

“Old” rulings, rule no more!



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Luxembourg Minister of Finance Pierre Gramegna has presented the Luxembourg government's budget bill for year 2020 to the Luxembourg Parliament today (the Budget 2020 Bill).

Amidst others, the Budget 2020 Bill limits to five years the validity of advance tax agreements (the ATAs) which have been granted prior to 1 January 2015. Consequently, ATAs granted prior to 2015 will, if the Budget 2020 Bill is voted, no longer be valid as of 1 January 2020. Hence, the concerned ATAs will be applicable for the last time with respect to the tax returns for the financial year 2019 and affect companies benefiting from such ATAs from the coming financial year on.

The reason behind this proposed legislative change is to prevent the application of ATAs granted prior to the implementation of the current ATA procedure. Indeed, ATAs granted under the current procedure are valid for no more than five years, whereas older ATAs do currently not know such time limitation. The Budget 2020 Bill argues that this change will thus ensure the legal coherence between former and current ATA procedures. If a taxpayer wishes to benefit from provisions granted under the former ATA, a new ATA request has to be introduced pursuant to the current procedure. This proposal is an exception to the existing framework on ATAs which can only be asked before a certain fact pattern is actually implemented.

Taxpayers may wish not to apply for a new advance tax agreement, for instance, to avoid the payment of the fee for ruling applications provided for by paragraph 29a of the tax procedural law (Abgabenordnung) or the exchange of ruling on an EU basis under the directive on administrative cooperation, bearing however in mind that “old” ATAs were also concerned by an exchange procedure. It is likely that the vast majority of situations governed by ATAs will simply continue to apply, as the purpose of an ATA was simply to confirm the application of the law and to provide fiscal safety to the taxpayer. Absent any legislative change, the fiscal analysis should a priori remain unchanged. However, in certain situations, the tax authorities have found that situations covered by ATAs could be considered abusive. The tax judge has systematically so far

rejected this approach, considering that the tax authorities were bound by past rulings and could only depart from them for the future in case they revoke the ATA. The new law, assuming it is adopted, might enable the authorities to revisit situations for the future which they might consider not to be in line with the prohibition of abuse of law.

It has, however, to be seen whether the current proposal will actually be adopted, as it impacts existing structures and hence constitutes an obstacle to fiscal safety.