The reform of the Luxembourg corporate exit tax to company migration abroad

On May 13 2014 the Parliament approved the draft bill of law no. 6556 regarding the application of an exit tax to those Luxembourg companies migrating abroad.

In fact before the law dated May 13 2014 (the "Law"), article 172 (1) of the Luxembourg Income Tax Law (LITL) provided for the assimilation of a Luxembourg company migration to a liquidation for corporate direct tax purposes, unless a permanent establishment would have been remaining in Luxembourg. Consequently, at the migration any latent capital gains become taxable at the level of the migrating company.

Why such a change and what is effectively going to change in the practice?

Pursuant to article 159 (1) LITL, a corporate entity is taxable in Luxembourg if it has its statutory seat and especially its place of effective management in Luxembourg.

In the event of transfer of its statutory seat and effective management abroad, pursuant to article 172 (1) LITL, the company becomes taxable on its latent capital gains. The only possibility of deferring that tax event is the permanence of a permanent establishment in Luxembourg.

Such exit tax has been deemed as not compliant with the EU Law and European Court of Justice jurisprudential cases by the European Commission.

Thus after an attentive analysis of the tax framework of exit taxes in Luxembourg, the Grand Duchy decided to amend its tax law and be compatible with the EU Law.

As a consequence, three days after the Law's publication on the Official Gazette, any transfers of corporate entities from Luxembourg to any other country belonging to the European Economic Area ("EEA") shall benefit from the deferral mechanism unconditionally.

In other words the corporate migration would not be assimilated to liquidation for Luxembourg tax purposes, any longer.

An additional step ahead: tax deferral on transfer of real estate assets

The Law provides also for the modification of art 54 LITL.

As from the entry into force of the Law, the capital gains derived from the disposal of qualifying assets (e.g. real estate properties) can benefit from a roll-over to the extent that said gains are reinvested in a permanent establishment fiscally domiciled in a country member of the EEA.

Conclusions

The Law represents a further confirmation of Luxembourg's fine-tuning to the EU legal approach. Furthermore the abovementioned amendments will facilitate certain corporate restructuring operations, providing Luxembourg with additional tax planning tools.

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