Updated: Tax measures during the state of emergency

Executive Summary

- Bill n°7555 adapting deadlines in tax matters voted
- Bill n°7541 introducing extended deadlines for the filing and reporting of annual accounts voted
- Administrative tolerance for VAT and subscription tax revoked
- Luxembourg and Belgium agreed on an amendment to the double tax treaty
- ECOFIN approved 6 months extension for DAC 6 deadlines
- Extended deadlines for CRS and FATCA

Please find below a summary of all tax measures taken by the Luxembourg government and tax authorities in the past weeks since the beginning of the state of emergency.

This Summary is up to date on the basis of the review of the official guidelines, newsletters, updates and draft bills published by the respective Luxembourg authorities as at 10 June 2020. Upon further measures taken, this memo will be updated accordingly.

A. Direct taxes

The Luxembourg tax administration ("LTA") has implemented a series of measures on filing and payment obligations in order to guarantee and foster the continuity of the Luxembourg economy. The measures are only foreseen for entities or individuals whose liquidity has been impacted by the COVID-19 crisis.

I. Payment of taxes

1. Cancellation of tax advances for Q1 and Q2

With regard to corporate income tax ("CIT") and municipal business tax ("MBT"), Luxembourg entities and self-employed individuals performing a commercial, agricultural, forestry or liberal activity may request a cancellation of their tax advances for the first two quarters of 2020. However, advances due for the first and second quarter of 2020 in relation to Luxembourg net wealth tax ("NWT") are not cancellable.

Individuals may also request a cancellation of advances due for the two first quarters of 2020 in relation to Luxembourg income tax.

2. Deferral for payment of taxes

Further, the deadline for the payment of taxes such as CIT, MBT and NWT due after 29 February 2020 may be deferred for four months on request of entities or self-employed individuals. Such request will not trigger any late interest payments.

However, such deferral may not be requested for payments due on withholding tax on salaries.

3. Respective forms for the request

The requests mentioned above are automatically accepted by the LTA and available for download on the links below:

- Request for cancellation of tax advances: https://impotsdirects.public.lu/dam-assets/fr/formulaires/covid/annulationavances.pdf

- Request for a four month extension on the payment deadline:

https://impotsdirects.public.lu/dam-assets/fr/formulaires/covid/delaipaiement.pdf

II. Filing of tax returns

1. Announcements of the LTA

The LTA extended the deadline for the filing of the 2019 annual tax returns as follows:

- from 31 March 2020 to 30 June 2020 for individuals in relation to their 2019 income tax return; and
- from 31 May 2020 to 30 June 2020 for entities with respect to their 2019 CIT, MBT and NWT returns.

2. Luxembourg bill introducing extended deadlines

On 7 May 2020, the Luxembourg Parliament voted bill n°7555 confirming the above mentioned deadlines for the filing of the 2019 tax returns for individual and corporate taxpayers.

In principle, under Luxembourg law, the LTA may grant an extension of the deadline for filing the tax returns up until 30 June of each year only. In view of the current situation, the bill provides that such extension may be granted up to 31 December 2020.

With regard to individuals, the bill foresees the following extensions:

- Married Individuals wishing to be taxed separately and civil partners desiring to be taxed jointly for the fiscal year 2019 may file their request until 30 June 2020 instead of 31 March 2020.
- Individuals who received interest payments within the meaning of the law of 23 December 2005 as amended (Relibi Law) during the tax year 2019 may opt for the fixed withholding tax at a rate of 20% until 30 June 2020 instead of 31 March 2020.

The final version of the law has been published on 12 May 2020 (the "**Law adapting deadlines in tax matters**").

B. Indirect taxes

I. Payment of taxes

The LITA declared that it would reimburse VAT credit balances below EUR 10,000 starting as from the week of 16 March 2020.

Further, the LITA declared on 7 April 2020 that Luxembourg companies may request a deferral of due VAT payments. The deferral may be requested either

(i) through https://guichet.public.lu/fr/myguichet.html without LuxTrust certificate,

(ii) directly by the manager or director of the Luxembourg entity or

(iii) indirectly by any representative of the entity.

The LITA declared that the enforcement of taxes due remains on hold due to the current situation even though it revoked its administrative tolerance on 12 May 2020 (cf. below).

II. Filing of tax returns

With regard to Luxembourg VAT and annual subscription tax, the LITA revoked on 12 May 2020 its administrative tolerance waiving the application of late interest payments on belatedly filed VAT returns.

C. Filing of annual accounts

I. Extension granted by the Luxembourg Business Registers

Luxembourg entities will benefit from an additional administrative period of 4 months for the filing of their 2019 annual accounts. Further, no surcharge will apply for possible failure to file the 2019 annual accounts within the extended deadlines until 30 November 2019.

As a result, for a financial year ending for instance on 31 December 2019, the filing of annual accounts will be subject to the standard administrative costs of € 19 excluding VAT until 30 November 2020.

II. Draft bill introducing extended deadlines for the filing of annual accounts

On 20 May 2020, the Luxembourg Parliament voted bill n°7541 introducing a waiver to the Luxembourg law dated 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings (the "RCS Law") by foreseeing an extension of three months (i.e. 31 October 2020 for companies whose financial year ended on 31 December 2019) for:

- the filing of the annual accounts and balance sheets; and
- the publication of the annual accounts and consolidated accounts together with the management and the auditor´s report.

The final version of the law has been published on 29 May 2020 on the *Mémorial A*.

D. Computation days for cross-border workers

In principle, the respective double tax treaties entered into between Luxembourg and France, Germany and Belgium allow cross-border workers to perform teleworking during a limited number of days annually without triggering any taxation in their respective countries of residency (for French cross border workers 29 days, for Belgian cross border workers 24 days and for German cross border workers 19 days).

In view of the current situation for French and Belgian cross-border workers, the limit of days of teleworking per year will not be counted retroactively as from 14 March 2020 until further notice. This has been agreed with the French and Belgian government.

Teleworking for more than 24 working days in Belgium or 29 working days in France in 2020 should not trigger taxation of (a portion of) the employee's remuneration in Belgium or France.

On 3 April 2020, the German and Luxembourg authorities signed a mutual agreement waiving the limit of days of teleworking being retroactively applicable from 11 March 2020 until 30 April 2020 (the deadline is automatically extended on a monthly basis until explicit termination of the agreement). This agreement is still in application at the date of this note.

On 19 May 2020, the Luxembourg and Belgian governments agreed on an amendment to the double tax treaty entered into between Luxembourg and Belgium. The amendment provides that working days performed in teleworking due to COVID-19 measures may be assessed as working days performed in the treaty state in which the taxpayer would have worked in the absence of COVID-19 measures.

E. Interruption for deadlines related to tax disputes

Under Luxembourg law, claims against assessments made by the LTA may be filed within a period of three months starting from the notification of the assessment. However, the Law adapting deadlines in tax matters foresees an interruption of the deadline from 18 March 2020 until 30 June 2020.

F. Recovery of due taxes

According to the Law adapting deadlines in tax matters, the following claims, in principle expiring on 31 December 2020, will be enforceable until 31 December 2021:

- treasury claims;
- claims assigned to the LTA;
- claims assigned to the Grand Duchy of Luxembourg within the meaning of Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures or on a bilateral or multilateral tax convention; and
- Privileges and guarantees within the meaning of the law as of 27 November1933 relating to the recovery of direct contributions.

G. Registration of priviliges

According to the Mortgage Scheme Law, lenders and sellers entering into a sale agreement may register their privilege within 45 days following the execution of the agreement. Creditors being part of a sale agreement may register their general privilege within 45 days from the execution of the sale agreement.
The Law adapting deadlines in tax matters extends the period of 45 days to 90 days.

Further, the Mortgage Scheme law provides for a deadline of 60 days for co-heirs and co-sharers to register their privilege.

The Law adapting deadlines in tax matters extends such deadline to 120 days following the execution of the respective agreement.

H. Extended deadlines for DAC 6, CRS and FATCA

On 8 May 2020, the European Commission issued a proposal for a Council Directive introducing an extension for the reporting deadlines foreseen by (i) Council Directive 2018/822/EU introducing reporting obligations with regard to specific cross-border transactions (“**DAC 6**”) and (ii) Council Directive 2014/107/EU as regards to the reporting of financial accounts (“**CRS**”) (the “**Proposal**”).

Whereas the Proposal initially suggested deferring the deadlines for CRS and DAC 6 by 3 months, the ECOFIN voted on 9 June 2020 to extend the deadlines provided by DAC 6 by 6 months. The deadlines for CRS would however still be deferred by 3 months. Despite the Proposal still being subject to the approval of the EU Council, the Luxembourg Ministry of Finance confirmed on 4 June 2020 its upcoming implementation into Luxembourg domestic law. A corresponding bill should be issued soon.

I. DAC 6

Although the entry into force of the law implementing DAC 6 into Luxembourg domestic law is still foreseen on 1 July 2020, the following deadlines would be extended according to the Proposal:

- the beginning of the 30-day period for the reporting of cross-border arrangements which would have been reportable as of 1 July would be deferred to 1 January 2021;
- the beginning of the reporting of old cross-border arrangements (i.e. which were implemented between 25 June 2018 and 30 June 2020) would be deferred to 28 February 2021;
- the first exchange of information on reportable cross-border arrangements between the tax authorities of the EU Member States would occur as from 30 April 2021.

II. CRS

As per the Luxembourg CRS law, the LTA must exchange information on reportable financial accounts with the competent authorities of other EU Member States before 30 September of each year. According to the Proposal, the deadline for the reporting of the reportable financial accounts for the tax year 2019 would be extended to 31 December 2020.

III. FATCA

According to the Luxembourg law relating to the Foreign Account Tax Compliance Act (FATCA) dated 24 July 2015, as amended (the "**FATCA Law**"), the LTA must provide specific information to the US Internal Revenue Service (IRS) on an annually basis. On 16 April 2020, the IRS extended the deadline for the reporting of the FATCA related information by Model 1 jurisdictions (e.g. Luxembourg) for the tax year 2019 until 31 December 2020. The Luxembourg Ministry of Finance announced that the upcoming draft bill will also contain provisions amending the FATCA Law.

I. Other tax measures – Defensive tas measures against non-cooperative jurisdictions

On 30 March 2020, the Luxembourg government deposited bill n°7547 introducing defensive tax measures on specific payments made by Luxembourg taxpayers to entities residing in countries featuring on the list of non-cooperative tax jurisdictions also referred to as the "EU blacklist" being regularly updated and published by the ECOFIN.

The bill provides for the introduction of a fifth paragraph to Article 168 (4) of the Luxembourg income tax law ("**LITL**") waiving the general principle of deductibility of expenses set out by Article 45 LITL[1]. According to the bill, the LTA may deny the deduction of interest and royalties paid to entities located in non-cooperative tax jurisdictions if the foreign entity qualifies cumulatively as:

- a tax opaque entity, in the sense of Luxembourg law;
- an "associated enterprise" in the sense of Article 56 LITL; and
- the Luxembourg taxpayer cannot justify that the interest and/or royalty payments were valid from a commercial point of view and reflected the economic reality of its business.

It should be noted that payments made to a foreign partnership would not fall within the scope of this defensive measure. However, if the partnership or the foreign entity acts as a conduit, the actual beneficial owner will be considered for the above analysis.

This measure should work in conjunction of Circular L.G. n°64 dated 7 May 2018, where Luxembourg companies entering into transactions with entities/persons located in non-cooperative tax jurisdictions are required to self-declare the transaction in their annual tax return.

The scope of application of the bill being limited to entities residing in countries included in the EU blacklist, the new paragraph will include a domestic list of non-cooperative tax jurisdictions.
Currently, the following countries have been included in the EU blacklist: American Samoa, Cayman Islands, Fiji, Guam, Oman, Palau, Panama, Samoa, Trinidad and Tobago, US Virgin Islands, Vanuatu and the Seychelles.

Mathilde Ostertag
Partner
GSK Stockmann SA
mathilde.ostertag@gsk-lux.com

Katharina Schiffmann
Senior Associate
GSK Stockmann SA
katharina.schiffmann@gsk-lux.com

Adrien Kleinschmidt
Associate
GSK Stockmann SA
adrien.kleinschmidt@gsk-lux.com

[1] The draft law is supposed to enter into force on 1 January 2021.

Copyright

GSK Stockmann SA – all righs reserved. The reproduction, duplication, circulation and/or the adaption of the content and the illustrations of this document as well as any other use is only permitted with the prior written consent of GSK Stockmann SA.

Disclaimer

This client briefing exclusively contains general information which is not suitable to be used in the specific circumstances of a certain situation. It is not the purpose of the client briefing to serve as the basis of a commercial or other decision of whatever nature. The client briefing does not qualify as advice or a binding offer to provide advice or information and it is not suitable as a substitute for personal advice. Any decision taken on the basis of the content of this client briefing or parts thereof is at the exclusive risk of the user.

GSK Stockmann SA as well as the partners and employees mentioned in this client briefing do not give any guarantee nor do GSK Stockmann SA or any of its partners or employees assume any liablitity for whatever reason regarding the content of this client briefing. For that reason we recommend you request personal advice.

www.gsk-lux.com

GSK STOCKMANN

BERLIN
Mohrenstrasse 42
10117 Berlin
T +49 30 203907-0
F +49 30 203907-44
berlin@gsk.de

HEIDELBERG
Mittermaierstrasse 31
69115 Heidelberg
T +49 6221 4566-0
F +49 6221 4566-44
heidelberg@gsk.de

FRANKFURT/M.
Taunusanlage 21
60325 Frankfurt am Main
T +49 69 710003-0
F +49 69 710003-144
frankfurt@gsk.de

MUNICH
Karl-Scharnagl-Ring 8
80539 Munich
T +49 89 288174-0
F +49 89 288174-44
muenchen@gsk.de

HAMBURG
Neuer Wall 69
20354 Hamburg
T +49 40 369703-0
F +49 40 369703-44
hamburg@gsk.de

LUXEMBOURG
GSK Stockmann SA
44, Avenue John F. Kennedy
L-1855 Luxembourg
T +352 271802-00
F +352 2718 02-11
luxembourg@gsk-lux.com