

Summary of recent Luxembourg government's statements on tax-related matters

27 April 2009

Current political discussions seek to achieve a legitimate goal: fight against "tax havens" and tax fraud against a background of financial and economic turmoil. The Luxembourg authorities have made clear over the last six months that they were fully willing to cooperate in the fight against tax fraud while they remain determined to enhance Luxembourg's tax competitiveness. Luxembourg Premier Jean-Claude Juncker confirmed this in his State of the Nation Address held before Luxembourg Parliament on 21 April 2009. Today, the Luxembourg authorities pride themselves on the fact that G20 member states have come to understand the Luxembourg regime better and have managed to avoid the confusion which arose in the past.

Luxembourg is not a tax haven

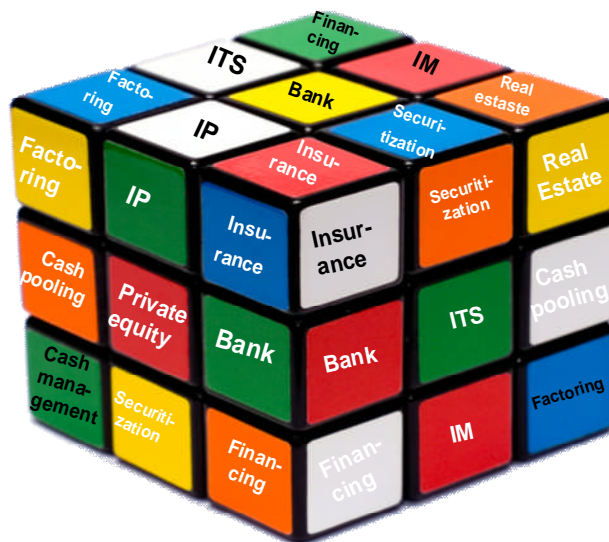
The tax haven concept, as defined under OECD guidelines, refers to four main criteria: low or nil taxation, no real exchange of information, no transparency and no substantial activities. Looking at those criteria, one can conclude that Luxembourg is not a tax haven, particularly because the country cannot be deemed to be of low or nil taxation. This was confirmed, both by the OECD and by the G20 summit held in London on 2 April 2009.

Banking secrecy is provided for under Luxembourg legislation. However, banking secrecy is not absolute, because it can be lifted for several circumstances, including in the event of tax offences. In the future, Luxembourg will maintain banking secrecy as an instrument that is used to protect privacy, to the extent that no OECD guideline opposes this. Luxembourg will nonetheless step up its fight against tax fraud by improving cooperation with requesting countries. The Luxembourg political authorities recently announced that current double tax treaties were going to be reviewed in accordance with the OECD model tax convention (article 26-5). By the same token, future treaties will be signed in light of the OECD model tax convention. Exactly how those treaties are going to be revised has not been determined yet. They could be amended one by one, a protocol could be added to the treaties or domestic Luxembourg legislation could be amended. As a result of those changes, Luxembourg should, in any event, exchange information on request in specific cases and based on concrete clues of tax offences, including instances where that information is held by a bank.

Strengthening Luxembourg's competitiveness

In addition to tax treaty amendments, Luxembourg also decided to maintain its tax relief programme. The country thus positions itself as a stronghold of financial engineering.

This engineering is based on tax legislation which looks at transactions from an economic standpoint and offers legal security but it also relies on a regulatory environment and company law framework which, while stringent, meet the players' needs. The legislative and regulatory framework therefore meets the many specific needs of investors, whether those are companies or individuals. We have shown the needs of business players in the form of a cube to illustrate the fact that Luxembourg offers numerous structuring opportunities that can meet those needs.



- Luxembourg recently enhanced its tax attractiveness by adopting the following measures:
 - exemption from withholding tax on dividends when the beneficiary is a company located in a country with which Luxembourg entered into a double tax treaty (provided certain requirements are met),
 - abolition of capital duty,
 - progressive 4 percent reduction in the rate of corporate income tax.
- Luxembourg offers a wide range of innovative vehicles and structures (IP companies, private equity companies, distressed debt SPVs, etc.).
- Vehicles and structures can be mixed and matched ad infinitum under Luxembourg legislation, in accordance with business players' foreign legislations.

Relying on this environment, Luxembourg financial engineering has been able to grow and is still growing significantly. Luxembourg's sound budgetary position – in 2008, the country's debt only represented 14.4 percent of GDP compared with a European average approximating 70 percent – lends durability to the regime.

Tax competition is not a reprehensible concept, nor is the financial engineering concept, as long as legal limitations and requirements are met, including those set out by the European Court of Justice in the Cadbury Schweppes case dated 12 September 2006.

In the abovementioned case, the Court restated that economic agents could legitimately take tax parameters into account when using the freedom of establishment, as long as that type of behaviour did not consist in creating "wholly artificial arrangements which do not reflect economic reality". Luxembourg is fully compliant with the relevant guidelines set out by EU authorities in this area.

Exchange of information procedure initiated between Luxembourg and the US

Also, the Luxembourg Finance Minister and the US Ambassador met representatives of the U.S. Treasury Department on 23 March 2009. The result of these discussions was positive as it was announced that Luxembourg and the United States of America will shortly enter into negotiations in order to revise their double tax treaty. It is expected that these negotiations will help remove Luxembourg from the "Stop Tax Haven Abuse Act".

In this settled climate, Luxembourg will remain a preferred partner and gateway to Europe, mainly for US investors. Luxembourg remains a prime location in international exchanges, particularly for banking, investment funds, international trade and business, ICT, logistics, e-business and biotechnologies.

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