



## Issuance of the 2021 budget draft law Important changes for the Luxembourg real estate sector

**The Luxembourg 2021 budget draft law 7666 has just been issued and submitted by the Luxembourg Minister of Finance to the Luxembourg parliament on October 14<sup>th</sup>, 2020.**

**While the current worldwide sanitary crisis has seriously impacted the overall economic landscape, various countries have faced such crisis by investing mainly in the health sector. Luxembourg wants now to maintain the current control of the crisis, by providing economic and tax measures in the budget draft law to stimulate the economy, while ensuring a tax justice between the taxpayers. In this context, the following main corporate tax measures are proposed in the budget draft law.**

### **Introduction of a property tax for investment funds receiving income from Luxembourg real estate assets**

The most striking measure contained in the draft law undoubtedly is the introduction, as from January 1<sup>st</sup>, 2021, of a 20% tax (under the form of an “immovable property retention tax”) on all the (direct and indirect) income realized by investment funds from Luxembourg real estate assets (i.e., rental income or capital gains derived from the

disposal of the real estate assets). Remarkably, the taxable basis in respect of recurring income, would be the **gross amount of the rental income** (excluding VAT).

The draft law provides a **wide definition of the targeted investment funds – basically all funds that could hold real estate are in scope**:

- **Undertakings for collective investment** (“UCI”) governed by Part II of the amended law of December 17th, 2010 (i.e., “Part II” SICAV and FCP - fonds commun de placement), except the ones incorporated under the form of a SCS - société en commandite simple;
- **Specialized investment funds** (“SIF”) governed by the amended law of February 13th, 2007, except if incorporated under the form of a SCS; and
- **Reserved alternative investment funds** (“RAIF”) governed by article 1 of the amended law of July 23rd, 2016, except if incorporated

A look-through approach is also considered in case the Luxembourg real estate assets are held by these investment funds through transparent entities under the definition of Luxembourg domestic tax law.

From a compliance perspective, the investment funds have the following obligations before May 31<sup>st</sup>, 2022:

- **File a specific tax return** detailing the amount of income received per real estate asset, if any, and payment of such tax before June 10th following the filing; and
- **All the investment funds** should also inform the Luxembourg tax authorities on whether or not they hold or were holding Luxembourg real estate assets in 2020 and 2021. Should the investment funds hold Luxembourg real estate assets and file the specific tax return, they do not need to inform the tax authorities on a separate basis.

Should the above-mentioned elements not be respected by the investment funds, **the general tax rules should apply** (i.e., penalty for late filing, fines) and the tax authorities should also be able to levy **an additional tax penalty of EUR 10,000 in the absence of information**.

### **Amendment of registration duties rate in relation to the contribution of real estate to a civil or commercial company**

Further to European directives in 2008 and taking into the divergence of registration fees/transcription rights rates between the sole contributions and the contributions in exchange for valuable considerations, it has been decided to **significantly increase the registration duties on contributions of immovable property located in Luxembourg to a foreign or Luxembourg entity from 0.5%+2/10ths to 2%+2/10ths, and the transcription rights from 0.5% to 1%. The increased rate would apply as from January 1<sup>st</sup>, 2021.**

## Introduction of a specific provision in relation to the vertical and horizontal tax unity

The draft budget law intends to clarify (with entry into force as from tax year 2020) the decision of the European Court of Justice dated May 14<sup>th</sup>, 2020 (i.e., case C-749/18) regarding the change from a vertical tax unity to a horizontal one without triggering the related tax consequences of an exit of a tax unity, provided the following conditions are met:

- The integrating shareholder of the dissolved tax unity becomes the integrating subsidiary of the new tax unity;
- The change of tax unity occurs before the end of 2022 taxable year;
- The change of tax unity involves an extension of the tax unity; and
- The integrated entities and integrating company engage themselves into that tax unity for at least five years. For the companies being already part of the dissolved tax unity, the starting date of the previous tax unity is taken into account for the new period.

## Other measures

- Amendment of the depreciation rates and period for rented real estate assets
- Introduction of an allowance for reduction of rents accorded by landlords to their tenants
- Amendment of subscription tax rate to net assets held by UCI which are in relation to sustainable activities in the environmental field
- Prohibition for SPF (“sociétés de gestion de patrimoine familial”) to hold real estate assets through the holding of partnerships and FCP (while this will continue to be allowed through joint-stock companies). This measure would apply as from July 1st, 2021.

The information reported in this newsletter is based on the information included in the current draft budget law **and may be amended during the parliamentary discussions, and/or further to State Council review**: the legal provisions that will be included in the final law may obviously still differ from the current draft law.

**Our tax team** is at your disposal should you have any questions relating thereto or should you need assistance to assess impacts on your business.

## Contacts

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