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Luxembourg – Review of Important 2015/2016 Tax Rules for Employers, Individuals

by KPMG Luxembourg, société coopérative (a KPMG International member firm)

flash Alert

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In this *GMS Flash Alert* we highlight some tax-related developments in Luxembourg that occurred at the end of 2015 and in early 2016 that may impact individuals (including those on international assignment) and their employers.¹ We highlight measures that provide for:

- a “step-up in basis” mechanism for individuals transferring their tax residency to Luxembourg;
- the possibility that individuals who were not tax residents in Luxembourg for the entire year could be taxed in Luxembourg as if they had been residents for the whole year;
- a tax amnesty regime for the years 2016 and 2017;
- a decrease in the tax-free reimbursement payable by an employer to an employee for the employee's claimed expenses tied to the use of his private car for professional/business purposes; and
- in a separate development, new rules employers must follow in relation to employee stock option plans – these rules apply to all stock option schemes (and to any other type of long-term incentive scheme).

Why This Matters

These measures will impact the compliance obligations of individuals and their employers – therefore individuals, employers, and their tax service providers should take note. The measures also introduce more streamlined and flexible rules where partial-year nonresident taxpayers are concerned. And, the tax amnesty program offers an opportunity for concerned taxpayers to regularize their affairs with the tax authorities with reduced penalties.

Introduction of a “Step-up in Basis” Mechanism

Bill n. 6891 introduced a “step-up in basis” system into Luxembourg tax law for individuals transferring their tax residency to Luxembourg. When a taxpayer becomes Luxembourg tax resident, the acquisition price of his shares and convertible loans that represent substantial shareholdings (i.e., participations of more than 10 percent) will be deemed to be the market value of said assets at the date the individual became a Luxembourg resident taxpayer. The initial acquisition date of the assets transferred must still be considered to calculate the holding period.

Such taxpayers will not be taxed in Luxembourg on the latent capital gains of these assets prior to their transfer of residence.

Election to Be Taxed as a Resident Extended to Full-Year Nonresidents

In order to comply with European Union (EU) principles, Bill n. 6891 introduced an option for *all* individuals who were not tax residents in Luxembourg for the entire year to be taxed in Luxembourg as if they had been full-year residents. This option, an improvement of Article 154 alinea 6 LITL, allows these taxpayers to benefit from a full year's tax rates, exemptions, and tax deductions/credits in respect of their declared worldwide income. This option already existed, but was limited to employees and retired persons who were tax resident for only part of the year.

Consequently, when a taxpayer paid – or had taxes withheld – on his salary and pension in excess of what actually should have been due, the taxpayer may seek a tax refund via a tax return.

Introduction of a Tax Amnesty Regime

The Budget Bill introduced a temporary tax amnesty regime for the years 2016 and 2017 for the benefit of Luxembourg taxpayers (residents and nonresidents). To benefit from this tax amnesty, the taxpayer will have to voluntarily file a unique tax return adjusting the prior year tax return(s) to disclose both undeclared income and related assets, and pay the tax due plus a penalty of 10 percent of the total tax due if reported in 2016, or of 20 percent if reported in 2017. (Taxpayers who are found to be non-compliant and do not subject themselves to the tax amnesty regime will likely be subject to normal rules and procedures, which entail heavier sanctions.)

Applicability of Above Measures

All measures are generally applicable as from 2016, except for the “step-up” provision and the change to the election to be taxed as a resident, both of which apply retroactively starting January 2015.

Lump-Sum Reimbursement for Private Car Use² – New Amount of the Lump-Sum Reimbursement as of 1 August 2015

The tax-free reimbursement payable by an employer to an employee for the employee's claimed expenses tied to the use of his private car for professional/business purposes decreased from EUR 0.40 per km to EUR 0.30 per km as of 1 August 2015.

All amounts paid above the lump sum of EUR 0.30 per km are considered as a benefit-in-kind and thus taxable as salaried income. This benefit is subject to wage tax and to the so-called 0.5-percent temporary tax for the budget balance (*l'impôt d'équilibre budgétaire temporaire*). It is also subject to social security contributions (up to the ceiling, except for the 1.4-percent “dependence insurance”).

As of 1 August 2015, for any reimbursement made at EUR 0.40 per km instead of EUR 0.30 per km, the taxable benefit-in-kind would amount to EUR 0.10 per km.

The employer has the responsibility to process the correct wage withholding tax on that benefit-in-kind.

Rules Governing Stock Option Plans

The new circular LITL n° 104/2bis was issued by the Head of the Luxembourg tax authorities on 28 December 2015.³

Employers planning to institute a stock option scheme (or any type of Long-Term Incentive Plan) for their employees⁴, must notify the Head of the tax office, "Bureau RTS," which oversees these Luxembourg employers, at least two months before setting up the scheme. In addition, they must include both a copy of the scheme and the list of the salaried beneficiaries.

Furthermore, employers have to communicate with minimal delay to the Head of the relevant Bureau RTS those stock option schemes set up before 1 January 2016, and whose options have not yet been granted.

Footnotes:

1 See the laws published in the Luxembourg government's official journal (in French):

Mémorial A n° 242 du 23.12.2015 at: <http://www.legilux.public.lu/leg/a/archives/2015/0242/index.html>

Mémorial A n° 245 du 24.12.2015 at: http://www.impotsdirects.public.lu/legislation/legi15/Memorial-A--N_-245-du-24-decembre-2015.pdf .

2 Règlement du Gouvernement en Conseil du 19 juin 2015 portant fixation de l'indemnité kilométrique pour les voitures utilisées pour voyages de service ([Mémorial A - N° 134 du 17 juillet 2015, page 2885](#)).

3 For Circulaire du directeur des contributions, L.I.R. n°104/2bis du 28 décembre 2015, see (in French): http://www.impotsdirects.public.lu/legislation/legi15/Circulaire-L_I_R_-n_-104-2-bis-du-28-decembre-2015.pdf .

4 As foreseen by the circular LITL n° 104/2 of 20 December 2012.

For reports on these measures from the KPMG International member firm in Luxembourg, see: *Luxembourg Tax News* – [Issue 2015-31](#) – December 2015 ("New individual and corporate tax measures") and *Luxembourg Tax News* – [Issue 2015-32](#) – December 2015 ("Stock option plans")

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KPMG's 2016 Global Assignment Policies and Practices (GAPP) Survey is now open and you are invited to participate. The updated 2016 GAPP survey features enhanced user functionality and reporting capabilities and refreshed survey categories reflecting current policy focus and practices that KPMG sees in the marketplace and new content requested by previous years' participants. Participation in the survey will allow you to benchmark your organization in relation to other survey participants on numerous aspects of an international assignment program, including: assignee selection and assessment, assignment preparation and planning, talent and performance management, assignment compensation and allowances, administration and outsourcing, as well as tax reimbursement approaches.

Please [click here](#) to access the 2016 GAPP Survey Web site page on www.kpmg.com.

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