



BUDGET LAW 2020

The law dated 20 December 2019 on the Budget for the year 2020 (the “2020 Budget Law”) ends the binding effect of advance tax clearances that have been granted prior to 1st January 2015.

Background

With effect as of 1 January 2015, the law dated 19 December 2014 on the 1st part of the implementation of the package for the future (“*Loi du 19 décembre 2014 relative à la mise en oeuvre du paquet d’avenir-première partie*”; hereafter also the “2014 Law”) formalised the process for the issuance of advance tax clearances (“ATCs”) by the Luxembourg Direct Tax Authorities through the introduction of a new paragraph 29a into the General Tax Law.

The provisions that were introduced by the 2014 Law, foresee, besides others that ATCs issued as of 1 January 2015 are:

- i. valid for a period of maximum 5 tax years, and
- ii. binding on the tax authorities during that period unless:
 - a. the description of the situation or the operations for which the ATC has been granted have been incomplete or incorrect,
 - b. the situation and operations actually realised differ from those based on which the ATC has been granted, or
 - c. it turns out that the ATC is not compatible with new national, European or international law.

The 2014 Law did not include transitional measures for ATCs that were granted by the Luxembourg Direct Tax Authorities prior to 1 January 2015.

Even though it was rather clear that ATCs issued prior to 2015 would continue binding the Direct Tax Authorities even after

2014, it seemed unclear whether ATCs issued prior to 2015 would also be limited in time or not.

In any case, 2019 is the last tax year where ATCs issued in 2015 under the new process will be binding on the Direct Tax Authorities. Thus, in order to avoid possible differences between the ATCs issued prior to 2015 and ATCs issued in or after 2015, the Luxembourg government proposed in the 2020 Budget Bill to introduce also a time limit for the ATCs granted prior to 2015.

The provisions proposed by the Luxembourg government have been adopted in the 2020 Budget Law with only some minor amendments.

Provisions introduced by the 2020 Budget Law

Following the enactment of the 2020 Budget Law:

- i. ATCs issued prior to 2015 stop to be binding on the Direct Tax Authorities by the end of the tax year 2019;
- ii. The taxpayer concerned may file a new request for an ATC in accordance with the procedure effective since 2015

As a consequence, ATCs issued prior to 2015 will be binding on the Direct Tax Authorities for the last time for the tax year 2019.

Impacts

The fact that an ATC stops to be binding, should not mean that the tax treatment covered by the ATC is not applicable anymore after the tax year 2019.

In fact, the purpose of ATCs issued prior to 2015 has been to obtain an advance confirmation from the Luxembourg tax authorities on how the Luxembourg income and net worth tax laws apply in certain specific situations or to certain transactions.

Taking this into account, the tax treatment covered by an ATC issued prior to 2015 should, in principle, continue to apply even after the tax year 2019 unless the tax laws applicable with respect to the specific situation or transaction covered by said ATC (or the interpretation of the relevant tax laws by the tax authorities) change.

Where it is unclear whether the tax treatment covered in an ATC issued prior to 2015 may be overturned by changes in the tax law or its interpretation, or due to a change in the facts and circumstances based on which the ATC has been issued, a deeper tax analysis should be undertaken and a potential action plan determined consequently.

On 3 December 2019, the Direct Tax Authorities issued a newsletter providing further clarification on the procedure to be followed for taxpayers who would request a new ATC when an ATC issued prior to 2015 or in 2015 stops being binding.

According to the newsletter, a new ATC may be requested as long as the transaction covered by the ATC that stops being binding on the tax authorities has not yet produced all its effects when the ATC stops being binding.

The Newsletter also specifies that corporate taxpayers that have non-calendar fiscal years need to file a new request before the end of their fiscal year.

Next steps

Taking the above into account, we strongly recommend to analyse each ATC obtained prior to 2015 in order to assess to which extent the tax treatment covered by the ATC may be impacted by changes in the new tax laws and/or its interpretation and whether it would be preferable (i) filing a new ATC or not, or (ii) taking any other action needed.

Considering that ATCs obtained in 2015 may also stop being binding on the Direct Tax Authorities by the end of the tax year 2019, and ATCs obtained in 2016 may stop being binding by the end of the tax year 2020, a similar analysis should be carried out for these ATCs.

If you need assistance in this respect, do not hesitate to contact one of our key contacts.

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