2015, Luxembourg transfer pricing guidelines shall be officially included in the Law

The 2015 Luxembourg budget law, presented on October 15 2014 by Pierre Gramegna, the Luxembourg Minister of Finance, introduces important news regarding transfer pricing: the OECD rules generally adopted in all the EU Members shall be duly reflected in the Luxembourg tax Law.

Upon such amendment, Luxembourg fits within the international context of fight against cross-border tax evasion and avoidance. The mission the majority of EU Members are pursuing is the creation of a common playing field where no inappropriate erosion of profit tax base would be ever allowed: in a globalized business, every company must pay its fair amount of tax where the profits are generated.

Article 13 of the Bill no. 6722 aims at restating the concept of fair market conditions (*pleine concurrence*) in the Luxembourg Law, even more.

As a matter of fact, Luxembourg Income Tax Law (LITL) already reflects the *pleine concurrence* principle in the Art. 164 (3). Accordingly, if there are advantages obtained by a stakeholder directly or indirectly from an entity in virtue of his relationship with such entity, said advantages have to be requalified as hidden profit distributions and added to the stakeholder's taxable profit.

It is evident that therewith the arm's length principle is displayed rather indirectly. In this sense, the Luxembourg lawmakers want to clearly include official transfer pricing guidelines and tools.

The proposed solution (under discussion) is the amendment of Art. 56 LITL on profit adjustments to associated enterprises in order to have a close reflection of Art. 9 of the OECD Model Tax Convention, dealing with profit adjustments between related entities.

In the practice, said TP regulations are already well used in Luxembourg (refer to the Circular of the Luxembourg Tax Administration no. 164/2 of January 28, 2011) and the arm's length principle is present in all the double tax treaties (DTTs) signed by the Grand Duchy and other OECD Members (approximately 70 DTTs up to date).

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The content of the new Art. 56 LITL is heavily inspired by the Dutch version of TP regulation.

A crucial point will be the production of documentation supporting the transfer prices' determination (e.g. comparison to similar transactions and sector, etc.). In order to not uselessly increase the administrative burden especially for small and medium sized enterprises, it is envisaged to introduce a simplified procedure that would be allowed should the amount of the involved transaction does not overcome a certain treshold (still under determination).

Lawmakers foresee to have the Bill of Law no. 6722 approved in view of an entry into force by January 2015.

Conclusions

The 2015 Luxembourg budget law still under discussion is a sign of the constant effort of the Grand Duchy to be in line with the other important jurisdictions in terms of tax regulation and transparency.

Though the Luxembourg tax practice already required the compliance with the OECD Model Tax Convention rules on transfer pricing, the implementation of an appropriate TP legal framework increases Luxembourg visibility over the international debate on Base Erosion of Profit Sharing (BEPS) and on fighting tax evasion and avoidance.

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