

TAX NEWS:

BILL FOR THE ABOLITION OF LUXEMBOURG CAPITAL DUTY

Following a recommendation by the EU Commission on December 6, 2006, which outlined measures to phase out capital duty in two steps, i.e., a maximum 0,5% rate of capital duty by 2008 and abolishment by 2010 implemented by the Luxembourg Budget Law 2008, a recent Luxembourg bill would bring this date forward and proposes to abolish capital duty as of January 1, 2009. Such proposal had already been announced by the Luxembourg Prime Minister in his statement on Luxembourg's economic, social and financial situation dated March 22, 2008. After EU Council Directive 2008/7/EC of February 12 2008, which had been seen by some commentators and practitioners as a step backward for the abolition of capital duty as it no longer bind EU Member States to do so within a certain timeframe (contrary to the initial draft version of such Directive), the new Luxembourg bill is a further step towards the complete abolition of capital duty in Luxembourg. However, this new bill is yet subject to amendments during the legislative process.

Scope of the Bill

1) Main proposal

The recent bill provides for an over-all abolishment of the law dated December 29, 1971 on capital duty and proposes to replace this with a specific fixed registration duty (which should be compatible with the scope of authorised 'duties in the form of fees or dues' under the EU Council Directive 2008/7/EC). The amount of the proposed fixed duty is set between EUR 50 and 100 and would apply to the following operations:

- the incorporation or subsequent amendment of the articles of incorporation of a civil or commercial company (including all investment funds) having its registered office or its central administration in Luxembourg; and
- the transfer to Luxembourg of the registered office or the central administration of a civil or commercial company (including all investment funds).

The announced fixed registration duty would, in principle, be exclusive of any other registration duty and would be due upon the registration of the notarial deed of the aforementioned operations.

2) Other changes in registration duties

It is proposed that the contribution of immovable properties located in Luxembourg in exchange of shares to a Luxembourg company would be subject to a 1.2% proportional registration duty (plus transcription duty of 0.5%) except in cases of restructuring. The term 'restructuring' refers to the transfer by one or more capital companies of all their assets and liabilities or one or more branches of activity to one or more capital companies which are in the process of being formed or which are already in existence, provided that the consideration for the transfer consists at least partly of securities representing the capital of the acquiring company.

For completeness sake, please note that the bill also proposes to amend other provisions of registration duties which are not described in the present tax news.

Practical incidence of the Bill

The bill clarifies the treatment of the current capital duty exemption subject to a five-year claw back in case of share for share exchanges made before January 1, 2009. The commentaries to the bill clearly state that any claw back would no longer be applicable upon any transfer by a Luxembourg company, after January 1, 2009, of a shareholding, which it would have acquired via a capital duty exempt share for share exchange, even if such exchange has occurred before January 1, 2009 and the five-year holding period is not fulfilled at the time of the transfer.

The above is for information purposes only and does not constitute nor can it be relied upon as binding legal advice. Before implementing a transaction on the basis of the above it is highly recommended to seek detailed advice.