VANDENBULKE
CORPORATE, FINANCE AND TAX LAWYERS

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IS LUXEMBOURG'S TAX BUBBLE ABOUT TO BURST?

Does Luxembourg deserve its reputation as a tax havens? What are biggest issues facing Luxembourg's legal industry in the next 12 months? How Luxembourg anticipates any impact from Brexit?

THE LAWYER

Denis Van den Bulke,
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The Lawyer: **Does Luxembourg deserve its reputation as a tax haven?**

DV: Referring to Luxembourg as a tax heaven is truly inappropriate. The Luxembourg tax system, which is Germany-inspired, levies taxes at a global rate of 40 per cent of GDP, which is higher than the average of most OECD countries. Whichever statistics you consult you will note that the Luxembourg tax burden is one of the heaviest of the OECD countries. In terms of governance the country strictly applies the rules of good conduct of the European Commission and exchange of information.

For the past 30 years the country has applied EU directives in respect of the parent-subsidiary or merger exchange regime and imposes strict capital ratios to holding companies, limiting financial leverage. Luxembourg financing companies are paying 30 per cent tax on their financing margin under strict transfer pricing conditions which are in no manner different from those prevailing in the US or other European countries.

Obviously, Luxembourg has been a victim of the witch-hunt affecting the tax environment in general, and the scapegoat of an aggressive campaign. This oversimplification was also accommodating to foreign governments pleased to point out to their publics that this small country was the cause of the deficiencies in their own ailing budgetary policies.

Most of this Luxembourg-bashing derives from the whispers that the tax administration would grant, in a praetorian way, favourable individual tax treatment. This obliterates the fact that most of the tax agreements made public confirmed only a general tax treatment to individual cases: this does not make it the preferred regime.

The Luxembourg tax regime has an economic approach whereby substance prevails over form, and it is often necessary to obtain confirmation from the tax administration that its economic analysis is aligned with the investor's.

Business needs security and rulings disperse the uncertainty about tax treatment. I would hope that other foreign tax administration take inspiration from Luxembourg and generalise that practice.

***The Lawyer:* What has been the impact on Luxembourg's legal industry of the increased scrutiny of the country's relationship with corporates? Has it affected law firms' revenue or their ability to recruit, or attract new clients?**

DV: In essence, the increased scrutiny of foreign governments on Luxembourg has not adversely affected the legal market. Ironically, instructions for tax work have increased in recent months. Clients have indeed instructed law firms to review and further monitor their tax compliance process, and validate their tax situation. The role of tax advisers has changed: they are not relying on the comfort of an advance tax agreement issued by the authorities but now play a role in opining on the tax effects of transactions or the structures they advise. Their liability is in play and at risk, and this requires an enhanced capacity to diagnose the effective tax treatment, in particular because they lack official guidance.

This redefinition of the tax adviser role calls for more sophisticated profiles that are still scarce in the market. Law firms relying heavily on advance tax agreements have seen this source of income run dry. In search of compensation they have moved to alternative income sources by setting up transfer pricing teams who provide benchmarks for financing arrangements.

***The Lawyer:* What are biggest issues facing Luxembourg's legal industry in the next 12 months? Do you anticipate any impact from Brexit? What about Trump's proposal to cut tax rates to encourage US companies to repatriate profits?**

DV: I believe we will see an over-concentration of law firms and increased competition. This could lead to a saturation of legal services, with potential loss of quality across the board and pressure on margins. Luxembourg is heavily dependent on foreign-educated lawyers who are not very familiar with the Luxembourg legal environment. Legal experience coupled with strong academic and business-minded capacity is a virtue nowadays.

The challenge for Luxembourg firms is to upgrade the sophistication of their service and advice, and recruit professionals who are experienced enough to counsel on complex transactions with a capacity in line with other international financial centres. To serve a premium clientele firms must offer premium legal services.

We see the Brexit as an opportunity: Luxembourg is a gateway for investment in Europe and will remain so. Its central and neutral position between Germany and France and its multilingual capacity outpace its rivals. Furthermore, UK investors and London financial actors are already familiar with Luxembourg.

The Luxembourg investment fund industry, which is the second-strongest in the world, will certainly benefit from the uncertainty about the passporting of UK based- funds and managers. We are also convinced that US fund managers will be attracted to locate their management platform in Luxembourg instead of London, which will not benefit from same open access to the wider EU markets.

"A superficial press analysis of the tax system plus over-simplification has depicted Luxembourg as a black sheep of international finance" *Denis Van den Bulke*

Beyond the subliminal political message conveyed by Trump we do not see US companies repatriating their treasury to the US for funding their worldwide operations. Luxembourg will keep its attraction as an international financing hub and a cash pool to fund international expansion. Other factors than a single nominal tax rate drive the decision to choose Luxembourg; a growing Asian and Arabic investment presence; an easy-access quotation; and an administrative flexibility with close proximity to the regulatory authorities.

***The Lawyer:* What can law firms do to help counter the country's image as a tax haven?**

DV: Sensationalist press has had a detrimental effect on Luxembourg's reputation. A relative ignorance of international tax rules, a superficial analysis of the Luxembourg tax system coupled with oversimplification have depicted Luxembourg as one of the black sheep of international tax and finance.

Lawyers must strive against this because today Luxembourg is not about tax evasion. In this respect, lawyers have an educational role to play.

Over the past 30 years we have seen in Luxembourg the emergence of a true fund and finance industry based on tangible competences, financial pragmatism and multilingual efficiency. These assets and our economic statistics are the strongest arguments to use against those who reduce the country to a tax heaven.

Although some investors may have tried to abusively draw tax benefits from Luxembourg, a public mea culpa would just offer arguments to our detractors and legitimise their anti-Luxembourg opinion. Our tax regime is neither better nor worse than our neighbours.

This interview is an excerpt of a longer article published by The Lawyer, featuring VANDENBULKE and some other independent Luxembourg based firms. Read the complete article at :
https://www.thelawyer.com/issues/30-january-2017/luxembourg-tax-bubble-burst/

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About VANDENBULKE

VANDENBULKE is a Luxembourg law firm providing specialized guidance in Corporate, Finance and Tax law. The firm was incepted with the unique ambition to offer a high-quality, efficient and highly focused legal advice to world-class professionals.
VANDENBULKE brings a fresh, independent and energetic approach in the emerging Luxembourg legal market. The firm is specialized in three main practices of law - Corporate, Finance and Tax.
This three-pronged specialization is distinctive of our integrated approach in most of the transaction we advise.
We pride ourselves on being able to offer clients more senior-level attention than may be available from many of our competitors. In addition, our limited size reduces potential conflict of interest providing integer and independent advice to our clients.