

LUXEMBOURG 2020 BUDGET BILL

On 14 October 2019, the Luxembourg government tabled the 2020 Budget bill. According to this bill, tax rulings issued before 1 January 2015 will be automatically null and void as from the end of the fiscal year 2019. Taxpayers should assess the impact of this measure and may then consider filing new requests to secure the correct Luxembourg tax treatment applicable to existing structures that are subject to a tax ruling granted before 1 January 2015.

AUTOMATIC EXPIRATION OF TAX RULINGS GRANTED BEFORE 1 JANUARY 2015

Tax rulings are frequently used to secure in advance, together with the tax authorities, the correct application of tax laws in respect of one or several particular transactions contemplated by a taxpayer.

Until 1 January 2015, the Luxembourg tax ruling process was solely governed by an internal note of the tax authorities dated 21 August 1989 (*Note de service du directeur des contributions*, L.G./N.S. N°3). In order to provide a more robust legal basis and to foster the principle of legitimate expectations relied on by taxpayers, the prized Luxembourg tax ruling process has been formalised via the law of 19 December 2014 "for the Future of Luxembourg" (*Zukunftspack*), as complemented by the Grand Ducal Decree of 23 December 2014. This new process applied as from 1 January 2015 (the **Cut-Off Date**).

According to this legal framework, tax rulings (now called '*demandes de décisions anticipées*') are granted by a specific body (*Commission des décisions anticipées*, the **CDA**) which assists tax inspectors in ensuring a uniform and consistent application of the Luxembourg tax laws among taxpayers. Tax rulings granted by the CDA are only valid for a maximum period of five years.

While neither the law of 19 December 2014 nor the Grand Ducal Decree of 23 December 2014 dealt with the validity of tax rulings granted before the Cut-Off Date, the 2020 Budget bill now provides that such rulings will be automatically null and void as from the end of the fiscal year 2019. In other words, all the rulings granted by the Luxembourg tax authorities before the Cut-Off Date can no longer be relied on by taxpayers from fiscal year 2020 onwards.

Key issues

- 2020 Budget bill tabled by the Luxembourg government
- Tax rulings granted before 1 January 2015 would be automatically null and void as from the end of FY 2019
- Filing a new tax ruling request may be considered to secure the tax treatment of structures still in place

POSSIBILITY TO FILE A NEW TAX RULING

This change should presumably not impact in itself the taxable base of most of the Luxembourg taxpayers, as the purpose of tax rulings has always been (if properly implemented) to ensure a correct application of tax laws, not to depart from applicable tax laws (this point was already clearly underpinned in the internal note dated 21 August 1989).

In addition, most of the tax rulings granted before the Cut-Off Date already mentioned that they were only binding for a five-year period and would have then (if not already) expired by the end of fiscal year 2019 in any case. Another informal caveat generally applicable to former tax rulings (which has since then been formalised in the new process) related to the adoption of new Luxembourg/international tax provisions contradicting any of the items mentioned in these rulings and that would consequently alter their validity. Given the numerous Luxembourg/international tax provisions adopted over the recent years, many of the tax rulings were likely already obsolete.

Notwithstanding the above and assuming this provision is eventually enacted, taxpayers should determine on a case-by-case basis whether they can still rely on the Luxembourg tax treatment depicted in rulings granted before the Cut-Off Date, despite their termination. If not, the exact tax consequences should then be assessed based on the currently applicable tax provisions.

In case of doubt, taxpayers are also invited to file a new tax ruling request, which will now be governed by the formal process implemented in 2015 and subject to exchange of information with foreign tax authorities.

Rather than an unfavourable change, this upcoming expiration should be considered by taxpayers as an opportunity to test the robustness of their vintage structures and, in case of flaws, start exploring BEPS proof contingency measures.

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