portion of the gain corresponding to the value increase of the Luxembourg real estate asset.

02 KEY MEASURES (REAL ESTATE TAX)

Taxation of Luxembourg real estate investments held by certain investment funds

- Where a Luxembourg real estate asset is held by an Investment Vehicle through a chain of several tax transparent entities or FCPs, the 20% real estate withholding tax applies on the gains realised on the disposal of any indirect interest through the chain but only up to the portion of the gain corresponding to the value increase of the Luxembourg real estate asset.

- Where income or gains are realised indirectly, the taxable income or gain is computed in proportion to the interest held in the entity(ies) holding the Luxembourg real estate.

02 KEY MEASURES (REAL ESTATE TAX)

Taxation of Luxembourg real estate investments held by certain investment funds (cont'd)

- The following new **reporting and payment obligations** will be introduced in respect of the new real estate withholding tax:

  - ✓ At the latest **on 31 May** of the year following the one during which the real estate income has been realised: **file a tax return** with the withholding tax office of the Luxembourg tax authorities;
  - ✓ An **external auditor** will have to certify in a report that the real estate income has been computed in accordance with the provisions of the law; this report will have to be filed together with the tax return.
  - ✓ The related real estate withholding tax will have to be **paid** at the latest **on 10 June**.
  - ✓ All Investment Vehicles, have to file an **additional return** including information on whether they have been (or not) holding (directly or indirectly) Luxembourg real estate assets during the calendar years 2020 and 2021. This tax return has to be filed **by 31 May 2022** at the latest.
  - ✓ Finally, Investment Vehicles must inform the Luxembourg tax authorities if they **change their legal form** and become a tax transparent entity or a FCP in the course of the calendar years 2020 and 2021(only to the extent that the Investment Vehicles hold at least one Luxembourg real estate asset at the time of the change of their legal form).

02 KEY MEASURES (REAL ESTATE TAX)

Real estate registration taxes on “share deals”

- Prior to 1 January 2021:
  - ✓ contribution remunerated by shares of a real estate asset situated in Luxembourg to a Luxembourg or foreign civil or commercial company upon its incorporation or capital increase (“*Apport pur et simple*”): proportional registration duty of 0.5% + 2/10 and 0.5% transcription tax (i.e. a total of 1.1% registration taxes)
  - ✓ contribution of a real estate asset situated in Luxembourg remunerated by other means than shares (“*Apport à titre onéreux*”): subject to a proportional registration duty of 5% + 2/10 as well as to 1% transcription tax (i.e. a total of 7% registration taxes).
- With effect as from 1 January 2021, the tax treatment of share deals (in the context of investments in Luxembourg real estate) has been amended to reduce the unequal tax treatment between share deals and asset deals for registration taxes.

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02 KEY MEASURES (REAL ESTATE TAX)

Real estate registration taxes on “share deals”

- In the case of capital contributions of real estate assets to a civil or commercial company, the registration duties have been increased from 0.5% + 2/10 to 2% +2/10 and the transcription tax will be increased from 0.5% to 1%.

- As a consequence, registration taxes applicable to such capital contributions will become 3 times higher (**3.4% instead of 1.1%**).

02 KEY MEASURES (GREEN TAXATION)

Investment funds & subscription tax

- As from 1 January 2021, sustainable funds set up as UCIs within the meaning of the law of 17 December 2010 will benefit from a lower rate of subscription tax ("*taxe d'abonnement*") - the standard rate being 0.05% - depending on the level of sustainable activity (within the meaning of article 3 of EU Regulation 2020/852) of the fund or its individual compartment:

  - ✓ 0.04% if at least 5% of the NAV of the fund, or of its individual compartment, is invested in sustainable economic activities;
  - ✓ 0.03% if at least 20% of the NAV of the fund, or of its individual compartment, is invested in sustainable economic activities;
  - ✓ 0.02% if at least 35% of the NAV of the fund, or of its individual compartment, is invested in sustainable economic activities; and
  - ✓ 0.01% if at least 50% of the NAV of the fund, or of its individual compartment, is invested in sustainable activities.

02 KEY MEASURES (GREEN TAXATION)

Investment funds & subscription tax (cont'd)

- Only the portion of the net assets invested in sustainable economic activities will benefit from the reduced rates mentioned above.

- The portion of sustainable economic activities will be determined based on the situation as of the last day of the financial year of the UCI and will have to be certified by an external auditor.

Environmental taxation

- As from 1 January 2021, a CO2 tax has been introduced which should increase the cost of petrol and diesel.

02 OTHER MEASURES

Tax consolidation regime amended to reflect latest CJEU case law

- The provisions of the Luxembourg corporate income tax law dealing with the tax consolidation regime will be amended with effect as from tax year 2020 to reflect the recent decision of the CJEU (C-749/18 of 14 May 2020) regarding the consequences of the change from “vertical” to “horizontal” tax consolidation.

- The new provision confirms that the change will not entail any negative tax consequences for the members of the tax consolidated group, provided certain conditions are met:

  - ✓ The Luxembourg head of the prior tax group needs to remain the head of the new tax group;
  - ✓ The change of the tax group needs to occur at the latest for the tax year 2022;
  - ✓ The perimeter of the tax group needs to be extended;
  - ✓ The members of the new tax group need to stay in the tax group for a minimum period of 5 years. However, the 5 year minimum period continues for the entities that had already been part of the prior tax group, i.e. the 5 year period only starts anew for the new entities having joined the tax group.

02 CURRENT STATE OF PLAY

Individuals	
Individual taxation	Not realistic in the current context of sanitary crisis, but still considered as important and as to be pursued
Stock-options	Abolished
Employees' participation	Implemented
Impatriates	Implemented
Ecological tax	Implemented
Benefits in kind	
Home working	
Innovative firms	

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02 CURRENT STATE OF PLAY

Legal entities	
Adaptation of the tax system	Decrease of the tax rate in 2019. What else?
Sustainable investment funds	Implemented
Subscription tax rate	No increase
Simplification of CIT/MBT rules	∅
SICAV-SIFs and real estate sector	Special WHT implemented

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02 CURRENT STATE OF PLAY

Real Estate sector	
Reform of the property tax	Project to be proposed until the end of the current legislative session
VAT super-reduced rate regarding accommodation	∅
Tax on the creation of the added value	
Accommodation (tax credit)	

3. OTHER RECENT DEVELOPMENTS

03 OTHER RECENT DEVELOPMENTS

Measure denying the tax deduction of interest and royalties to entities in blacklisted jurisdictions

- Today, the draft law which introduces a measure denying under certain conditions the corporate income tax deduction of interest and royalty expenses due to entities located in non-cooperative tax jurisdictions was passed by the Luxembourg Parliament.

- The entry into force of the new measure was postponed from 1 January 2021 to 1 March 2021.

- Its scope of application may evolve in the coming weeks following the update of the EU list of non-cooperative jurisdictions which is expected to take place in February.

- As from **1 March 2021**, interest and royalties due to entities located in non-cooperative tax jurisdictions will **no longer be tax deductible**, if the following **cumulative conditions** are met:
  - ✓ The beneficiary of the interest or royalty is a collective undertaking (thus, excluding tax transparent entities); if the beneficiary is not the beneficial owner, then the beneficial owner has to be taken into account;
  - ✓ The beneficiary of the interest or royalty is an associated enterprise; and
  - ✓ The collective undertaking which is the beneficiary of the interest or royalty is established in a country or territory which is on the **EU list of non-cooperative tax countries and territories**.

03 OTHER RECENT DEVELOPMENTS

Measure denying the tax deduction of interest and royalties to entities in blacklisted jurisdictions

- Interest and royalties remain tax deductible to the extent that the taxpayer can demonstrate that the operation to which the interest or royalties relate has been put in place for **valid economic reasons which reflect economic reality**.

- The measure will apply to interest and royalties due to countries listed as of the latest list available at that time and published in the Official Journal of the European Union.

- What is the effect of a country being **added or removed** from the list?

  ✓ Countries added will be taken into account for interest and royalties due as from 1 January of the following year (i.e. there will be **no retroactive nor immediate effect** but only an impact as from the following calendar year);

  ✓ Countries removed will no longer be taken into account for interest and royalties due as from the date of the publication of the relevant EU list in the Official Journal (i.e. the **removal will have an immediate effect**).

The countries to be taken into account as from 1 March 2021 may no longer be the same as the twelve countries listed as of 6 October 2020.

List as of 6 October 2020 (date of the latest update): American Samoa, Anguilla, Barbados, Fiji, Guam, Palau, Panama, Samoa, Seychelles, Trinidad and Tobago, US Virgin Islands and Vanuatu

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03 OTHER RECENT DEVELOPMENTS

Circular on interest deduction limitation rules

- On 8 January 2021, the Luxembourg tax authorities issued Circular n° 168bis/1 (the “Circular”) in order to provide guidance on the interpretation of the interest deduction limitation rules (“IDLR”).

- Context: The limitation concerns exceeding borrowing costs (i.e. the amount by which the borrowing costs exceed the interest income in a given year) and corresponds to the higher of EUR 3mio or 30% of the tax EBITDA per fiscal year.

The notion of borrowing costs and interest income

- Borrowing costs are divided into three categories:
  - ✓ Interest expenses on all forms of debt;
  - ✓ Other costs economically equivalent to interest, and;
  - ✓ Expenses incurred in connection with financing.

03 OTHER RECENT DEVELOPMENTS

Circular on interest deduction limitation rules

- Borrowing costs may only concern deductible interest expenses, i.e., non-deductible interest expenses, regardless of the reason for the non-deductibility (e.g. anti-hybrid rules), do not qualify as borrowing costs.

- The notion of **interest income** and other economically equivalent income should constitute the counterpart of the borrowing costs (application of a **symmetric and coherent approach**):

  - ✓ Expenses incurred by a borrower not considered as borrowing costs should also not be considered as interest income at the level of the lender.
  - ✓ A charge considered as a borrowing cost for a borrower under the above definition, such expense should also be considered as an interest income for the lender.

03 OTHER RECENT DEVELOPMENTS

Circular on interest deduction limitation rules (cont'd)

Discounted debt

- A deduction for impairment of (presumably) irrecoverable receivables does not give rise to borrowing costs.
- Hence, the reversal of such impairment should likewise not constitute interest income.

- Could a capital gain on a discounted debt that has been acquired after the write-down qualify as interest income?
- Circular remains silent on this specific case
- Relying on the general principles, capital gains should not be considered as interest income for the lender when they are not considered as borrowing costs for the borrower.
- Tax exposure where such discounted debt has been financed with interest bearing debt.

03 OTHER RECENT DEVELOPMENTS

Circular on interest deduction limitation rules (cont'd)

Real estate

- The fraction of capitalised interest included in the acquisition cost, e.g. of a real estate asset, falls within the scope of the IDLR in case of amortisation, depreciation and upon sale.

Tax neutral reorganisations

- Unused interest capacity and the carry forward of exceeding borrowing costs which could not be deducted in a given tax year may be transferred in case of tax neutral reorganisations.

Tax EBITDA

- The deductible fraction of foreign taxes, as well as interest expenses which benefit from the grandfathering rules, shall not be added back to the tax EBITDA.
- Income and interest expenses from infrastructure projects which qualify for the carve-out from the IDLR should be excluded from the tax EBITDA computation.

03 OTHER RECENT DEVELOPMENTS

Circular on interest deduction limitation rules (cont'd)

Grandfathering and material modifications

- In case of a modification of existing loans on or after 17 June 2016, the grandfathering would be limited to the original terms of the loan.
- Material modifications include:
  - ✓ Extension of the maturity of a loan,
  - ✓ Modification of the interest rate or the interest rate computation method or the modification of one or several of the contracting parties if such modifications were not contractually foreseen before 17 June 2016, or a
  - ✓ Modification of the principal amount.
- Restructurings such as mergers and demergers are not considered as a material modification
- A mere drawdown under a loan facility granted before 17 June 2016 falls within the scope of the grandfathering rule (provided that the maximum amount has not been subsequently increased).

03 OTHER RECENT DEVELOPMENTS

Circular on non-application of the Parent-Subsidiary-Directive to Gibraltar companies

- Clarification of the implications of the decision of the CJEU of 2 April 2020 denying the application of the Parent Subsidiary Directive to Gibraltar Companies
- No retroactive effect
- Until 31 December 2020:
  - ✓ Dividend distributions from Gibraltar companies to Luxembourg companies and capital gains realised by Luxembourg companies on the sale of shareholdings in Gibraltar companies still qualified for the participation exemption regime.
  - ✓ The same applied to the exemption of shareholdings in Gibraltar companies for NWT purposes.
- As from 1 January 2021:
  - ✓ Dividends received and capital gains realised by Luxembourg companies will only qualify for an exemption to the extent that the Gibraltar company is a fully taxable company subject to corporate income tax at a rate comparable to the Luxembourg corporate income tax, levied on a comparable basis.
  - ✓ The same will apply to the exemption of shareholdings in Gibraltar companies for NWT purposes.
  - ✓ As far as dividend distributions from a Luxembourg company to a Gibraltar company are concerned, no withholding tax exemption will be available since Luxembourg does not have a double tax treaty with Gibraltar.

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4. INTERNATIONAL DEVELOPMENTS

04 INTERNATIONAL DEVELOPMENTS

Taxation of the Digital Economy - OECD Pillar One and Pillar Two

- OECD's work on addressing the tax challenges arising from the digitalisation of the economy (i.e. Pillar One and Two)
- In 2019, members of the Inclusive Framework agreed to examine proposals in two pillars, which could form the basis for a consensus solution to the tax challenges arising from digitalisation.
- **Pillar One** focuses on new **nexus and profit allocation rules**:
  - ✓ Ensure that, in an increasingly digital age, the allocation of taxing rights with respect to business profits is no longer exclusively made by reference to physical presence
  - ✓ Grant greater taxing rights to the market jurisdictions.
- **Pillar Two** explores options and issues in connection with the design of a **global minimum tax** that would address remaining BEPS issues:
  - ✓ Income Inclusion Rule
  - ✓ Undertaxed Payment Rule
  - ✓ Switch-Over Rule
  - ✓ Subject to Tax Rule

04 INTERNATIONAL DEVELOPMENTS

Taxation of the Digital Economy - OECD Pillar One and Pillar Two

- Timeline:
  - ✓ Several delays of the OECD-level discussions in 2020 due to Covid 19 pandemic
  - ✓ Blueprint reports issued on 14 October 2020 and launch of public consultation process
  - ✓ Objective: Consensus-based solution and final reports by mid-2021
  - ✓ Achievable?

Interaction with initiatives at EU level

- In 2018, the EU Commission had issued two proposals for Directives:
  - ✓ Directive on a digital services tax
  - ✓ Directive on the concept of significant digital presence
- Work on these two proposals was suspended in light of the work undertaken at OECD level on Pillar One and Pillar Two
- The EU Commission however announced that in the absence of a final consensus at OECD level by mid-2021, it would set out the next steps for a reform of the corporate tax system to fit the digitalised economy at EU level, notably to avoid that member states take unilateral measures, and to achieve a harmonised approach at EU level.

04 INTERNATIONAL DEVELOPMENTS

Tax Package of the European Commission

- On 15 July 2020, the European Commission adopted a new Tax Package aimed at reinforcing the fight against tax abuse, helping tax administrators keep pace with a constantly evolving economy and easing administrative burden for citizens and companies.
- The Tax Package, adopted on 15 July 2020, contains **three initiatives**:
  - ✓ a **Tax Action Plan** to be implemented between now and 2024: measures to reduce tax obstacles and simplify administrative burdens for businesses in the Single Market and help Member States enforce existing tax rules and improve tax compliance;
  - ✓ a proposal for amending the Mutual Assistance Directive on administrative cooperation in the field of taxation (2011/16) to extend the EU tax transparency rules to digital platforms (**DAC7**): automatic exchange of information on the revenues generated by **sellers on online platforms** and clarifying rules in other areas in which Member States work together to fight tax abuse, e.g. through **joint tax audits**; and
  - ✓ a communication on **tax good governance** which suggests a review of scope, criteria and governance of the Code of Conduct and improvements to the EU list of non-cooperative jurisdictions, to address tax competition and tackle harmful tax practices within the European Union.

05 KEY TEAM MEMBERS

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Christina is chartered accountant in Luxembourg ("expert-comptable"). She holds a post-graduate degree in Luxembourg tax as well as a degree in Business administration (with a specialization in tax) from Europa Universität Viadrina in Frankfurt (Germany). She also holds a master 2 in Business administration from Reims Management School (France).

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Gilles is Regulatory Reporting Director at ATOZ Services.

Gilles has experience in HNWI, individual taxation and family office advisory. He advises private banking and life insurance groups as well as family offices on tax matters related to wealth engineering solutions, asset engineering schemes, individual investment solutions. Gilles is also active in capitalisation and tax matters pertaining to life insurance.

Gilles is a member of the working group of Luxembourg Private Equity Association (LPEA) on FATCA.

Gilles holds a Master's degree in Tax and Business Law from the University of Clermont Ferrand (France). Gilles is a graduate of EDHEC Business School (France).

He speaks English and French.

THANK YOU

Do not hesitate to contact us if you have questions

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TAXAND