24 June 2019

BUDGET LAW 2019

On 26 April 2019, the Luxembourg Parliament voted the 2019 budget law ("the Budget Law").

The main amendments introduced by the Budget Law in relation to the taxation of companies are the following:

Decrease of the corporate income tax rate

Starting as of the tax year 2019, the corporate income tax ("CIT") rate is decreased from 18% to 17% if the taxable iincome exceeds EUR 200.000.

Considering that the contribution to the unemployment fund remains unchanged, a company established in Luxembourg City and therefore subject to municipal business tax ("MBT") at a rate of 6.75% will be subject to income taxes at an aggregate rate of 24.94% as from the tax year 2019 if it realizes taxable income of more than EUR 200.000.

The 2019 Budget Law also proposes that, if the taxable income of an entity subject to corporate income tax does not exceed EUR 175.000, CIT is levied at a rate of 15%. Consequently, the aggregate income tax rate (i.e. CIT, MBT and contribution to the employment fund) to be supported by a company established in Luxembourg City will be 22.8% if its taxable income does not exceed EUR 175.000.

If the taxable income exceeds EUR 175.000, CIT will progressively increase so that it reaches 17% when the taxable income exceeds EUR 200.000.

Fiscal integration

In view of the change of the application of the interest deduction limitation rules for fiscally integrated groups, the Budget Law overhauls article 164bis of the income tax law ('ITL'). The main changes deriving from the Budget Law are:

Interest limitation rules

Broadly speaking, the interest deduction limitation rules limit the deduction of exceeding borrowing costs incurred by an entity subject to corporate income tax to the highest of 30% of its tax EBITDA or EUR 3 million. In the context of a fiscally integrated group, these rules were initially foreseen to apply only at entity level.

The Budget Law finally implements the motion made by the Luxembourg Parliament when adopting the law transposing the EU Directive 2016/1164 ("Anti-Tax Avoidance Directive 1" or "ATAD 1") and introduces the option offered by ATAD 1, which is to apply the interest deduction limitation rules at the level of a fiscally integrated group.

Thus, it is foreseen that, starting 1 January 2019, the interest deduction limitation rules shall, as a general rule, apply at the level of the tax group with a possibility, however, to opt out of the general rules and to apply the interest deduction limitation at the level of the individual entities belonging to the fiscally integrated group. The interest limitation rules may only be applied on an individual entity level if all entities forming the fiscally integrated group opt for the application of the interest limitation rules at individual entity level. This option has to be expressed in the joined request to be filed by the companies that will form the fiscally integrated group. For fiscally integrated groups that exist prior to 2019, the option to apply the interest deduction limitation rules on an individual entity level will have to be requested before the end of their fiscal year for which the interest deduction limitation rules will apply for the 1st time (i.e. 31 December 2019 unless the fiscal years ends on another date).

Practical application of the fiscal integration

So far, certain practical requirements and aspects of the fiscal integration, such as:

- the requirements for the application of the fiscal integration,
- the use of tax losses incurred by individual members of the fiscally integrated group prior to start of the fiscal integration,
- the attribution of the tax loss carry forwards incurred during the fiscal integration when the fiscally integrated group is terminated, and
- the definition of the entity that is liable for the payment of income taxes due by the fiscally integrated group,

have been covered in the Grand-Ducal Decree dated 18 December 2015.

The 2019 Budget law integrates these provisions into article 164bis ITL itself by adjusting them, however, where required, in view of the new provisions of the interest deduction limitation rules.

Moreover, the Budget Law also formalizes the prior tax authorities practice in relation to the use, respectively the carryforward of unused tax credits (i.e. investment tax credits and tax credits for hiring unemployed), as well as the use and carry forward of certain special expenses other than tax losses.

If you would like to discuss the Budget Law and obtain assistance to evaluate the impact arising from the Budget Law on your business, do not hesitate to contact one of the following persons:

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