

Bill implementing ATAD 2 in Luxembourg domestic law and 2020 budget law voted on 19 December 2019.

Executive Summary

On 19 December 2019, the Luxembourg parliament approved the bills n°7466 transposing the ATAD 2 Directive EU 2017/952 into Luxembourg domestic law ("ATAD 2") and n° 7500 providing for the 2020 budget law ("Budget Law").

I. Bill implementing ATAD 2

The bill n°7466 transposing ATAD 2 into Luxembourg domestic law (the "Bill") will enter into force on 1 January 2020. The Bill provides for an exception for rules relative to reverse hybrid mismatches which will only be effective as from 1 January 2022.

ATAD 2 provides for the extension of the already implemented general hybrid-mismatch rule to situations involving hybrid financial instruments, hybrid entities, hybrid PEs, hybrid transfers, imported mismatches, reverse hybrid mismatches and dual residence mismatches between two member states or member states and third states¹.

From a technical point of view, the Bill (i) amends Article 168ter of the Luxembourg Income Tax law ("LITL") and (ii) introduces a new Article 168quater².

Although the initial draft was heavily commented by the Chamber of Commerce and the State Council, the Bill

approved by the Parliament took into account the comments provided by the State Council. In particular, the final draft states that, in presence of a reverse hybrid mismatch³, the sole portion of income falling under the scope of Article 168quater (i.e. income which has not been subject to tax in Luxembourg or any other jurisdiction) shall be subject to corporate income tax in Luxembourg⁴.

II. 2020 Budget law

Article 5 of the Budget Law, foresees the introduction of a new paragraph 29b AO (*Abgabenordnung*) limiting the scope of application of advanced tax agreements ("ATAs") granted to Luxembourg taxpayers by the tax authorities⁵. As from the financial year ending 2019, ATAs granted before 1 January 2015 will be no longer binding. However, taxpayers may request new ATAs in accordance with the standard procedure provided for in Paragraph 29a (2) AO⁶. Further, the Luxembourg tax authorities (*Administration des Contributions Directes*) published a newsletter dated 3 December 2019 providing additional clarifications with regard to the impact of Paragraph 29b AO on (i) transactions which have not fully produced their effects before the expiration of the ATAs (i.e. end of the financial year 2019) and (ii) taxpayers using a financial year diverging from the calendar

¹ Directive EU 2017/952

² Bill n°7466

³ i.e. entities treated as transparent in their home jurisdiction and opaque in the jurisdiction of associated investors

⁴ For further information on the reverse hybrid mismatch rule, please see our recent publication on the matter: <https://www.gsk.de/de/folgen-der-atad-2-richtlinie-fuer-fondsstrukturen/>

⁵ §29b AO

⁶ §29a (2) AO



year. In both cases, taxpayers may respectively request for a new ATA before (i) the full execution of ongoing transactions and (ii) closing of the financial year ending 2020 provided that there are ongoing transactions⁷.

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⁷ Newsletter, 3 décembre 2019, *Administration des Contributions Directes*



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