

Luxembourg budget law for 2021 adopted

18 December 2020

As announced in October, new tax measures are included in the Luxembourg budget law for 2021 which was adopted by the Luxembourg Parliament on 17 December 2020 (the **Law**). The Law will be published in the coming days.

The Law contains no material changes from the initial bill of law. The main measures are:

- for investment funds: the introduction of a new real estate tax (*prélèvement immobilier*) due by certain Luxembourg investment funds holding real estate in Luxembourg and the decrease of the subscription tax due by ESG funds.
- for individuals: the end of the tax regime applicable to stock options and warrants which is replaced by a partial exemption applicable to profit-participating bonuses paid to employees (*primes participatives*) and the reshape of the impatriates tax regime.

Additional amendments are made i.a. to the taxation of individuals, SPFs, the tax consolidation regime as well as registration duties on transfer of real estate.

Most of the tax measures will apply from 1 January 2021.

1. New real estate tax due by investment funds

As previously announced, an annual real estate tax at the fixed rate of 20% is due as from 1 January 2021 by certain Luxembourg investment funds holding real estate assets located in Luxembourg.

The Luxembourg entities covered by the new measure are the following investment vehicles having legal personality (SCS being, however, expressly excluded from the scope):

- Undertakings for collective investment (UCIs) subject to Part II of the Luxembourg Law of 17 December 2010
- Specialised investment funds (SIFs) subject to the Luxembourg Law of 13 February 2007
- Reserved alternative investment funds (RAIFs) subject to the Luxembourg Law of 23 July 2016

Thus, foreign investment funds, Luxembourg tax-transparent limited partnerships (i.e. SCSs and SCSps) as well as FCPs and SICARs are not subject to the real estate tax.

According to the Law, the tax is levied on income and gains received or realised after 1 January 2021 by the investment funds, which derive directly or indirectly through Luxembourg tax transparent entities or *fonds commun de placement* (FCPs) from Luxembourg real estate.

If the real estate is held through Luxembourg tax transparent entities or FCPs, the amount subject to the real estate tax due by the funds will be determined on a pro rata basis. Furthermore, in such a case, any gain realised by an investment fund upon the transfer of its interests in the tax transparent entities or FCPs will be treated as the sale of the underlying real estate for the purposes of this measure and taxed accordingly taking into consideration the amount equal to the increase in value of the real estate.

The real estate tax which is due and payable by the investment fund cannot be deducted or credited by the fund or the investors.

A specific tax return must be filed and submitted together with a report from an independent auditor certifying the computation of the real estate income and gains to the Luxembourg direct tax authorities before 31 May of the following calendar year. As a consequence, the first tax return should be made by 31 May 2022 at the latest.

A listing of any Luxembourg real estate held directly or indirectly at any time during 2020 and 2021, or the lack of such holding, by Luxembourg investment funds subject to this tax must be reported to the tax authorities by 31 May 2022 at the latest subject to a EUR 10,000 fine. A reporting is also required for such Luxembourg investment funds in case of change of their legal form into a tax transparent entity or FCP during 2020 and 2021.

2. Reduced subscription tax for ESG funds

To develop sustainable investment, Luxembourg UCIs or compartments of UCIs which invest in economic activities qualifying as environmentally sustainable as defined by Article 3 of Regulation (EU) 2020/852 of 18 June 2020 on the establishment of a framework to facilitate sustainable investment will benefit as from 2021 from a reduction of the subscription tax rate currently levied at 0.05% on the net asset value. The rate applicable to the portion of sustainable investments will be as follows:

- 0.04% if the proportion of sustainable investments made by the UCI, respectively the compartment, represents at least 5% of the net asset value of the fund/compartment.
- 0.03% if the proportion of sustainable investments made by the UCI, respectively the compartment, represents at least 20% of the net asset value of the fund/compartment.
- 0.02% if the proportion of sustainable investments made by the UCI, respectively the compartment, represents at least 35% of the net asset value of the fund/compartment.
- 0.01% if the proportion of sustainable investments made by the UCI, respectively the compartment, represents at least 50% of the net asset value of the fund/compartment.

The amount corresponding to the proportion of sustainable investments realised by the fund/compartment should be certified by an independent auditor (*réviseur d'entreprise agréé*).

3. Repeal of stock options and warrants regime replaced with a partial exemption of profit-participating premium

The Circular issued by the Luxembourg tax authorities in 2017 on the tax treatment applicable to stock options and warrants has been repealed by the Director of the direct tax authorities on 14 December 2020. The regime will no longer apply from 31 December 2020.

As from 1 January 2021, a specific tax treatment is however introduced regarding certain profit-participating premiums paid to employees under conditions.

The profit-participating premium is treated as a salary income at the level of the employee.

The employee who must be affiliated to a mandatory social security scheme benefits from a 50% income tax exemption provided that the amount of the profit-participating premium is limited to:

- 25% of the gross annual salary (additional benefit in kind or in cash being excluded) of the tax year during which the premium is allocated, and
- 5% realised by the employer during the accounting period preceding the allocation of the premium.

The employer must keep proper accounting records. In addition, a list of the employees benefiting from this tax measure as well as any relevant information shall be provided by the employer to the Luxembourg tax authorities.

The profit-participating premium is treated as a tax-deductible expense at the level of the employer.

4. Amendment of the tax regime applicable to impatriates

The Circular issued by the Luxembourg tax authorities in 2014 on the tax treatment applicable to impatriates has also been repealed by the Director of the direct tax authorities on 14 December 2020. The former regime is however maintained for impatriates currently benefiting from the 2014 regime.

As from 1 January 2021, the tax regime applicable to impatriates becoming Luxembourg tax resident is reshaped as follows:

- Moving expenses and various related costs (e.g. travel and accommodation costs, tax compensation, tuition fees) which are reimbursed by the employer to the employee are tax-exempt. Recurring costs are however limited to EUR 50,000 (increased to EUR 80,000 for a couple) per year and 30% of the annual fixed remuneration;
- Half of the impatriation premium paid by the employer to compensate the costs of living to the employee is tax-exempt provided that such premium does not exceed 30% of the gross annual salary (additional benefit in kind or in cash being excluded).

The income tax exemption is applicable from the year of the arrival of the impatriate up to the eight following years. It is however subject to various cumulative conditions, e.g.:

- the impatriate has his tax domicile or residence in Luxembourg;

- the impatriate has neither been domiciled for tax purposes in Luxembourg, nor has lived less than 150 km from the Luxembourg border, nor has been subject to income tax for professional income during the five preceding tax years;
- the impatriate carries out his professional activity as a main activity and has acquired an in-depth specialization;
- the fixed gross annual salary of the employee amounts to at least EUR 100,000.

Specific conditions are required for seconded impatriates.

The number of impatriates benefiting from the regime within the enterprise may also be restricted.

Similarly to employees benefiting from the profit-participating premium exemption, a list of the employees benefiting from the impatriate regime must be submitted by the employer to the tax authorities each year by 31 January at the latest.

5. Amendment of the tax consolidation regime

Further to a decision of the Court of Justice of the European Union, a vertical tax consolidation may now be replaced with a horizontal tax consolidation without dissolution of the existing tax group.

The neutrality of the change in the tax group is however subject to the following conditions:

- the parent company head of the former tax group becomes the subsidiary head of the new tax group;
- the change is made before the end of fiscal year 2022;
- the tax group is enlarged due to the change; and
- members of the tax group remain within the new tax group for at least five accounting years, the previous period during which members were already part of the dissolved tax group is however taken into account for this purpose.

This provision is applicable from fiscal year 2020.

6. Measures related to the Covid-19 pandemic

- A tax relief for fiscal year 2020 equal to twice the amount of forgiveness of rent (capped at EUR 15,000 per real estate and lease agreement) is granted to landlords who decided in 2020 to waive their rental income to be paid by tenants under a commercial lease.
- Financial aids granted during fiscal year 2020 to self-employed and micro-enterprises because of the Covid-19 pandemic are exempt from income taxes.

7. Amendment of registration duties linked to transfer of real estate

- Registration duties applicable in cases of contributions of Luxembourg-based real estate properties made to civil and commercial companies in exchange for shares are increased from 1.1% to 3.4% (including transcription tax).
- The anti-abuse rule which provides that registration duties are applicable if a real estate is allocated in case of dissolution, liquidation or capital reduction of a civil or commercial company to a person other than the initial contributor is extended and applies when such transfer takes place within ten years (instead of five).

8. Measure impacting SPFs

Wealth management companies (SPFs) are no longer allowed to hold real estate properties directly or indirectly through Luxembourg and/or foreign tax transparent entities (such as SCIs) and FCPs. This provision applies from 1 July 2021.

An SPF however is still allowed to hold real estate assets through companies subject to corporate income tax.

9. Measures linked to rental housing

- The accelerated amortisation applicable in cases of rental housing for buildings less than five years old and for renovation expenditures higher than 20% of the acquisition price of the building is reduced to 4%.
- However, the 6% accelerated amortisation remains applicable to i) renovation costs linked to sustainable energy in relation to buildings less than nine years old and ii) in cases of rental housing for buildings less than six years old and renovation expenditures higher than 20% of the acquisition price if the building has been acquired or achieved before 1 January 2021.
- A specific tax relief corresponding to 1% of the value used to compute the 4% accelerated amortisation is granted (capped at EUR 10,000).

10. Additional measures

- The tax card (*fiche de retenue d'impôt*) will be transmitted by the tax authorities to the employer in electronic form. As from 2022, the employer has to view the electronic tax cards of the employees at least once per calendar month to avoid a penalty of maximum EUR 10,000.
- Tax credits applicable to employees, self-employed and retired persons are slightly increased for low and medium-income taxpayers.
- Tax credit linked to venture capital investments certificates is no longer available.
- The VAT small enterprises scheme (*régime de franchise*) is increased from EUR 30,000 to EUR 35,000.
- A carbon tax is introduced.

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