

# NEWSLETTER

*Dear clients,*

*Springtime, finally! The first snowdrops show their heads, the temperature is rising again and there seems to be a slight touch of green wherever you look. In the course of this euphoric mood we would like to come up with the odd new idea as well as prepare you and your company for imminent changes:*

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## **Important social security changes for cross border employees**

A new EU regulation comes into force on 1<sup>st</sup> May which might have fundamental effects on the social security situation of employees working in different countries.

What is it about? The different EU member states have each their own social security system and that is not going to be changed by the new regulation. It is basically about determining which social security system is applicable. This is by far not only interesting for lawyers but might implicate from which country you will one day receive your pension.

Usually a worker is subject to the social security regime of one Member state, namely the state where he lives and works. This is the basic principle and that is not going to be changed.

However, once an employee works in different the following rules will apply in the beginning of May 2010:

In case one is working in the country of residence but also in another country the proportion of the activity in your country of resi-

dence will be of importance. Once this amounts to more than 25 % the employee will be subjected to social security system of his home country. Even though he or she might still spend more than 60 % of his time at work in another country. Here is the main implication for the insureds to be found. Until now quite a number of practical difficulties would arise if who lived e.g. lived in Germany and worked in Luxemburg would want to spend only as much as one single working day for his employer in Germany. Under the current legislation he would then be subject to the German social security system and lose membership of the Luxemburg Social security regime. Under the coming regulation it will be possible to adapt employment contracts accordingly which will lead to a lot more flexibility than before.

The same principle is going to be applied to self employed people living and working in different countries. Only if they render a substantial part of their services (more than 25 %) in their country of residence they are

going to be socially insured their country of residence.

However, if you work in different Member states, but not in the one you live, the regime of the Member state in which the employer is based.

In case someone is working both self – and employed in different countries that someone is going to be insured in the country of his employment.

Apart from that the rules for posting someone abroad will change as well. It is now possible to remain part of your “home” social security

system while working abroad for up to 24 months.

These changes brought by the new EU regulation will be especially interesting for the transport business since a number of special rules created for this line of business will cease to exist. Double memberships in for example in Belgium and Luxemburg will no longer be possible. However, especially for these kinds of businesses the new regulation will open a whole range of new opportunities.

Please get in touch. We are quite happy to develop a liable and long term concept to cut social security costs.

(Katharina von Randow)

### **New rules against money laundering in Luxemburg**

The grand ducal decree has specified the rules against money laundering and the financing of terrorism. As financial service providers we are obliged accordingly to review and control a number of facts, like the identity of our clients, the identity of their legal representatives and especially the identity of the person being the economic beneficiary (Due Diligence).

This obligation for ongoing control isn't restricted to establishing the identity of the persons involved or the source of capital being invested in Luxemburg. It also contains the obligation to be continually alert concerning the business relationship as well

as details of single transactions and their internal coherence. We are fully aware that this review can be seem to be a nuisance or worse – it might even be regarded as meddling with our client's internal affairs. However, the high esteem of the financial profession as well as the high esteem of Luxemburg as a place of business demands that these rules are being adhered to.

Since we are bound by personal liabilities we would like to raise your awareness for the strict rules against money laundering which are based not only on national as well as European legislation.

(Régis Lux)

### **Taxation according to declaration?**

In its 29.01.2010 newsletter the Administration des Contributions directes has announced that from now on its departments will determine the taxation only on the basis of the tax declaration handed in. Until re-

cently the Treasury used to control the information given by the tax payers on a preliminary basis. The administration shall be entitled to control a file later on but isn't obliged to do so. Practically this means that the Ad-

ministration des Contributions can determine taxes on an interim basis. In any case the taxpayer has to pay the determined amounts. Should the administration find out within the next five years that the interim taxation was incorrect this can be easily rectified at the instigation of the administration. The reasoning behind this move is that the treasury hopes to receive tax payments rather sooner than later.

This means a higher risk of a flawed taxation

for the taxpayer since it is unlikely that the senior civil servants will spend as much time on controlling the files as before. It is therefore strongly recommended to check any tax assessment even more carefully these days.

In the beginning this *modus operandi* will be applied only to corporate entities.

(Catherine Pundel)

### **The end of the “Holding 1929”**

The “Holding 1929” - an investment company that has been created by a law from 1929 – which has been a very successful recipe for many decades in Luxemburg and was accordingly a little envied by some of its European neighbours – sees its days numbered. The special tax status of the holding 1929 comes to an end at the end of this year.

Shareholders of a Holding 1929 have two options now: The first is not to do anything and the company will become fully liable to tax (corporate, business and property tax). However, it is important to remember that certain restrictions in the corporate purpose laid down in the articles can still get in the way of some activities: Other than the usual investment company a Holding 1929 mustn't own property and is only allowed to lend money. If such restrictions were incorporated in the articles - which have been very often – these restrictions continue to be valid and must be adhered to.

The second option is to turn a Holding 1929

into a so called “SPF” (*société de gestion de patrimoine familial*: a company for the administration of a family's assets) whereby some requirements have to be complied with: The shareholders must be individuals or trusts which makes it impossible to embed it into a company structure. Apart from that the SPF is just as restricted in its activities as the old Holding 1929 and therefore is not allowed to hold property, trademark rights, patents. Money lending is only allowed as long as it is interest free and granted to direct shareholders.

Just as the Holding 1929 the SPF is being governed by the Administration de l'Enregistrement and it also enjoys being exempt by usual taxes. Just like the Holding 1929 it only has to pay the *taxe d'Abonnement*. In return it is also exempt from the different double tax treaties different to other fully taxable companies. If you would like to receive more information on this issue please don't hesitate to call us.

(Régis Lux)

### Latest tax news

The latest double tax treaty between Luxembourg and United Arab Emirates has come into force on 19<sup>th</sup> June 2009. This treaty has consequences for withholding tax and income generated after 1<sup>st</sup> January 2010, as well as other sources of income and property tax and any other taxes concerning the accounting year beginning on the 1<sup>st</sup> January 2010.

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The multiplication factor for the year 2010 concerning and and trade tax have been stipulated by the grand ducal decrees from the 28<sup>th</sup> November and 14<sup>th</sup> December 2009. The communal business tax differs between the different communities between 200% and 250 %. For the commune Luxembourg the tax will remain at 225 %.

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The law of 18<sup>th</sup> December 2009 covering the state budget 2010 brings introduces changes to the income tax:

- The coefficients for re-evaluation have been modified for the year 2010 (Art. 102 Income tax law LIR – speculation gains, realisation profits and increase in value)
- Tax deductible donations can now also be made towards non-profit-making-organisations in other European Member states as requested by the European Court of Justice.

Some clarifications on VAT after the introduction of the VAT-Package:

- the VAT Administration (as well as the eTVA-system for the electronic VAT tax declaration) will no longer accept null reports for (recapitulative?)
- applications for VAT refunds can only be made electronically and in the applicant's country of residence since the 1<sup>st</sup> January 2010. Please note that the deadline to hand in the application has been set moved to the 30<sup>th</sup> September of the following year (instead of the 30<sup>th</sup> June).
- from the beginning of 2010 VAT tax payers whose intra-community deliveries ( Triangular trade) amount to more than 100.000 € per quarter of the year have to hand in monthly VAT tax declarations electronically. This has to happen either on a monthly or quarterly basis.

The Director of the Tax Administration has issued the newsletter No LGA 55 on 12<sup>th</sup> January 2010 in which he explains the modalities of taxing financial instruments according to the rules of Islamic finance, like the Mura-baha, the Mucharaka, die Mudaraba and the Sukuk. These financial instruments are mainly being used by investors who want govern their investments while respecting Islamic values. (Benoît Servais)

### Tax returns

A parliamentary inquiry in November 2009 has shown that the Administration des Contributions directes has changed its way of granting tax returns recently. Until the beginning of 2009 tax returns were paid on the basis of the tax declaration retroactively for up to five years.

However, the treasury has changed this code of practice in 2009 and from now on follows the letter of Art. 153 of the Fiscal code. This article says that a tax return is only possible on request in form of a tax declaration or an annual account within the year which you would like to see reimbursed.

The finance minister has since affirmed that this new procedure is to be maintained in the

future. In fact the deadlines for handing in requests for reimbursements have been considerably shortened. It is to be recommended

to watch the deadlines even more carefully from now on.

(Catherine Pundel)

### **Domiciliation of companies and the “authorisation d’Etablissement”**

The ministry of commerce (Ministere de classe moyenne) has recently introduced a new praxis for granting business licences and thus implemented a new interpretation of the law by Luxemburg’s Administrative Court. According to this ruling the applicants have to give further information to the Ministry of commerce. Applicants have to show that they have an office suitable for their kind of business activity. This makes life more and more difficult for registered domiciliators offering services for commercial companies. The Ministry’s point of view is comprehensible given the wording of the law. However, these requirements for a suitable infrastructure might seem a bit excessive if the company is basically offering rather financial than commercial

services (like cost allocation, Management fees, consultancy fees, commissions). In cases like these another practice of the Ministry might help along. It is possible to grant a dispense from obtaining a license for companies offering only services for members of the same legal structure. However, since it’s sometimes difficult to define a member of the same legal structure this can lead to quite substantial problems. This is especially so when other authorities (e.g. social security or VAT) insist on documented evidence for the existence of a license. It therefore remains to be seen if this new practice is going to bring lasting changes to the essence of domiciliation as we know it (Régis Lux).

### **Taxation according to income**

For some taxpayers the amount of taxes to be paid is determined at the end of the fiscal year according to their declaration of how much they have earned.

So who is to compile such a tax computation? This is important because the most important criteria have been changed in 2009. Taxpayers whose taxable income consists in part or in total of income of which payroll – tax has been deducted, of capital gains or royalties have to declare their income taxes when...

- they earn more than 100.000 € in one of these categories
- the taxable income consists of net income from which no payroll tax is deducted and which amounts to more than 600 €
- the taxable income consists of capital gains of more than 1500 €
- a married couple has opted for a joint taxation, who in fact live together with one of them residing in Luxemburg and the other abroad

- the taxable income consists also of royalties of more than 1.500 €.

In case these different sources of income are combined one is to declare taxes if the added incomes surmount 36.000 € within the tax classes I or II or respectively surmount 30.000 € in tax class I a).

Apart from that all income that is not submitted to withholding tax has to be declared.

Please note that the fiscal year in Luxemburg

is identical with the calendar year.

By the way, the legal principle that no one can ignore the law applies also to fiscal matters. This means that everybody is obliged to find out at his own initiative whether he has to declare taxes or not. It's not sufficient to wait until the treasury starts asking questions.

If you would like to speak with an English speaking tax advisor please turn to Mrs Catherine Pundel.

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*Dear clients,*

*We look confidently forward to an economically vibrant springtime as well as to continue to work closely together with you.*

*All the best,*

*Yours,*

*Alhard von Ketelhodt*

*Luxemburg, March 2010*