

# Luxembourg: Abolition of capital duty

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**O**n December 16, 2008, the Luxembourg parliament adopted the long awaited legislation abolishing capital duty. The most important features of the new legislation, which enters into effect on January 1, 2009, are as follows:

**Capital duty will be completely abolished as from January 1, 2009.** This reform has attracted considerable attention from investors and corporate groups, as Luxembourg is one of the last EU Member States that still levy capital duty on equity contributions. This has sometimes been seen as an obstacle to or a burden for the structuring of certain transactions in Luxembourg. Consequently, the reform is expected to have a positive effect on Luxembourg's position as a financial centre.

**Capital duty "claw-back" provisions will no longer apply.** Under the current rules, an exemption from the levy of capital duty applies to certain share-for-share reorganisations involving companies from other EU Member States. This exemption is conditional upon the retention by the recipient company of: (i) the shares contributed, and (ii) a shareholding of at least 65 percent in the other company for a period of five years, failing which the capital duty will, in principle, become due.

According to the parliamentary documents, a permanent capital duty exemption will now be granted for the above transactions. This means that where a five-year holding period is currently required, this requirement will no longer apply.

The fixed capital duty of EUR1,250 applicable to special investment funds ("SIFs"), sociétés d'investissement en capital à risque ("SICARs"), certain pension funds and UCIs will also be abolished.

## Introduction of a fixed registration tax

A fixed registration tax of EUR75 will be payable upon the incorporation of a company, the amendment of a company's articles of association or the transfer of a company's corporate seat to Luxembourg.

Contributions of real estate assets situated in Luxembourg will however be subject to a proportional registration duty and to a transcription tax. If the remuneration for such a contribution is in the form of shares, the contribution will be subject to a registration duty of 0.6 percent and a transcription tax of 0.5 percent. Where the remuneration is in a form other than shares, however, the applicable rates will be six percent and one percent respectively.

Under certain conditions, only the fixed registration tax – and not the proportional registration duty – will be payable in the event of a contribution of Luxembourg real estate assets that is made within the framework of a reorganisation. The main condition is that the remuneration for the relevant transfer consists predominantly (i.e. over 50 percent) of shares in the company to which the assets were contributed.

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