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ATOZ ALERT

Luxembourg Draft Budget 2027: Council of State raises formal oppositions to two tax measures

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On 17 November 2026, the Council of State issued its opinion on draft law No. 8800 concerning the State budget for 2027 (the "**Draft Budget**"). The Draft Budget provides for various tax measures: a one percentage point cut in corporate income tax (CIT), the restoration of unlimited loss carryforwards, higher investment tax credit (ITC) rates for digital and green projects, a longer holding period for speculative gains, a new regime for residential amortisation, and simplified employer reporting.

The Council's review of the tax provisions includes two formal oppositions relevant to the tax measures of the Draft Budget covered in our 8 October ATOZ Alert: the extension of the holding period for certain gains and the transitional conditions for accelerated amortisation of rental housing.

The Council's oppositions focus on legal certainty and legitimate expectations. It also comments on the retroactive removal of the tax-loss carryforward limit and offers observations on some other provisions in the draft.

This Alert summarises those formal oppositions.

Two formal oppositions on tax measures

EXTENSION OF THE HOLDING PERIOD FOR CERTAIN GAINS

The Draft Budget extends from six to twelve months the holding period used to determine whether a gain is a speculative gain and, for the relevant disposal of a participation, whether a gain is taxable. The amendments concern Articles 99bis and 100 of the Luxembourg Income Tax Law (LIR).

The Council objects to applying the longer period to securities acquired before 1 January 2027. A taxpayer could face a higher tax burden that was not foreseeable when the securities were acquired. The Council's opinion gives examples of taxpayers bound by pre-existing contractual

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commitments to sell after more than six but no more than twelve months, without a right to defer the sale. Such situations may arise under discretionary bank portfolio mandates with investment limits, portfolio-pledge financing arrangements requiring sales under specified conditions, or employee share-based remuneration plans.

Thus, the Council formally opposes the provision as drafted. In the Council's view, absent transitional provisions protecting these situations and a justification demonstrating that the impact on taxpayers' legitimate expectations is proportionate, the proposal conflicts with the principles of legal certainty and legitimate expectations.

Proposed solution by the Council: make the new regime apply only to securities acquired from 1 January 2027.

ACCELERATED AMORTISATION FOR RENTAL HOUSING

The Draft Budget restores a 6% accelerated amortisation rate for qualifying rental housing from tax year 2026. The value used as the amortisation basis for the whole building or part of a building at completion must not exceed EUR 600,000, and completion must have occurred less than six years before the start of the operating year. If the EUR 600,000 ceiling is exceeded, the Council understands that the 6% rate does not apply and the ordinary 2% rate applies to the full amortisation basis. Certain transitional cases retain the 4% rate.

The formal opposition concerns an inconsistency in the transitional rule rather than the policy choice to introduce the 6% rate. For properties acquired or constituted after 31 December 2025 and before 1 January 2027, the draft law refers to completion less than five years before the start of the operating year and to acquired buildings whose completion was less than six years earlier.

The Council considers the conflicting five- and six-year references an incoherence that creates legal uncertainty about the conditions for the transitional regime. It formally opposes the provision on that basis, while stating that it agrees in principle with the proposed measure.

Proposed solution by the Council: harmonise the references so the applicable time condition is unambiguous. The opinion does not supply replacement statutory wording or expressly select which of the two periods should govern; the drafting choice remains for the government.

What next?

The Council of State's opinion is an advisory step in the legislative process; it does not, by itself, enact the proposed changes. The Luxembourg Government must now amend the Draft Budget to address the Council of State's formal objections before Parliament can vote on it.

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Questions?



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