

Luxembourg: Rules on tax deduction of donations changed

The Luxembourg tax authorities issued a tax circular on 20 July 2009 that allows a tax deduction for donations made to recognized public service organizations in other EU/EEA Member States (e.g. educational, cultural, scientific, audio-visual institutions, etc.). The circular was issued in response to a decision of the European Court of Justice in the *Persche* case, in which the Court ruled that domestic tax laws that discriminate against donations to public interest organizations based in other EU Member States violate the free movement of capital principle in the EC Treaty in cases where a donation made to a nonresident organization satisfies the conditions laid set forth under domestic law.

Luxembourg tax law allows a tax deduction for cash donations to state-approved organizations considered to be in the public interest, either on the basis of a special law or pursuant to general procedures. The way these procedures operated in practice discriminated against nonresident organizations, with the result that only Luxembourg organizations were able to obtain the necessary state approval and therefore qualify as a tax deduction. Under the general procedure, the public interest nature of the organization must be verified by the relevant state body. While, in theory, this should apply to both Luxembourg and foreign organizations, in practice, it has been difficult to verify the objectives of foreign organizations, so that donations to non-Luxembourg non-profits have been disallowed as deductions.

In addition to ending the disparity in treatment between Luxembourg and EU/EEA non-profit organizations, the new circular also provides that taxpayers are not required to demonstrate the status of the organization at the outset; the tax authorities can rely on other means to verify status, such as official listings issued in the country concerned or a specific certificate to be filed by the organization.

The circular will allow many taxpayers to increase their tax deductions. However, it should be noted that, to be deductible, the total annual value of the donation must be at least EUR 120 but no more than EUR 1 million or 20% of net income for the tax year concerned (donations exceeding this ceiling may be carried forward for the two subsequent years), whichever is lower. In addition, the taxpayer must file a tax return. Finally, nonresident taxpayers may take advantage of the deduction provided at least 90% of their professional income is taxable in Luxembourg (50% for Belgian residents) and they opt to be taxed in Luxembourg.

— Joëlle Lyaudet (Luxembourg City)
Partner
Deloitte Luxembourg
+352 (45) 145 2582
jlyaudet@deloitte.lu

About Deloitte

Deloitte refers to one or more of Deloitte Touche Tohmatsu, a Swiss Verein, and its network of member firms, each of which is a legally separate and independent entity. Please see www.deloitte.com/about for a detailed description of the legal structure of Deloitte Touche Tohmatsu and its member firms.

Deloitte provides audit, tax, consulting, and financial advisory services to public and private clients spanning multiple industries. With a globally connected network of member firms in 140 countries, Deloitte brings world-class capabilities and deep local expertise to help clients succeed wherever they operate. Deloitte's 165,000 professionals are committed to becoming the standard of excellence.

Deloitte's professionals are unified by a collaborative culture that fosters integrity, outstanding value to markets and clients, commitment to each other, and strength from cultural diversity. They enjoy an environment of continuous learning, challenging experiences, and enriching career opportunities. Deloitte's professionals are dedicated to strengthening corporate responsibility, building public trust, and making a positive impact in their communities.

Disclaimer

This publication contains general information only, and none of Deloitte Touche Tohmatsu, its member firms, or its and their affiliates are, by means of this publication, rendering accounting, business, financial, investment, legal, tax, or other professional advice or services. This publication is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your finances or your business. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser.

None of Deloitte Touche Tohmatsu, its member firms, or its and their respective affiliates shall be responsible for any loss whatsoever sustained by any person who relies on this publication.