

## **The Arm's Length Principle And Profit Participating Loans: First Decision By Luxembourg Courts - Tax Case Study**



Our tax litigation team recently had the opportunity to assist a taxpayer in an appeal for the reversal of a decision issued by the Luxembourg tax administration (“LTA”) that considered that the interest on a profit participating loan (“PPL”) was excessive, and that requalified a portion thereof into a hidden profit distribution subject to a 15% withholding tax.

This case is of particular interest given that it is the first judgement analysing the compliance of the variable interest of a PPL with the arm's length principle. The Administrative Tribunal of Luxembourg (“Tribunal”)[1] confirms that the interest rate of a PPL may be justified by a comparison with the arm's length interest accrued during the same period on a similar fixed interest loan. It also acknowledges that any value in the interest rate range determined by the economic analysis satisfies the arm's length principle. Finally, the decision recalls the binding character of an advance tax confirmation (“ATC”). This decision is final.

[1] Administrative Tribunal of Luxembourg, 4th chamber, case n° 43264 dated 13 July 2021.

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