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INSIGHT: Covid-19 – Positive Tax Measures for Luxembourg Companies and Employees


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Romain Tiffon and Samantha Schmitz of ATOZ Tax Advisers look at a raft of tax measures introduced by the Luxembourg government to address the COVID-19 crisis and protect the economy.

Over the past days and weeks, the Luxembourg government has introduced a number of measures to deal with the spread of the Coronavirus and to guarantee the continuity of the Luxembourg economy.

On March 17, 2020, as part of the implementation of these measures, the Luxembourg tax authorities made several positive announcements for Luxembourg taxpayers. These announcements were then followed on April 3, 2020 by a draft law addressing, among other things, the extension of deadlines in tax, financial and budgetary matters in the context of the Covid-19 crisis. Finally, the Luxembourg government, anticipating the potential negative tax implications for cross-border workers who have to work from home during the crisis, reached an agreement with Belgium, France and Germany in this regard.

1. Payment of Taxes Postponed upon Request

The Luxembourg tax authorities announced on March 17, 2020 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 first and second 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;
- an extension of four 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 March 1, 2020, meaning that an extension is not possible if the due date was February 29, 2020 or earlier. The form to be used for the request is available here;

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

Finally, on April 7, the Luxembourg value-added tax (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.

2. Extension of Deadlines for Filing Tax Returns and Opting for Certain Tax Treatments

The Luxembourg Parliament released a Draft Law (the Draft Law) on April 8, 2020, the purpose of which is to introduce for a limited period of time a number of deadline extensions for certain legislative provisions in fiscal, financial and budgetary matters. The Draft Law follows the announcements made by the Luxembourg tax authorities on March 17, 2020 which dealt not only with the cancellation of tax advances but also with the extension of deadlines for filing 2019 tax returns.

- *Filing of tax returns*: the deadline for filing income tax, corporate income tax and municipal business tax returns for 2019 is extended to June 30, 2020 (Section 167 (3) of the Luxembourg General Tax Law, Abgabenordnung, AO).
- *Individual vs. collective taxation for individual taxpayers*: the deadline for opting for the individual taxation system (as the collective taxation system applies by default to partners and married couples) or for amending or canceling the choice originally made is extended to June 30, 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 March 31, 2020 to June 30, 2020. According to Article 6bis, no 2, 2nd indent of the amended law of December 23, 2005 introducing a final withholding tax on savings income, 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.

Indirect Tax

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). The Luxembourg VAT authorities announced prior to the release of the Draft Law 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 March 16, 2020, VAT credits are refunded to Luxembourg businesses whose VAT receivable balance does not exceed 10,000 euros ($10,875).

3. Extension of Deadlines for Administrative and Judicial Proceedings

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

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

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

4. Extension of Deadlines Applicable According to Statute of Limitation Rules

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

5. Privileges and Guarantees Extended in Time

According to the Draft Law, the privileges and guarantees provided for by the provisions of the amended Law of November 27, 1933 concerning the collection of direct taxes whose effects cease before December 31, 2020 will be extended to December 31, 2021.

6. 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 could easily be exceeded during the Covid-19 crisis due to travel restrictions and the requirements of "social distancing," resulting in many employees working from home and thus outside of Luxembourg, the Luxembourg government started negotiating with these three countries in order to reach an agreement according to which the days spent outside of Luxembourg due to the current crisis would not be taken into account.

Following these negotiations, on March 16, 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 March 14, 2020 and until further notice, the presence of a worker at home, in particular to carry out teleworking, would not be taken into account in the calculation of the 24-day period.

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

Finally, on April 3, 2020, Germany and Luxembourg agreed that as of March 11, 2020, any working day spent at home due to the Covid-19 crisis would be considered as a working day spent in the country in which the employee usually performs his/her activity (i.e. in the employment state). This measure will apply until April 30, 2020 and will be renewed automatically from month to month until it is terminated by one of the two countries.

7. More Tax Measures to Come?

As in many other countries globally, 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, more 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 April 3, 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 analyzes 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 situation 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 government might want to take a 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.

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