NUMERO 05/345 ISSN1561-8366 PRIX DU NUMÉRO : EUR 4,50 MAI 2020

AGEFI Luxembourg

Le Journal Financier de Luxembourg

Covid-19 crisis

Luxembourg introduces new tax measures

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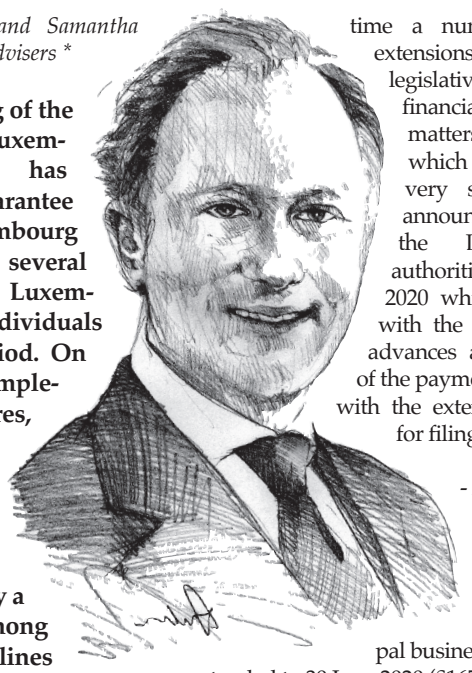

Since the very beginning of the COVID-19 crisis, the Luxembourg Government has showed its willingness to guarantee the continuity of the Luxembourg economy by introducing several measures aimed to support Luxembourg companies and individuals during this challenging period. On 17 March 2020, as part of the implementation of these measures, the Luxembourg tax authorities made several positive announcements for Luxembourg taxpayers. These announcements were followed a few weeks later by a draft law addressing among others the extension of deadlines in tax, financial and budgetary matters and which was passed by the Luxembourg Parliament on 7 May 2020.

Finally, the Luxembourg Government, anticipating potential negative tax implications for cross-border workers who have to work from home due to the lockdown, reached an agreement with Belgium, France and Germany in this respect.

Quarterly advances cancelled and payment of taxes postponed upon request

On 17 March 2020, the Luxembourg tax authorities announced that Luxembourg individual and corporate taxpayers who are experiencing liquidity problems due to Covid-19 and have business income, income from agriculture and forestry or income from independent professional services may request:

- a cancellation of the quarterly advances of (corporate) income tax and municipal business tax in relation to the 1st and 2nd quarters of 2020. However, it is not possible to cancel the net wealth tax advances. The form to be used for the request is available here: https://impotsdirects.public.lu/dam-assets/fr/formulaires/covid/annulationavances.pdf

- an extension of 4 months of the deadline for the payment of (corporate) income tax, municipal business tax and net wealth tax. This extension is only possible for taxes with a due date as from 1 March 2020, meaning that an extension is not possible if the due date was 29 February 2020 or earlier. The form to be used for the request is available here: https://impotsdirects.public.lu/dam-assets/fr/formulaires/covid/delaipaiement.pdf.

It is important to note that even though the request for cancellation and/or extension has to be (briefly) justified, the cancellation/extension is accepted automatically by the Luxembourg tax authorities, which means that the tax authorities do not assess how significant the liquidity issues of the taxpayer are.

Finally, on 7 April 2020, the Luxembourg VAT authorities released a communication according to which taxpayers experiencing financial difficulties due to Covid-19 may be granted upon request an extension of the deadline for the payment of VAT. To request the deadline extension, a form has to be used which is available on the MyGuichet.lu platform https://guichet.public.lu/fr/actualites/2020/avril/07-tva-demande-report-paiement.html.

Deadlines for filing tax returns and opting for certain tax treatments extended

On 7 May 2020, the Luxembourg Parliament passed a draft law (the "Draft Law"), the purpose of which is to introduce for a limited period of time a number of deadline extensions for certain legislative provisions in tax, financial and budgetary matters. The Draft Law, which should become law very soon, follows the announcements made by the Luxembourg tax authorities on 17 March 2020 which dealt not only with the cancellation of tax advances and postponement of the payment of taxes but also with the extension of deadlines for filing 2019 tax returns.

- *Filing of tax returns*: the deadline for filing the 2019 income tax, corporate income tax and municipal business tax returns is extended to 30 June 2020 (§167 (3) of the Luxembourg General Tax Law, *Abgabenordnung, "AO"*).

- *Individual vs. collective taxation for individual taxpayers*: the deadline applicable to both resident and non-resident taxpayers for opting for the individual taxation system (as the collective taxation system applies by default to partners and married couples) or for amending or cancelling the choice originally made is extended to 30 June 2020.

- *20% final withholding tax on savings income*: in respect of the 2019 tax year, the deadline until which a beneficial owner can opt for a 20% final withholding tax is extended from 31 March 2020 to 30 June 2020. According to Article 6bis, no 2, 2nd indent of the amended law of 23 December 2005 introducing a final withholding tax on savings income (so-called RELIBI Law), beneficial owners of interest on savings income paid by certain paying agents established outside Luxembourg can opt for a final withholding tax of 20% instead of being taxed on an assessment basis.

Unfortunately, the Draft Law does not cover the deadlines applicable in indirect tax matters such as VAT (filing of tax returns and recapitulative statements and deadlines for appealing against amending assessment or automatic taxation). On 18 March 2020, the Luxembourg VAT authorities announced in a newsletter that, until further notice, no administrative fine would be levied in case of late filing of VAT returns and that deadline extensions for the payment of VAT could be granted by the tax authorities upon request to both individuals and legal persons.

However, a statement according to which no penalty will apply, without clarifying for how long, does not really bring legal certainty to taxpayers. Therefore, some clarification by means of legal measures would be most welcome.

Finally, as a last positive measure, since 16 March 2020, VAT credits are refunded to Luxembourg businesses whose VAT receivable balance does not exceed EUR 10,000.

Deadlines for administrative and judicial proceedings extended

The Draft Law provides a suspension from 18 March 2020 until 30 June 2020 of the 3-month deadline applicable for contesting a tax assessment ("*Réclamation*" within the meaning of §228 of the AO).

In addition, the 3-month deadline applicable for contesting an administrative decision in tax matters ("*Recours hiérarchique formel*" within the meaning of §237 of the AO) is also suspended from 18 March 2020 until 30 June 2020.

These measures follow the Grand Ducal Regulation of 25 March 2020 suspending the deadline prescribed in proceedings before the constitutional, judicial and administrative courts during the COVID-19 crisis.

Deadlines applicable according to statute of limitation rules extended

According to the Draft Law, statutes of limitation ("*Délais de prescription*") ending on 31 December 2020 will be extended to 31 December 2021. This will apply to any types of statute of limitation in respect of all taxes payable to the treasury as well as all tax receivables the collection of which is entrusted to the Luxembourg direct tax authorities ("*Administration des Contributions Directes*").

Privileges and guarantees extended in time

According to the Draft Law, the privileges and guarantees applicable based on the amended Law of 28 November 1933 concerning the recovery of direct taxes and social insurance contributions whose effects cease before 31 December 2020 will be extended to 31 December 2021.

No negative tax consequences for cross-border employees working from home

The protocols to the double tax treaties concluded by Luxembourg with Belgium, France and Germany provide rules allowing cross-border workers to perform their activity outside of their employment state (Luxembourg in most cases) for a maximum amount of days (19 days in Germany, 24 days in Belgium and 29 days in France) while remaining taxable in their employment state.

Given that the maximum amount of days will most probably be exceeded during the Covid-19 crisis due to the lockdown resulting in many employees having to work from home and thus outside of their employment state, the Luxembourg Government negotiated with these 3 countries agreements according to which the days spent outside of Luxembourg due to the current crisis would be disregarded when applying the 19, 24 or 29-day rule.

On 16 March 2020, the Belgian and Luxembourg authorities agreed that the current crisis constitutes a case of force majeure, for which no days are to be counted under the 24-day rule. Therefore, it was decided that, as of 14 March 2020 and until further notice, the presence of a worker at home, in particular to carry out teleworking, is not taken into account in the calculation of the 24-day period.

On 19 March 2020, France and Luxembourg reached the same agreement, according to which, as of 14 March 2020 and until further notice, the presence of a worker at home, in particular to carry out teleworking, is not taken into account in the calculation of the 29-day period.

Finally, on 3 April 2020, Germany and Luxembourg agreed that as of 11 March 2020, any working day spent at home due to the Covid-19 crisis is considered as a working day spent in the country in which the employee usually performs his/her activity (i.e. in the employment state). The agreement provides that the measure applies until 30 April 2020 and that it is renewed automatically from month to month until it is terminated by one of the two countries. Since no communication has been made in respect of a potential termination so far, the agreement has most probably been automatically renewed until 31 May 2020.

More tax measures to come?

In the same way as many other countries, since the very start of the Covid-19 crisis, Luxembourg has shown its willingness to react quickly in order to guarantee the continuity of the Luxembourg economy. For this reason, to reassure taxpayers as soon as possible, informal announcements have been made (communications of the Luxembourg government, newsletters of the tax authorities) before formal (legal) steps requiring more time for becoming effective were taken. As decisions had to be made very quickly, some of the legislative steps taken have a scope of application which is not always broad enough to handle all issues: while legal changes have been introduced to extend deadlines in direct tax matters, no such measures have been taken yet in indirect tax matters, which would be welcome to improve legal certainly.

Finally, additional bilateral or multilateral measures may be taken by countries like Luxembourg which have a large number of cross-border activities and cross-border workers: on 3 April 2020, the Organization for Economic Co-operation and Development (OECD) Secretariat released recommendations on the implications of the Covid-19 crisis on cross-border workers and other related cross-border matters. The OECD paper mainly analyses the tax issues linked to telework, individuals that are stranded in a country that is not their country of residence, and travel restrictions, since these issues have an impact on the taxing rights of countries as defined in double tax treaties. The main topics addressed are the potential impact of the current crisis on the tax residence of companies, the potential creation of permanent establishments and the tax issues of cross-border workers.

On these issues, which are particularly relevant and important for Luxembourg, the Luxembourg Government might want to take a formal position and/or reach agreements with its tax treaty partners, as it has already done to solve the potential tax issues of its cross-border workers working from home during the crisis. Some countries like Ireland, Australia or France have already started to do so and Luxembourg might consider agreeing on similar approaches with its tax treaty partners: Ireland and Australia clarified that the unplanned presence of employees as a consequence of COVID-19 should not result in the constitution of a permanent establishment of the employer. More recently, the French tax authorities clarified that the lockdown applicable in France since 17 March 2020 should not have any consequences on taxpayers' residence both under French domestic law and under tax treaties. These positions reflect the OECD recommendation according to which one should generally assess tax residence and/or permanent establishment based on usual circumstances and not based on facts and circumstances that pertain to an exceptional and temporary period such as the COVID-19 crisis.

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