



In this issue:

**Summary**

**Deloitte's View**

**People to Contact**

## GES NewsFlash

# Luxembourg – Draft Law n°6130 – Discriminatory Tax Treatment of Non- Resident Taxpayers

June 17, 2010

### Summary

Further to the decision of the European Court of Justice in Gerritse case (C-234/01), the European Commission requested that Luxembourg amend several provisions relating to the taxation of non-resident taxpayers.

### Tax treatment of Luxembourg source income

According to the current regime, Luxembourg source income derived by non-resident taxpayers, apart from salaries and pensions, are subject to progressive tax rates with a minimum rate of 15%. The same income derived by residents are not subject to the application of the minimum rate.

Luxembourg has decided to comply with the requirements of the European Commission, however without bringing the non-resident regime fully in line with the resident regime. The draft law foresees that, when progressive rates applied to the taxable income increased by the tax exempt band show an average rate of less than 15%, this rate would apply to the types of income normally subject to the 15% minimum rate, i.e. all income except salaries and pensions.

### Election to resident regime

Currently, non-resident taxpayers may elect to be treated like residents provided they derive at least ninety percent of their professional income in Luxembourg. This allows them to claim the deduction of special expenses and extraordinary charges normally limited to residents, subject to their foreign income -if any- being considered to calculate their Luxembourg tax rate.

The draft law plans a substantial amendment regarding the election condition. Indeed, in the future, the 90% threshold would be calculated on the taxpayer's total income and not only on his professional income.

### **Deloitte's View**

The proposed regime gives an advantage to non-resident taxpayers who derive less than EUR 15.300 of non-professional income in Luxembourg. Therefore, for a taxable basis of EUR 5.000, the gain would rise up to 30% of the tax amount and for a taxable basis of EUR 10.000, the gain would amount to 20%.

Regarding the election for the resident regime, the whole situation of the taxpayer would be taken into account in the future. Therefore, a taxpayer deriving only non-professional income in Luxembourg would be able to ask for the election and thus benefit from allowances and deductions currently granted to residents.

### **People to Contact**

If you have any questions concerning the issues in this GES NewsFlash, please contact one of the tax professionals as follows:

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### **Back to Top**

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