

NEWSLETTER

Dear clients,

Just before the Christmas excitement gets hold of us we still have a chance to concentrate on business. Since the legal and fiscal landscape is changing continuously we are ever looking forward to developing new options for your business. In this sense we would like to inform you about important changes in corporate and tax law:

Squeeze-or sell-out

In Luxemburg the law from 21st July 2012 concerning the exclusion of minority shareholders has come into force. The raison d'être is to fill in a legal gap by introducing two options into Luxemburg law:

- 1) The forced exclusion of minority shareholders in favour of the controlling shareholder ("squeeze – out")
- 2) Respectively the other way round the right of minority shareholders to demand the purchase of their shares. ("sell-out")

This concerns shares with a right to vote. Generally the law is applicable to Luxemburg based entities with stock being traded or under public offer. In order to be considered to be the controlling shareholder any private or legal person must hold – directly or indirectly – at least 95 % of the capital as well as 95 % of decision rights. Each shareholder has to inform CSSF in case he becomes controlling shareholder or if circumstances should change. These events need to be published.

Squeeze-out

Each controlling shareholder has the right to demand from the remaining minority shareholders to sell their shares to him once he has followed the new information procedure.

This begins by experts determining the fair price for the shares or rather the compensation which needs to be paid.

Within of one month CSSF needs to be informed of this "fair price". CSSF also needs a copy of the report of the evaluation, since this report has to be published.

Within another month of the publication of the evaluation report the minority shareholder has a right to contest. In this case CSSF can ask for a second evaluation report and has to determine a fair price within a period of three months.

In the event that the price is not contested by the minority shareholder CSSF accepts the price and informs the board of the company as well as the controlling shareholder.

Sell-out

Once a shareholder becomes controlling shareholder or a controlling shareholder starts buying additional stock the minority shareholders have the corresponding right to ask the controlling shareholder to buy their stock as well.

The minority shareholder has to inform the controlling shareholder within the scope of the procedure designed for this case.

Once again a fair price has to be determined by experts. Within one month after having

informed the controlling shareholder the said controlling shareholder has to transmit the fair price as well as the evaluation report to CSSF and to the board of the company and to publish the relevant information.

Again there is the possibility to contest the evaluation.

CSSF is entitled to monitor compliance with the law. In case of non-compliance fines can be imposed as well as custodial sanctions.

(Régis Lux)

Leave entitlements of deceased employees are now inheritable

In case an employee dies before he could take his vacation, his dependents are entitled to compensation, the European Court of Justice Judges have held and thus changed its existing case law.

Even though it may sound strange, in this particular case it could actually make sense. The employee concerned was not able to take holidays for some years due to staff shortage and was ultimately entitled to 146 holidays. The man fell ill and died. His widow then claimed financial compensation for the leave entitlement.

The wife had sued the employer in Germany in different levels of jurisdiction. The employment courts relied on the previously established case law of the Federal Labour Court (Bundesarbeitsgericht), according to which all claims to vacation ceased when the employee died. Leave was tied to the person and could not be transferred or inherited.

The widow and her lawyer cited the European Working Time Directive 2003 / 88 and the Landesarbeitsgericht Hamm forwarded the case to the ECJ.

The European Judges interpreted the Directive as follows: According to EU law, the right to paid annual leave or a financial compensation for unused leave does not cease when the employee is no longer alive and cited its settled case according to which the right to paid annual leave was a particularly important principle of EU social law.

The judgment will not only strengthen the rights of workers. It also reminds the employer to ensure that employees take holidays in time and ultimately to promote the health of their staff. It's a good opportunity as well to avoid unnecessary liabilities in form of claims from relatives later on.

(Katharina von Gregory)

Tax news

Concerning indirect taxes:

Now that the law of 26th March 2014 has come into force the value of an usufruct, a life estate or a right to use – albeit gratuitous or non – gratuitous – is to be determined according to the age of the beneficiary. The legal criteria are to be found in the circular No 767 from 7th April 2014.

(Françoise Goosse)

Concerning direct taxes:

A couple of new double tax agreements have been signed between Luxemburg and the following countries:

- The Seychelles, Tadzhikistan, Macedonia, Kazakhstan (come into force 1st January 2014)
- Sri Lanka, Laos (come into force 1st January 2015)

(Françoise Goosse)

New European succession regulation

The European Union has passed a new regulation about which national succession law is to be applied in the event of death. This regulation only comes into force on 17th August 2015 but in terms of a reliable succession planning when it comes to draft a will it should already be taken into consideration.

According to this regulation the national succession law of the country of habitual residence of the testator is to be applied. An exception is being made for property or other

immovable assets. For these the national law of the country is to be applied in which these immovable assets are to be found (this is being called the principle of estate division).

We can only recommend to those clients who have moved outside the border of Luxemburg to seek information on the consequences of German, French or Belgian succession laws as well as on the options to choose a governing law.

(Katharina von Gregory)

Deployment from Germany to Luxemburg

The income of a German employee being sent to Luxemburg by his foreign Employer to work there temporarily remains in principle taxable in Germany (in the country of residence). According to the old version of the Luxemburg / German double tax agreement this was to change after the 183rd calendar day the employee had spent in Luxemburg.

According to the new version of the Luxemburg / German double tax agreement a reference period of 12 months is to be applied. The income of an employee being sent to Luxemburg from the 1st September 2014 to 30th April 2015 is taxable in Luxemburg from the first day of his stay since the deployment is to last 8 months and therefore longer than 183 days.

(Katharina von Gregory)

Permanent jobs first to be offered internally

Last December Parliament has amended the Code de Travail in order to promote equal opportunities for temporary employees. Even before this amendment the same conditions and rules must be applied for temporary and permanent employees (Art. 122 – 10 (1)).

According to the newly introduced Article 122 – 10 (2) new and planned permanent positions are to be offered first to your temporary employees by way of information. It is not known yet what happens if you don't.
(Katharina von Gregory)

FATCA

This could be interesting for all our private or corporate clients with taxable income in the US. The Foreign Account Tax Compliance Act ("FATCA") was introduced in the US in order to tackle non-tax compliance by US taxpayers with foreign accounts. In short, FATCA makes foreign financial institutions to report to the US Internal Revenue Service information about US accountholders and certain US investors. A 30% withholding tax will apply on US sourced income paid to foreign financial institutions (i.e. Luxembourg's banks) if they do not comply with FATCA reporting obligations.

The US department of treasury has issued two model agreements in order to implement FATCA. These agreements serve as a base for the negotiations between the US and the

respective country implementing FATCA. The fundamental difference between model 1 and model 2 is that, under model 1, foreign financial institutions will report the relevant information to their domestic tax authorities which will then convey such information to the US Internal Revenue Service whilst under model 2, the foreign financial institutions must report directly to the IRS. On May 21st 2013, Luxembourg chose model 1 to exchange the information required under FATCA.

On February 27th 2014, Luxembourg and the US agreed on the content of the model 1 agreement and it was signed on March 28th 2014.

(Françoise Goosse)

VAT Update

Increase of the Luxembourg VAT rates

During the last months an increase of Luxembourg VAT rates has been discussed quite vigorously. The date of entry into force of these new VAT rates has now been confirmed: as of 1 January 2015, Luxembourg

VAT rates of 6 %, 12 % and 15 % will increase by 2 points (respectively to

8 %, 14 % and 17 %). The 3 % super-reduced VAT rate applicable, amongst others, to basic necessity products will not be modified.

However, according to a recent Government Statement (dated 9 April 2014), the scope of this super-reduced VAT rate within the framework of the real estate sector would be limited to dwellings/immovable works in relation to the principal residences of the owners. Consequently this 3 % VAT rate would no longer be applicable to dwellings / immovable works in relation to buildings to be rented by the owner or to secondary residences.

Nevertheless and despite this increase, the Luxembourg standard VAT rate will remain the lowest within the EU countries.

(Françoise Goosse)

VAT changes applicable to telecommunication, broadcasting and e-services in 2015

As you may have already heard, there will be significant changes in 2015 regarding the place of taxation of telecommunication, broadcasting and electronic services provided in a B2C context.

In 2003, legislation was at first introduced in the EU in order to provide a level playing field between EU and non EU businesses involved in the supply of electronically distributed services. At the time no one anticipated the arrival of the new e-commerce world of iTunes, Netflix, Zynga and other new big players.

The 2003 legislation was introduced to tackle a rather unexpected result: not only were these types of services not taxed when provided by businesses outside the EU, but EU businesses were obliged to tax such services, regardless of where the customer was located. The result was a significant disadvantage for EU businesses compared to their non-EU competitors.

In order to remedy this, the 2003 legislation required the non-EU businesses to account for VAT in the country where the consumer was located. As from this date, and until the end of December 2014, EU businesses selling electronic services to EU consumers had to charge VAT rate where the seller is located while non-EU business selling electronic services to EU consumers had to charge VAT rate where the customer is located.

To allow the non-EU business to file their VAT returns without the burden of filing a VAT return in every country, they were allowed to use the “Mini One Stop Shop” where they could file a VAT return in one EU country for the VAT charged in all EU countries. Alternatively, non-EU businesses could set-up a platform in a low VAT rate EU jurisdiction and then charge their EU customers with one single low VAT rate. Hence Luxembourg’s attraction for many e-commerce players over the last 10 years.

Changes in the place of taxation

From 1 January 2015, new rules will apply to the place of taxation of telecommunication, broadcasting and electronically supplied services.

Supplies of telecommunication, broadcasting and electronically supplied services will be taxable for VAT purposes at the place of the recipient of these services, regardless of the location of the service provider (UE or non-EU) or the quality of the customer (B2B or B2C transaction).

In the case of B2B transactions, the recipient of the service (customer) will be responsible for declaring VAT due. However, in the case of B2C transactions the service provider will be the person liable for the payment of VAT.

Therefore the key issue for businesses is going to be to clearly identify the place of establishment of their customers in order to determine in which Member State VAT is due. Notably, this will require changes to the way customer data is collected. Moreover, where intermediaries are involved in the provision of services, a review of the VAT implications should be performed to determine the person liable for the payment of VAT. Therefore, we strongly suggest a review of operational processes in light of this new legislation and ask you to get in touch if we can be of assistance.

Mini One Stop Shop scheme

In theory this would result in the obligation of e-commerce suppliers to register for VAT purposes, filing VAT returns and paying VAT in all the member states where they have customers.

However, to lighten this potential burden for businesses a specific scheme called “Mini One Stop Shop” will be put in place.

This e MOSS concerns VAT on the provision of telecommunication, broadcasting and electronically supplied services by businesses (already applicable to non-EU businesses) to

non-taxable persons (B2C relation) established in the EU.

The MOSS scheme enables both EU and non-EU businesses to designate one Member State for one single VAT registration, allowing for the filing of one single VAT return per quarter and the payment of all VAT due in the Member State of identification. Under the MOSS platform, quarterly VAT returns need to be filed on the portal within 20 days of the end of the calendar quarter. Respective information and VAT amounts due are then distributed to each Member State of consumption.

In Luxembourg, registration options for the MOSS scheme can be completed from 1 October 2014 (early registration period) on the VATMOSS platform (multilingual web-portal of the VAT Authorities). This portal allows for the management of VAT returns, the follow-up of VAT payments and transfers among Member States.

Practical guidelines on the VATMOSS scheme have now been published by the Luxembourg Authorities with the goal to provide a better understanding of the registration and administration process of this scheme.

(Françoise Goosse)

Dear clients,

we hope that you can enjoy some respite before we all start looking for presents and Santa and are looking forward to hearing from you – as ever.

Best regards,

Alhard von Ketelhodt,

Luxembourg, November 2014