



LUXEMBOURG

Luxembourg – Tax Update

TAX

Luxembourg - Agenda

1. Individual tax update 2009
2. Corporate tax update 2009
3. Other tax measures
4. Outlook 2009/2010
5. Q&A
6. Cocktail



Individual tax update 2009

Agenda

◆ 2009 individuals - tax update

- 2009 tax credits
- Tax rates and brackets (2009 update)
- Various

◆ 2008 individuals - tax amendments (reminder)

- Relibi law
- Mortgage interest
- Stock options

2009 Tax credits

- ◆ **Tax credits will replace the corresponding tax deductible allowances:**
 - Compensatory allowance for employees: € 600
 - Compensatory allowance for pensioners: € 600
 - Compensatory allowance for single parents (tax class 1a): € 1,920
- ◆ **Principle: refundable tax credit (or negative tax, “impôt négatif”)**
 - Should the amount of tax credits exceed the amount of personal income tax, the difference is paid to the individual
 - Exception: taxable income is lower than € 540 : the reimbursement of the tax credit is not due

2009 Tax credits

◆ Tax credit for single parents:

- Granted to each single parent taxpayer (in class 1a)
- The tax credit amounts to € 750 per annum (tax saving corresponds to the amount of tax saved through the single parents allowance: $1\,920 \times 38.95\% = 748$)

2009 Tax credits

◆ Tax credits for employees and retired persons

- Granted to:
 - each taxpayer performing a salaried activity and
 - to each retired person receiving an old-age pension
- The tax credit amounts to € 300 per annum (tax saving is higher than the one corresponding to the allowance: $600 \times 38.95\% = 233.7$)

Tax rates and brackets (2009 update)

◆ 0%	for the income lower than	11.265 EUR
◆ 8%	for the income ranged between	11.265 - 13.173 EUR
◆ 10%	for the income ranged between	13.173 - 15.081 EUR
◆ 12%	for the income ranged between	15.081 - 16.989 EUR
◆ 14%	for the income ranged between	16.989 - 18.897 EUR
◆ 16%	for the income ranged between	18.897 - 20.805 EUR
◆ 18%	for the income ranged between	20.805 - 22.713 EUR
◆ 20%	for the income ranged between	22.713 - 24.621 EUR
◆ 22%	for the income ranged between	24.621 - 26.529 EUR
◆ 24%	for the income ranged between	26.529 - 28.437 EUR
◆ 26%	for the income ranged between	28.437 - 30.345 EUR
◆ 28%	for the income ranged between	30.345 - 32.253 EUR
◆ 30%	for the income ranged between	32.253 - 34.161 EUR
◆ 32%	for the income ranged between	34.161 - 36.069 EUR
◆ 34%	for the income ranged between	36.069 - 37.977 EUR
◆ 36%	for the income ranged between	37.977 - 39.885 EUR
◆ 38%	for the income exceeding	39.885 EUR

Average tax rates (updated for 2009)

Taxable income	Class 1	Class 1a	Class 2
20 000	5,21%	0%	0%
30 000	10,77%	4,93%	2,29%
40 000	16,25%	12,90%	5,21%
50 000	20,79%	18,11%	8,01%
60 000	23,81%	21,58%	10,77%
70 000	25,98%	24,07%	13,53%
80 000	27,60%	25,93%	16,25%
90 000	28,86%	27,37%	18,77%
100 000	29,87%	28,53%	20,79%
110 000	30,69%	29,48%	22,44%
120 000	31,38%	30,27%	23,81%
130 000	31,96%	30,94%	24,98%
140 000	32,46%	31,51%	25,98%
150 000	32,90%	32 %	26,84%

Amended tax table - Examples

Taxpayer – Tax class 1

2008		2009					
Annual Adjusted taxable income	Total tax due (Unemployment contribution included)	Annual Adjusted taxable income	Total tax due (Unemployment contribution included)	Tax credit for salaried person	Columns (4) – (5)	Absolute profit	Relative profit
(1)	(2)	(3)	(4)	(5)	(6)	(2)-(6)	(6)/(2)
15.000 €	465 €	15.600 €	415 €	300 €	115 €	350 €	75,3%
25.000 €	2.316 €	25.600 €	2.137 €	300 €	1.837 €	479 €	20,7%
35.000 €	5.336 €	35.600 €	4.930 €	300 €	4.630 €	706 €	13,2%
45.000 €	9.199 €	45.600 €	8.679 €	300 €	8.379 €	820 €	8,9%
55.000 €	13.094 €	55.600 €	12.574 €	300 €	12.274 €	820 €	6,3%
100.000 €	30.621 €	100.600 €	30.101 €	300 €	29.801 €	820 €	2,7%

Amended tax table - Examples

Taxpayer – Tax class 1a

2008		2009					
Annual Adjusted taxable income	Total tax due (Unemployment contribution included)	Annual Adjusted taxable income	Total tax due (Unemployment contribution included)	Tax credit for salaried person	Columns (4) – (5)	Absolute profit	Relative profit
(1)	(2)	(3)	(4)	(5)	(6)	(2)-(6)	(6)/(2)
15.000 €	- €	15.600 €	- €	300 €	-300 €	300 €	-
25.000 €	716 €	25.600 €	448 €	300 €	148 €	568 €	79,3%
35.000 €	4.075 €	35.600 €	3.447 €	300 €	3.147 €	928 €	22,8%
45.000 €	7.970 €	45.600 €	7.342 €	300 €	7.042 €	928 €	11,6%
55.000 €	11.865 €	55.600 €	11.237 €	300 €	10.937 €	928 €	7,8%
100.000 €	29.392 €	100.600 €	28.764 €	300 €	28.464 €	928 €	3,2%

Amended tax table - Examples

Taxpayer – Tax class 2 with 1 salary

2008		2009					
Annual Adjusted taxable income	Total tax due (Unemployment contribution included)	Annual Adjusted taxable income	Total tax due (Unemployment contribution included)	Tax credit for salaried person	Columns (4) – (5)	Absolute profit	Relative profit
(1)	(2)	(3)	(4)	(5)	(6)	(2)-(6)	(6)/(2)
15.000 €	- €	15.600 €	- €	300 €	- 300 €	300 €	-
25.000 €	372 €	25.600 €	251 €	300 €	- 49 €	421 €	113,2%
35.000 €	1.632 €	35.600 €	1.405 €	300 €	1.105 €	527 €	32,3%
45.000 €	3.480 €	45.600 €	3.086 €	300 €	2.786 €	694 €	19,9%
55.000 €	5.921 €	55.600 €	5.318 €	300 €	5.018 €	903 €	15,3%
100.000 €	22.293 €	100.600 €	21.020 €	300 €	20.720 €	1.573 €	7,1%

Amended tax table - Examples

Taxpayer – Tax class 2 with 2 salaries

2008		2009					
Annual Adjusted taxable income	Total tax due (Unemployment contribution included)	Annual Adjusted taxable income	Total tax due (Unemployment contribution included)	Tax credit for salaried person	Columns (4) – (5)	Absolute profit	Relative profit
(1)	(2)	(3)	(4)	(5)	(6)	(2)-(6)	(6)/(2)
15.000 €	- €	16.200 €	- €	600 €	- 600 €	600 €	-
25.000 €	372 €	26.200 €	300 €	600 €	- 300 €	672 €	180,6%
35.000 €	1.632 €	36.200 €	1.491 €	600 €	891 €	741 €	45,4%
45.000 €	3.480 €	46.200 €	3.209 €	600 €	2.609 €	871 €	25,0%
55.000 €	5.921 €	56.200 €	5.466 €	600 €	4.866 €	1.055 €	17,8%
100.000 €	22.293 €	101.200 €	21.253 €	600 €	20.653 €	1.640 €	7,4%

2009 Various

- ◆ **Child bonus (“boni pour enfant”) is paid monthly and amounts to EUR 76.88 per month**
- ◆ **Alimony payments**
 - The alimonies are deductible as special expenses up to a maximum increased from €21'600 to €23'400 per ex-spouse

2009 Various

- ◆ **Exemption of another type of allowance (article 115-10 LIR)**
 - An amount equal to the termination allowance as defined by the employment law or by a collective bargain agreement, if this allowance is allowed in the framework of an authorized layoff plan (for economic reasons), in case of discharge or in case of mutual agreement between the parties
 - Limit: exemption up a limit equal to 12 times the minimum social salary for non qualified workers (i.e. € 19,701 for 2009)

2009 Various

- ◆ **Interest paid by home savings institutions to individuals should be fully tax exempted (amendment of article 115-15 LIR) – exempted from the 10% relibi WHT**
 - Scope: home savings institutions agreed in Luxembourg, in any EU Member State or State member of the EEE.

2009 Various

- ◆ **Filing obligations for an annual personal income tax return (*).**
 - New limits as of 2009:
 - if the Luxembourg taxable income exceeds € 100,000
 - in case more than one salaried activity in the household, if the Luxembourg taxable income exceeds € 36,000 in tax class 1 and 2 and € 30,000 in tax class 1A.

(*): There are other limits not mentioned here

2008 Reminder

- ◆ **Relibi law (dated Dec 23 2005) amended by law dated July 17 2008**
 - Principle:
 - 10% final withholding tax if the interest derives from the privately held assets of the individual
 - Scope of the law
 - Individual persons
 - Luxembourg residents (permanent address)
 - Receiving interest for their own accounts
 - Without being a tax resident in another member state (certificate of tax residence)

2008 Reminder

- ◆ **Relibi law (dated Dec 23 2005) amended by law dated July 17 2008**
 - Extension of the scope of the law: the benefit of the 10% final withholding tax on interest received by Luxembourg tax residents has been extended to:
 - Interest from paying agents located outside of Luxembourg: All kinds of economic operators in Luxembourg, in an EU or EEE country
 - Specific tax form (deadline: 31 March of year N + 1)

2008 Reminder

- ◆ **Mortgage interest in relation with the main residence is tax deductible for non resident taxpayers as of tax year 2008**
 - **Consequence:**
 - Possibility to reduce the tax rate on the Luxembourg source income by taking into account the taxpayer's foreign negative income generated by the mortgage interests on his main residence

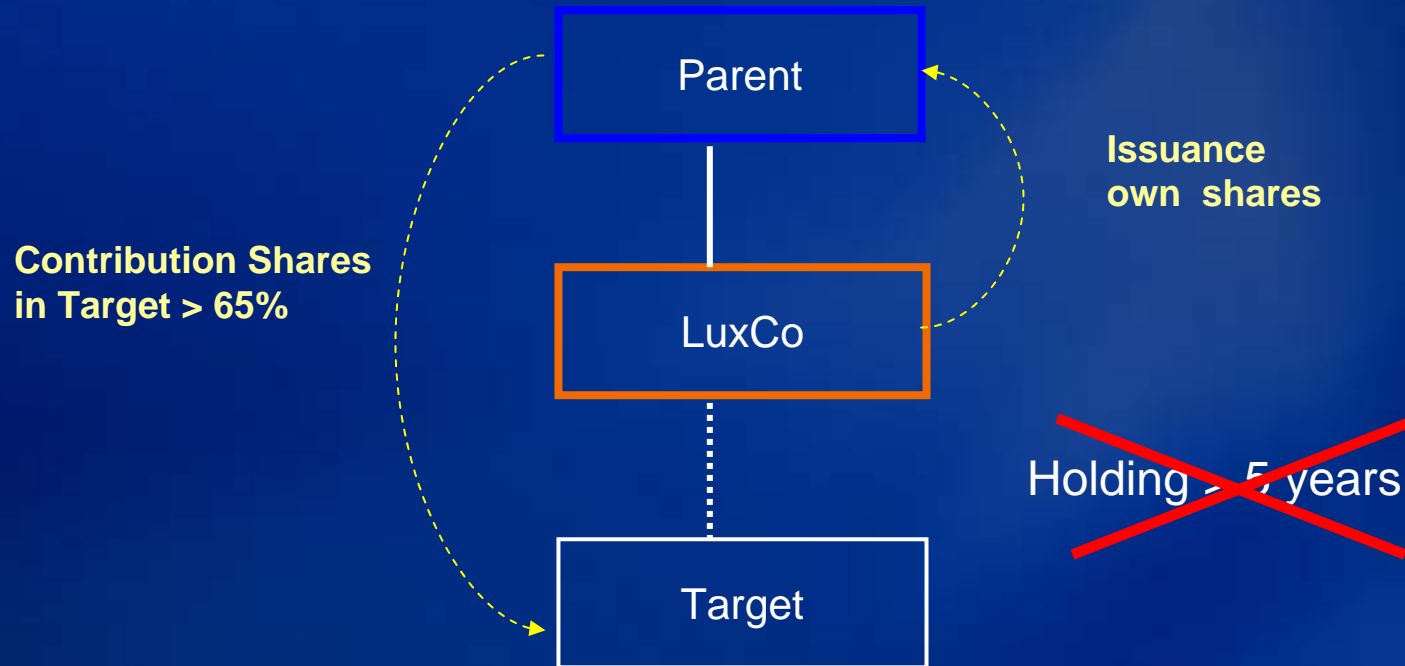
2008 Reminder

- ◆ **Tax treatment of stock option plans (circular 104/2)**
 - In principle, should be amended
 - No agreement based on the provisions of the circular is granted by the Luxembourg tax authorities

Corporate tax update 2009

Capital duty abolished

Capital Duty as of 1 January 2009 fully abolished

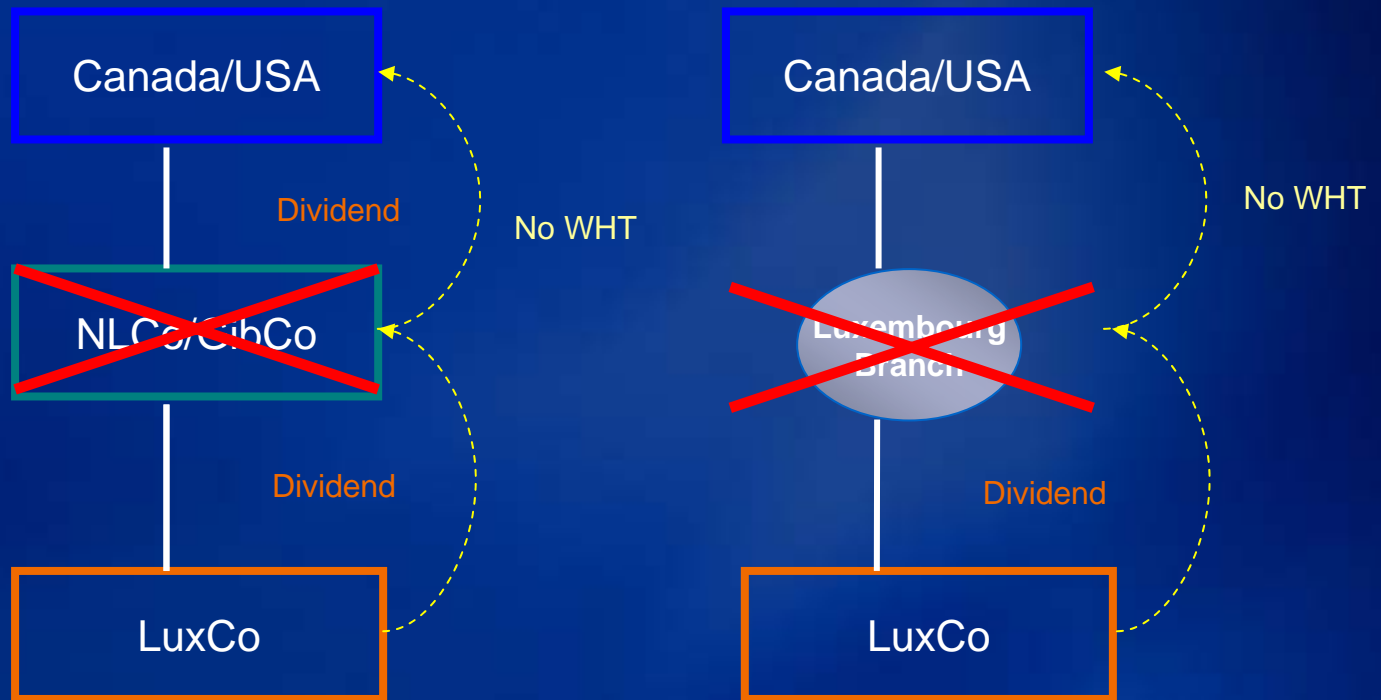


Changes in tax law

◆ Corporate Income Tax

- Tax Rate in a first stage decreased from 22% to 21% resulting in a consolidated corporate tax rate of 28.59% (Prime Minister announced further decrease up to 25.5%)
- WHT rate on dividends distributed to parent resident in DTT-country reduced to 0%
 - 10% shareholding or 1.2m acquisition costs
 - Holding of 12 months
 - Parent subject to comparable tax

Changes in tax law



As from January 1st 2009...

Trends and adjustments on existing laws - IP law

◆ What is it:

- 80% exemption on royalties and capital gains, i.e. effective rate of 5.72% +
- Qualifying IP assets held by Luxembourg corporations will be exempt from the 0.5% net wealth tax (2009)

◆ Basis for exemption: net positive IP income



Trends and adjustments on existing laws

- IP law

◆ Which IP can qualify

- Patents (existing and “in application”), trademarks, utility rights, software copyrights, service marks, designs and models
- Excluded: copyrights of literary or artistic works, or plans, secret formulae or processes
- Domain names are, as from tax year 2008, within the ambit of those rights eligible to partial tax exemption on income derived from intellectual property

◆ When: IP acquired or self developed after 31 December 2007

Trends and adjustments on existing laws

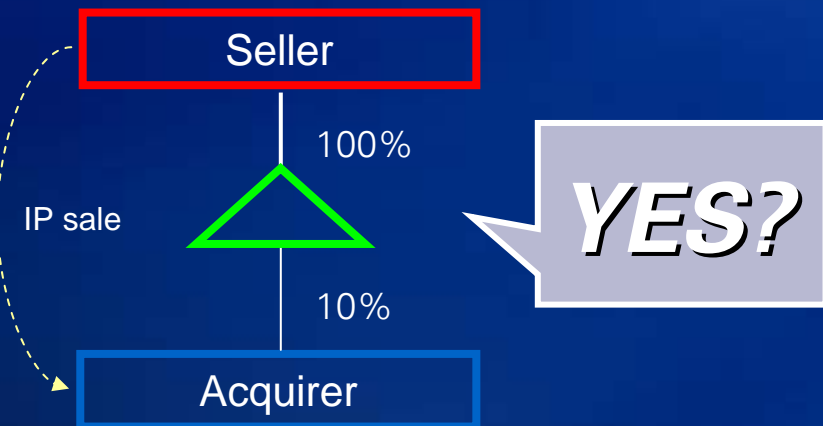
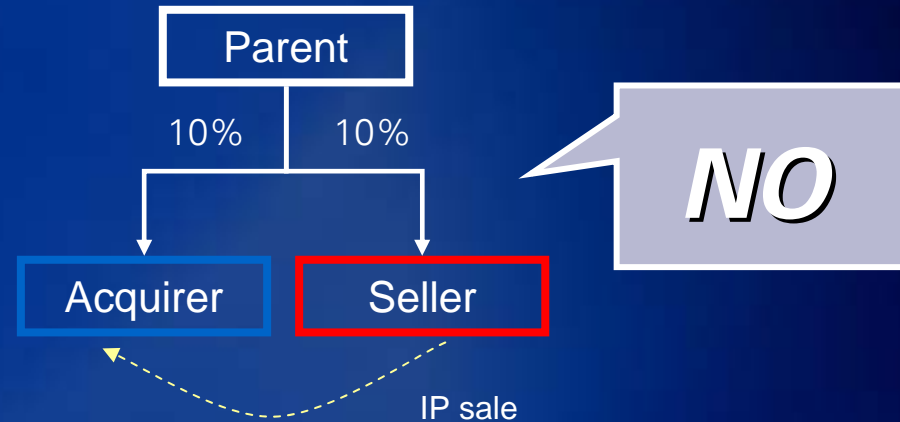
- IP law

◆ Excluded “acquisitions”: acquisitions from “directly” related companies

- common and direct ownership of at least 10%
- seller/buyer are direct owners of each by at least 10%
- seller/buyer are directly owner 10% (>) by the same common parent

Trends and adjustments on existing laws

- IP law



Changes in tax law – New Bill to be reintroduced before end of February 2009

- ◆ Objective: recognition of IFRS as a basis for corporate taxes (optional)
- ◆ Bill 5924 presented by Luxembourg Government on 1 October 2008 has not been adopted!!

- ◆ New bill is expected soon with the following amendments (crystal ball):
 - Non-realized capital losses on financial instruments, which are booked at fair value through “equity” (AFS portfolio) are NOT deductible
 - Possibility to keep participations (which qualify for the Luxembourg participation exemption regime) at their initial acquisition cost

- ◆ Create uncertainty for the banks that have adopted IFRS for their 2008 statutory accounts => practical solutions:
 - Fiscal balance sheet to neutralize effects due to different evaluations (e.g. fair value) and classifications (e.g. hybrids)
 - Confirmation with the Luxembourg tax authorities (e.g. tax treatment of the differences booked on first time adoption)

Improved cooperation between tax authorities (new law adopted in December 2008)

◆ Fight against tax evasion / fraud

- Law clarifies and strengthens legal framework, allowing an effective cooperation and exchange of information between the various tax authorities (ACD, AED, etc.)
- Law permits tax authorities to exchange all necessary information for tax collection/ to perform joint tax audits
- Tax authorities may share data with other public services (e.g. social security) and with the judicial authorities for criminal prosecution purposes

Improved cooperation between tax authorities (new law adopted in December 2008)

◆ Measures to improve VAT audit procedures

- Law grants VAT authorities full access to company premises and documentation
- The list of documentation to be provided by companies to the VAT authorities (during a tax audit) is modified
- Introduction of penalty charges (ranging from €50 to 1,000 a day) should the taxpayer fail to present requested documentation
- Deterrent penalty equal to 10% of evaded tax will be claimed to the taxpayer who willfully and knowingly intended to evade tax or obtain tax refund by deceit or irregularly

Improved cooperation between tax authorities (new law adopted in December 2008)

◆ Simplified and accelerated assessment for corporate tax purposes

- Self-assessment for capital companies (SA, Sàrl, SCA & SE)
- Tax authorities will issue provisional evaluation (draft assessment notice) based on the tax return filed
- Accuracy in filing the tax return will be critical
- Tax authorities may readjust the taxable basis within a 5-year period, if required
- Tax assessment becomes final thereafter (could create uncertainty for taxpayers)

Luxembourg Tax Treaties Update

◆ Total DTT signed: 9

(Azerbaijan, UAE, Georgia, HK, India, Kazakhstan, Kuwait, Moldavia, Ukraine)

◆ Total DTT initialed: 8

(Albania, Armenia, Bahrain, Barbados, Cyprus, Kyrgyzstan, Macedonia, Qatar)

◆ Total DTT in negotiation: 4

(Lebanon , Pakistan, Serbia, Syria)

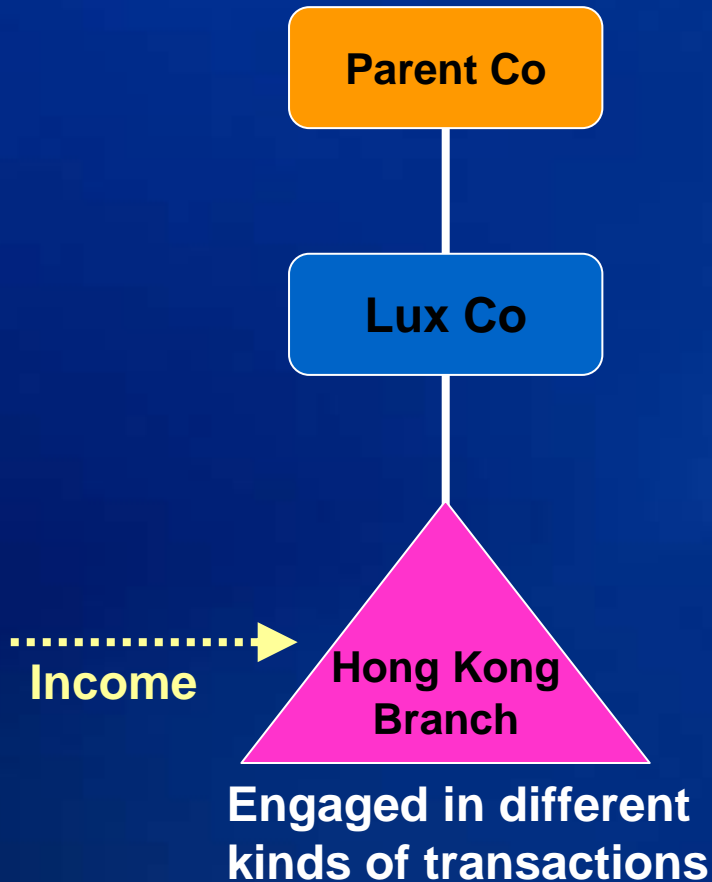
◆ Total DTT in force: 51

(Austria, Belgium, Brazil, Bulgaria, Canada, China ,Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Indonesia, Ireland, Israel, Italy, Japan, Korea, Latvia, Lithuania, Malaysia, Malta, Mauritius, Mexico, Mongolia, Morocco, Netherlands, Norway, Poland, Portugal, Romania, Russia, San Marino, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Thailand, Trinidad and Tobago, Tunisia, Turkey, United Kingdom, United States, Uzbekistan, Vietnam)

Luxembourg Tax Treaties Update

- ◆ With Hong Kong: 0% dividend WHT
(applicable as from January/April 2008; not yet in force).
- ◆ With Kuwait: 0% dividend WHT
(applicable as from 01.01.2007; not yet in force).
- ◆ With United Arab Emirates: 5% dividend WHT; 0% WHT if the BO is the other State itself (not yet applicable).
- ◆ With India: 10% WHT on dividends (not yet applicable – bill tabled).
- ◆ Other DTT Approved/Signed during the last 12 months:
Albania, Armenia, Barbados, Kazakhstan, Kyrgyzstan,
Macedonia...

Offshore funds exemption for Hong Kong Permanent establishment



Structure

- ◆ Hong Kong branch of LuxCo carries out different kinds of transactions

Offshore funds exemption for Hong Kong Permanent establishment

Examples of feasible investments for Hong Kong branch:

- ◆ Securities (including distressed debt)
- ◆ Future contracts
- ◆ Foreign exchange hedges
- ◆ Deposits
- ◆ Exchange-traded commodities
- ◆ Etc.

Offshore funds exemption for Hong Kong Permanent establishment

Further requirements:

- ◆ Transactions are carried out or arranged by specified persons

Potential targets

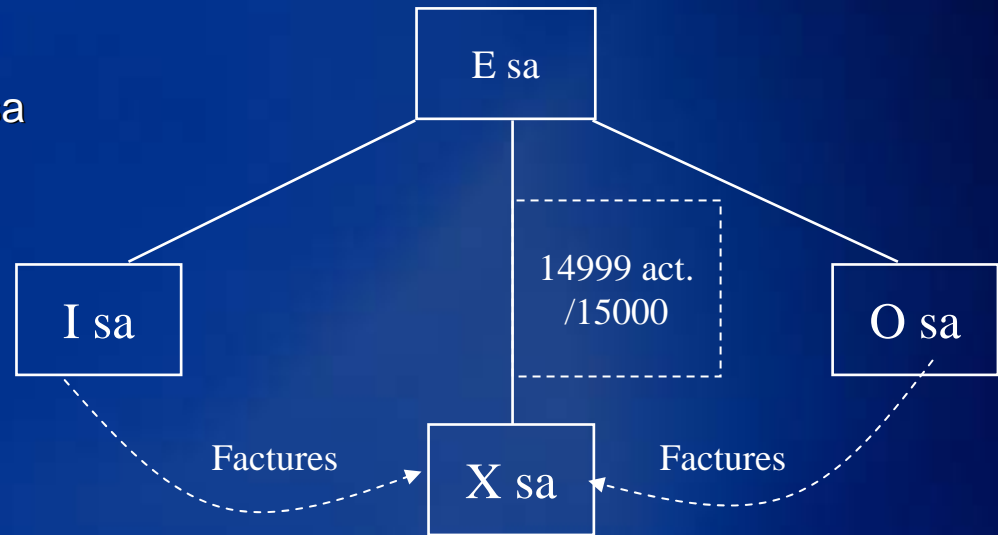
- Banks – for the time being especially in view of distressed debts
- Others to be discussed

Tax jurisprudence 2008

23324: hidden dividend distribution, reversal of the burden of proof

◆ Background:

- Invoices (consultancy) from I sa and O sa to X concerning a building in France.



◆ Tax authorities:

- Did not receive the requested information about the economic beneficiaries → refused the deduction of the invoices paid to I sa and O sa and considered the amounts paid as hidden dividend distribution (25% WHT).

◆ The Court:

- The tax authorities must prove the hidden distribution. However, the burden of proof is reversed if circumstances make likely an undue decrease of the profit.

Tax jurisprudence 2008

23434: management of a private real estate properties vs. commercial activity

◆ Background:

- The plaintiffs acquired buildings, among which some constitute their main residence, others are used in professional purposes or rented out.

◆ Tax authorities:

- The real-estate activity of the plaintiffs exceeds the management of a private heritage.

◆ The Court:

- The character of the durability does not imply inevitably that the activity repeats.

Durability = the activity just has to take place with the intention to repeat it if the opportunity arises and to constitute a source of income on the basis of repeated operations. An isolated operation does not take on the character required by durability.

Tax jurisprudence 2008

24037C/24036C: Chamber of commerce fees

◆ Background:

- In 2006, the SOPARFI X introduced a petition for nullity against the bulletins of Chamber of Commerce fees: as a SOPARFI having a commercial form but not exercising commercial activity, it should not be considered as a CC member.

◆ 1st instance:

- No legal definition of the CC member → Cancelled the litigious bulletins.

◆ The Court (The CC appealed against the decision in February 2008):

- The law of 1924 is enough to determine who qualifies to be member
- The law says: The persons who run [...] a commercial institution
- Independently of the question to know if X exercises a commercial activity, it runs an establishment which is to be considered as commercial in the fact that it has the commercial form. Furthermore, its business purpose allows it to make commercial transactions.
- However, since there is no legal basis and no Grand-Ducal decree, the assessment and levying procedure are unlawful.

◆ **Bill 20.10.08: SOPARFIs are automatically members of the CC + specific lump-sum contribution (max. 3.000 EUR).**

Tax jurisprudence 2008

24061C: METINVEST

◆ Background:

- X had entered into two call option agreements giving to it the right to acquire shares of a Singapore company. In 2003, X exercised the options.

◆ Tax authorities:

- Art. 166 ITL N/A to income relating to call options as there is no direct part.

◆ 1st instance:

- Since there is no clear definition of the term holding in the ITL, reference had to be made to the general principles set forth in article 11 of the loi d'adaptation (§ 11, 4° Steueranpassungsgesetz). Based on these principles, the holder of the shares for tax purposes is the one who possesses the economic ownership over the said shares.
- The case was dismissed for more formal reasons

◆ The Court:

- The court decided that the economic ownership of the shares had been transferred to the holder of the call option.

Other tax measures

Philanthropy :

Opportunities for Asset Management

- ◆ **Charitable contributions: ceilings of deduction have been increased (10% of the taxable income up to € 500,000) to:**
 - 20% of the taxable income
 - Up to an amount of EUR 1,000,000

Tax incentive for hiring unemployed people

- ◆ Tax relief in the field of income tax, on grounds of hiring the unemployed, is maintained for a further three years, with the relief rate of 10% increasing to 15%

Outlook 2009 / 2010

Shopping list

- ◆ Abolishment capital contribution ✓
- ◆ Abolishment net wealth tax
- ◆ Initiative extension 147 LIR ✓
- ◆ Eliminate conditions 166 LIR
- ◆ Enlargement of investment tax credit
- ◆ Deductible reserve for future investments
- ◆ Notional interest deduction
- ◆ VAT grouping
- ◆ Administrative simplification
- ◆ Reduction in nominal tax rate (broaden the base)
- ◆ Reduction withholding tax rate on dividends 10 %
- ◆ Reduce taxe d'abonnement on funds

Prioritizing criteria

Objective: enhance competitiveness and source additional tax income by attracting new business

- Simplification
- Modernization of tax system
- Raise effectiveness of public services
- Coherent strategy to attract investments
- Limit the investment (budgetary impact) / maximizing return

Brainstorming actions

- ◆ Abolishment of substance tax (+- Mio 150 €)
- ◆ Align 147 LIR and 166 LIR (+- Mio ... €)
- ◆ Find on shore replacement Holding 29 / attract finance vehicles / enhance private banking
- ◆ Attract corporate headquarters
- ◆ Attract “bad banks”
- ◆ Carried interest private equity business
- ◆ Alternative minimum tax

In progress for 2009

- ◆ IFRS and tax implications
- ◆ OECD transfer pricing rules
- ◆ Process of review of the savings directive
- ◆ Stock options
- ◆ CCCTB
- ◆ Election year

Q & A



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