PROFIT-SHARING PREMIUM

As indicated in our payroll alert of 2 November 2020 about the draft law regarding the State budget for 2021[1], this law[2] has introduced a new article 115 no. 13a regarding the profit-sharing premium into the modified law of 4 December 1967 on income tax (LIR). On 11 February 2021, the tax authorities have published a circular LIR no. 115/12 as well as FAQ, with useful clarifications (see link hereafter, in French language only):
[Newsletter du 11 février 2021 - Archives - Administration des contributions directes - Luxembourg (public.lu)]

I. Text of the law

Article 115 no. 13a LIR specifies that employers may use this regime if they are profit-making and if the total of profit-sharing premiums does not exceed 5% of their net profit.

On his side, the employee shall be registered to a social security regime (Luxembourgish or foreign, linked by a bi- or multilateral social security instrument), and the exemption of the profit-sharing premium of the profit-sharing premium shall not exceed 25% of the total gross amount of the annual remuneration, excluding benefits in kind and in cash, of the tax year during which the premium is paid. If these conditions are fulfilled, the premium benefits from a 50% tax exemption.

The new article specifies that at the moment of the payment, the employer must communicate, in the prescribed format, a nominative list of employees benefitting from this measure during the tax year to the head of the tax office competent for wage tax audit at the employer's company.

II. Circular of the director of the tax authorities LIR no. 115/12 of 11 February 2021

(1) Communication

The circular of the director of the tax authorities LIR no. 115/12 of 11 February 2021 specifies that the communication indicated under I. is to be transmitted electronically to the tax authorities in a prescribed format, via a secured IT transmission (kindly find the link hereafter, in French language only, for more details):
[Prime participative - Échanges électroniques - Administration des contributions directes - Luxembourg (public.lu)]

The circular furthermore specifies that in case of lack of transmission, the exemption cannot be granted and a wage tax adjustment may need to take place. The exemption of 50% only applies to the part of the profit-sharing premium which does not exceed the threshold of 25% of the gross amount of the annual remuneration, without any benefits in cash or in kind. It is therefore clarified that the part of the profit-sharing premium liable to benefit from the partial tax exemption (and not the exemption itself, as this might be deducted from the law) must not exceed 25% of the remuneration.

[1] Draft law no. 7666
[2] Law of 19 December 2020 regarding the budget of State revenues and expenses for the year 2021

Example of calculation of the exempted part:

Annual salary	100.000 euros
Maximum profit-sharing premium (25%)	25.000 euros
Exempted amount (50% of 25%)	12.500 euros

(2) Readjustment of the limit of 25%
If an employee leaves the employer during the year because he retires, takes up a new job, stops working, or if the employee reduces or increases his occupation rate, the employer may need to adjust the wage taxes withheld.

(3) Social security contributions
The circular specifies that the social security contributions due on the exempted part of the premium are not tax-deductible according to article 110 no. 1 LIR.

(4) Profit-sharing premiums paid to partners/shareholders of capital companies
If profit-sharing premiums are granted to a partner or shareholder of a capital company, who receives an income from employment from this company, and even if this partner or shareholder is the only employee receiving such a premium, this profit-sharing premium is to be considered as income from employment, liable to benefit from the exemption according to article 115 no. 13a LIR.

III. FAQ

The tax authorities have published a list of FAQ summarized in below spreadsheet:

No.	Question	Response
1	Operating year to be taken into account in order to determine the profit and the 5%- limit	Last operating year closed before 1 January of the year of payment of the profit-sharing premiums
2	Definition of « positive result »	Net benefit. In case of a commercial company : commercial profit after deduction of taxes[3]
3	Group of companies	The employer in a narrow sense is to be considered (employer of the employee as registered in the files of the tax authorities).
4	Communication	Needs to be done to the tax authorities (see point II.(1) above)

[3] Result of the operating year as indicated in the account 142 – result of the operating year of the normalised accounting plan according to the grand-ducal regulation of 12 Septembre 2019 determining the content of the normalized accounting plan (“contenu de plan comptable normalisé”)

No.	Question	Response
5	Indication of the exemption on the salary certificate (template 160)	The exempted part of the premium must be indicated in section C of the salary certificate.
6	Which elements are to be considered/not to be considered in order to calculate the 25%-limit?	To be considered: normal salary, overtime hours, periodical premiums, etc. To be excluded : benefits in kind and cash benefits, e.g. bonuses, 13th month, interest bonifications, travel expenses, reimbursement of expenses etc., profit-sharing premium itself
7	Estimation of the predictable annual salary	To be done according to the available data. A regularization needs to be done in case of adjustment of the salary during the year.
8	Retirement, departure during the year and change of working hours during the year	The employer will adjust the withholding tax, if required.
9	Exonerated salaries	If an employee works abroad for a number of days and if these days are not taxable in Luxembourg, the global annual salary (including the exonerated part) is to be considered for the 25%-limit. The breakdown between the part of the profit-sharing premium taxable in Luxembourg and the part taxable abroad is to be done according to the days of presence in each country.
10	The profit-sharing premium exceeds the limit of 25%	The part of the profit-sharing premium exceeding 25% is to be taxed as non-periodical income.
11	Cercle and number of potential beneficiaries	Neither the number of employees, nor their qualities (employee, shareholding manager or other) are limited.

We send you the link to the FAQ for additional information (in French language only):
[FAQ-sur-prime-participative.pdf (public.lu)]

Of course, BDO is at your disposal for an individual consultation.

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