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The unsettled Luxembourg tax matter: the treatment of redemptions of “alphabet” share classes

The new year 2023 has started off interestingly for Luxembourg tax professionals as the local administrative tribunal ruled (once again) on the tax treatment of redemptions of multiple classes of shares in Luxembourg companies (the so-called, “alphabet classes of shares”).

Notwithstanding the existence of several other judicial decisions on the contested subject matter - notably, the decisions of the administrative tribunal issued on 22 March 2019 and 23 November 2017 – the present decision shows that the principle under which redemption and cancellation of alphabet share class transactions should be qualified as sale and purchase of securities and not dividend distributions is hardly set in stone yet.

Usurping the opportunity to bring more clarity to the matter, the administrative tribunal has confirmed that a change in participation in a commercial company carried out by the sole shareholder (e.g. repurchase of one or several classes of alphabet shares), accompanied by a subsequent share capital reduction of such commercial company qualifies as proceeds derived from the disposal of a participation in the sense of the relevant Luxembourg tax law provisions, and is normally not considered as profit distributions. As a result, a Luxembourg withholding tax should not apply in respect of such a transaction. However, a novelty of the administrative tribunal’s approach (unmentioned in previous decisions on the matter) lies in a caveat – the withholding tax will not apply to repurchase of one or several classes of alphabet shares, accompanied by a subsequent share capital reduction only to the extent the redemption price of such class of shares does not exceed its fair market value.



The practical effects of the above decision are to be seen (if any, as the decision can be appealed by the parties within a 40 day-period from the issuance of the judgment and if appealed, can then be bashed by a higher court).

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