

## NEWSLETTER

### VAT ON COMPANY CARS - CIRCULAR 807BIS

On 28 April 2023, the Luxembourg VAT authority issued its circular n°807bis. It clarifies the application of VAT on **company cars made available to employees for private use**, following the European Court of Justice ruling C-288/19.

The provision of a car by the employer to the employee is to be considered a long-term rental of a vehicle, and thus subject to VAT in the country of residence of the employee, if **one of the following conditions is met:**

- The employee **pays the employer** for to use of the car, or
- A portion of the employee's salary is **retained as compensation** for the use of the car, or
- The **waiver** of any other potential advantages the employee may have in view of the use of the car, or
- The vehicle is made available to the employee for a **duration exceeding 30 consecutive days**, during which the employee is granted permanent and exclusive right of use of the car.

**If the company car is also used for professional purposes, the taxable basis can be reduced accordingly.**

The circular specifies that corrective annual VAT returns may be filed for the 5-year statute of limitations period, if this VAT treatment has not been applied in the past, regardless if a tax assessment has already been issued.



### REFORM OF THE INVESTMENT TAX CREDIT - BILL TABLED IN JULY 2023 FOR AN APPLICATION FROM JANUARY 2024 ONWARDS

The reform aims to encourage and accelerate the digital transformation and the ecological and energy transition of Luxembourg companies.

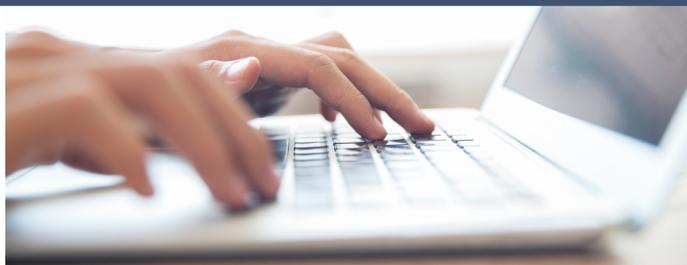
As a result, their competitiveness will be further strengthened.

New features specific to digital transformation and ecological and energy transition:

- Eligibility of investment and operating expenditure;
- Introduction of an additional subsidy rate of 6% for investments.

Other new features:

- Increase in the overall rate of tax relief from 8% to 12%.
- Repeal of the tax bonus for additional investments.



## TELEWORKING VS SOCIAL SECURITY: CHANGES TO THE EUROPEAN FRAMEWORK AGREEMENT FROM 1 JULY 2023 ONWARDS

From now on, a frontier worker may carry out his duties (by teleworking) in his country of residence, while remaining subject to the social security legislation of the Member State where his employer's registered office or place of business is located, subject to **certain cumulative conditions**:

- Both the worker's country of residence and the country in which the employer is established have signed the framework agreement;
- The time worked in the country of residence is at least 25% and less than 50% of the worker's total effective working time. Otherwise, the usual European agreements apply (EC 883/2004 and EC 987/2009);
- There must be an existing connection to the employer's IT infrastructure;
- The employee in question does not carry out another type of activity in his or her country of residence or in any other country.

Otherwise, the non-resident teleworker risks being affiliated to the social security system of his or her country of residence.

This initial agreement is valid for five years.

### SIGNATORY COUNTRIES OF THE FRAMEWORK AGREEMENT

Germany, Belgium, and France have signed the agreement. For other countries, it is essential to check beforehand whether the employee's Member State or assimilated country of residence is a signatory to the agreement.

### TRANSITIONAL PERIOD

Up to and including **30 June 2024** to declare any teleworking by non-resident employees that took place from 1 July 2023 onwards.

## Summary:

### Teleworking thresholds and procedures from 1 July 2023 onwards

WORKING TIME			
< 25%	≥ 25% and < 50%		≥ 50%
Framework agreement non applicable	Declaration to the CCSS using the Token		Framework agreement non applicable
↓ Application EC 883/2004 et 987/2009	Analysis by CCSS		↓ Application EC 883/2004 and 987/2009
	Criteria met	Criteria non met	
↓ Request in the country of residence	New framework agreement: Issue of form A1 form	Request transferred in the country of residence	↓ Request in the country of residence

## TELEWORK VS TAXATION

It is important not to confuse the two. The framework agreement in question relates solely to social security affiliation and not to tax aspects.

The tax provisions in force remain unchanged. If the tolerance thresholds are exceeded during the year, the days worked outside Luxembourg will be taxed in the employee's country of residence.

TOLERANCE THRESHOLDS IN FORCE (IN DAYS)		
Germany	Belgium	France
19	34	34

## POINTS OF ATTENTION

- Any teleworking carried out by a non-resident employee must be declared on the CCSS website.
- Implications for employment contracts and working hours.

## REFORM OF ESTABLISHMENT RIGHTS

On 20 July 2023, the Chamber of Deputies of the Grand Duchy of Luxembourg voted to reform the right of establishment. The main objective is to modernise and stimulate the entrepreneurial spirit by simplifying the regulatory framework.

### THE MAIN CHANGES

#### 1. Introduction of a "new chance" after bankruptcy

Entrepreneurs who have gone bankrupt for reasons beyond their control\* will be able to obtain a new business permit, despite the existence of public debts.

\* Natural disaster, unintentional destruction of the production site or production equipment, loss of a major customer, partial or total incapacity to work of the director, loss of profitability following a major market disruption, etc.

#### 2. Digitised and simplified administrative procedures

The establishment permit will be issued electronically and associated with a unique 2D barcode. This will enable the Middle Classes Department to access and update a certain amount of information relating to the establishment.

The code will have to be displayed on the company's website and in each point of sale. It should also appear on letters, e-mails, the website, estimates, invoices, signs on building sites, etc.

#### 3. New categories of business licences

The following activities will require a licence with a specific wording:

- Commercial vehicle sales activities and services;
- Commercial activity and services involving the rental of shared workspace or offices with ancillary services;
- Food retailing activities and services;
- Commercial activity and services involving high-value movable goods.

All holders of this type of establishment licence will have two years from 1 September to comply.



#### 4. Specification of qualification requirements for certain commercial professions

Real estate business introducers: obligation to complete an accelerated training course covering professional ethics and all Luxembourg legislation relating to the real estate sector. For more information, please contact the House of Entrepreneurship.

Operators of discotheques: same qualification requirements as operators of public houses (training for access to the HORECA professions).

Deadline for compliance: 2 years from 1 September 2023.

#### 5. Simplification of the process for obtaining a premises licence

From now on, it will no longer be compulsory to be a partner or employee of the company to apply for an establishment permit. The qualification requirement has been abolished for certain craft activities included in a new list C (e.g. photographers, tattoo artists, etc.).

The reform thus takes account of the new realities of certain trades, where requirements have changed, particularly in the context of digitalisation.

## REFORM OF ESTABLISHMENT RIGHTS

### 6. Details of professional respectability

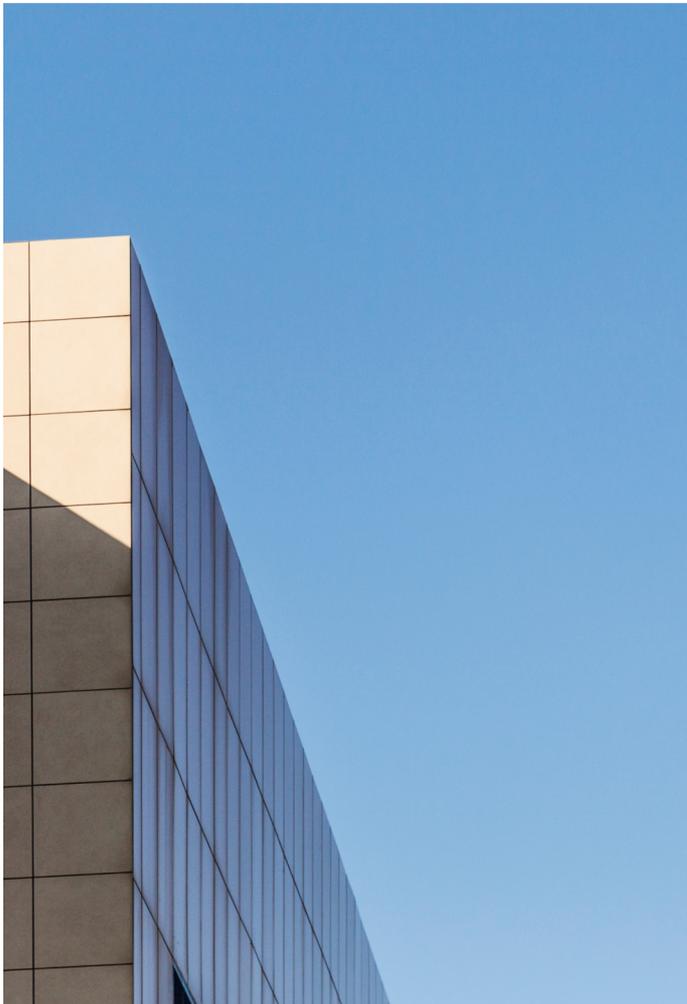
The law establishes a list of breaches that automatically affect professional respectability.

### 7. Easier transfer of business (list A craft activities)

An employee who has held a position in a company for three years (previously ten) will now be able to take over the business licence. However, they will have to complete the training required to become a manager within five years.

### 8. Limitation on the number of business licences

An individual may hold a maximum of two licences simultaneously if the companies are not part of the same group, unless the individual holds, directly or indirectly, at least 25% of the shares in each company.



## CLARIFICATION AND CORRECTION OF THE LAW OF 10/08/1915 ON COMMERCIAL COMPANIES AS AMENDED BY THE LAW OF 2016.

On 19 July 2023, the Luxembourg Parliament adopted a law aimed at correcting certain material errors and inconsistencies following the major 2016 reform modernising the law of 10 August 1915 on commercial companies (Company Law).

### MAIN CHANGES TO COMPANY LAW

#### 1) Clarification of the rules applicable to a s.à.r.l. with a single shareholder

- A decision to transfer the registered office may be taken by the management board;
- The articles of association may contain provisions concerning authorised capital.

#### 2) Change in calculation of quorum or majority rules at shareholders' meetings

When calculating the quorum and majority rules for shareholders' meetings, shares whose voting rights have been suspended (either by a decision of the Board of Directors or because the shareholder has decided to waive them) and shares bought back (either from a limited liability company or a public limited company) are not taken into account.

#### 3) Changes to the procedure for approving transfers of shares in a limited liability company

- To avoid giving a right of veto to the outgoing partner;
- To specify that shares may be bought back by the company from the transferring partner, with or without a reduction in capital.

#### 4) Benefits or protection of a partner

Provisions in the memorandum of association of a "société en commandite simple" or a "société en commandite spéciale" that allocate all profits to one partner - or that protect one partner from any losses in breach of article 1855 of the Civil Code - are null and void (leonine clauses).