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GES NewsFlash

Luxembourg – Reduction of Inheritance Taxes for Non-Residents

January 7, 2010

Summary

Draft law n°5954 submitted on 7 November 2008 and aimed at extending to non-residents some rules currently applicable to successions of residents only has been passed by the Chamber of deputies on 16 December 2009.

The purpose of this law is to ensure that the national legislation complies with the European principles of freedom of establishment and of free movement of capital and persons.

Current regime

Any transfer of estate on death is subject to a different regime in function of the place of residence of the deceased at the time of his/her death. In this regard, the place of residence of the beneficiaries of the succession (heirs, legatees...) is not taken into account.

In the event of death of a resident of Luxembourg, the transfer of the whole of his/her estate is subject to inheritance taxes ("droits de succession"), subject to certain exemptions. Taxes are computed on the net distribution received by each beneficiary (i.e. after deduction of any liability or charge relating to the assets transferred). Inheritance taxes are computed according to a progressive tariff established in function of the degree of relationship between the deceased and the beneficiary and of the amount of the assets transferred.

However, exemptions are provided in favor of the surviving spouse in presence of common children or descendants and in case of transfer in direct line of descent. In the absence of common children or descendants, the surviving spouse benefits from an abatement of 38,000 euro, applied to the net estate received before application of the basic rate of 5% (plus surcharge in function of the amount of the assets transferred). An identical regime is applicable to the surviving partner provided the partnership agreement has been concluded more than three years before the death

of the partner.

In the event of death of a non resident of Luxembourg, death duties de mortem causa (“droits de mutation par décès”) are levied on the share received by each beneficiary. Unlike inheritance taxes, death duties are based only on real estate located in Luxembourg and are due on the gross value of these assets. They are due whatever the degree of relationship between the deceased and the beneficiary. The basic rates applicable are respectively 2% for transfers in direct line of descent and 5% for transfers between spouses and partners, with or without common children or descendants (surcharge excluded).

Future regime

The law extends to non residents the rules currently applicable to residents for transfers in favor of the surviving spouse or partner and for transfers in the direct line of descent.

Where the estate of a non resident includes real estate property located in Luxembourg, the transfer of this asset in favor of his/her spouse or partner in presence of common children or descendants will be exempt from death duties. The same will apply for transfers in direct line of descent.

In absence of common children or descendants, the surviving spouse or partner will benefit from the abatement of 38.000 euro currently applicable only to transfers of the estate of Luxembourg residents. After application of the abatement, the share of the asset transferred would be subject to the basic rate of 5% (surcharge excluded).

Finally, the determination of the taxable basis subject to death duties will be amended. It will now be possible to deduct liabilities guaranteed by the assets transferred as well as liabilities relating to the purchase, improvement and keeping of the assets, as they exist on the day of the death. It is worth noticing that these liabilities will only be deductible provided documents are available to evidence their existence and the link with the assets concerned.

Deloitte's View

Considering the particular situation of the Luxembourg real estate market and the increasing migration towards boarder countries, the passing of draft law n°5954, whose provisions should come into force in 2010, embodies a significant move that will encourage the purchase of real estate by non-residents in Luxembourg.

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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