



# WHAT'S NEW

# IN 2023 ?

# AGENDA

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# AGENDA

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## Changes concerning access to the RBE

In its judgment of 22 November 2022 (Case C-37/20, C-601/20), the Court of Justice of the European Union (ECJ) partially invalidated the relevant EU directives on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, which provides that "*Member States shall ensure that information on the beneficial owners of companies registered in their territory is in all cases accessible to all members of the public*".

According to the ECJ, the widespread information on the internet enabled a potentially unlimited number of persons to become aware of the material and financial situation of a beneficial owner. The protection against possible misuse of the information was insufficient and the corresponding provision in the Directive was invalid.

For this reason, the previous practice in Luxembourg, whereby an unlimited number of persons were able to access the Register of Beneficial Owners (*Registre des bénéficiaires effectifs* - RBE) via the website [www.lbr.lu](http://www.lbr.lu), was, by decision of the Ministry of Justice, initially closed to everyone as of 22 November 2022.

## Changes concerning access to the RBE (Continued)

In the meantime, RBE access to the LBR website is again possible for certain persons, so-called "professionals" (as defined in the Money Laundering and Counter-Terrorism Act of 2004), upon request.

In order to have access to view the RBE, the signing of an agreement is foreseen, as well as an associated technical annex. This agreement leads to the creation of an account at the LBR, which allows professionals to be identified as such when logging on to the LBR website and to integrate internal users into this account via an access management application. It should be noted that the creation of this account requires the use of Luxtrust certificates and professionals are only allowed to consult the RBE in this regard as part of their anti-money laundering and counter-terrorist financing obligations.

Other persons with a legitimate interest in the register (e.g. members of the press, other actors related to the fight against money laundering and terrorist financing) will probably be granted access again in due course, but no date for the lifting of the suspension has been announced in this regard yet.

## FIAT wins tax dispute against EU Commission

In September 2012, the Luxembourg tax authorities issued a « tax ruling » in favour of Fiat Chrysler Finance Europe (formerly FFT), a subsidiary of the FIAT group, which provides liquidity and financing support to the group's European-based companies. In particular, the Luxembourg authorities confirmed the analysis of the underlying transfer prices had been properly carried out.

This « tax ruling » in particular allowed FFT to determine its corporate taxable profit in Luxembourg.

However, the Commission considered this to be state aid incompatible with EU law and ordered Luxembourg to recover taxes amounting to almost 30 million euros. The Luxembourg state opposed this decision and - like FFT - brought an action for annulment of the decision before the EU General Court.

However, in September 2019, the court dismissed the action brought by both parties. The applicants appealed this decision to the European Court of Justice (ECJ).

Ireland, eager for « tax ruling », did the same.

## FIAT wins tax dispute against EU Commission (Continued)

The ECJ followed the Advocate General's suggestion and, in its judgment of 8 November 2022, annulled the EU General Courts decision and declared the Commission's decision on Luxembourg's State aid in favour of FFT void. The decision of the General Court was indeed based on an error of law, which was undoubtedly in turn due to an erroneous analysis on the part of the Commission, which - in particular - did not take into account the provisions of the Luxembourg Tax Code and the arm's length principle.

Thus, the ECJ clarified only the national law applicable in a Member State may be taken into account in order to determine a reference system for direct taxation. The ECJ further held that no « selective advantage » had been granted to FFT.

Other Commission decisions on state aid could suffer the same fate ...

## Administrative dissolution without liquidation

The law of 28 October 2022 establishing the procedure of administrative dissolution without liquidation will enter into force on 1 February 2023 and was created to allow the dissolution within a short period of time of "empty shell companies" under Luxembourg law which have not complied with the applicable law for several years (and thus meet the requirement for the opening of a judicial liquidation) and which, moreover, have neither assets nor employees.

This new procedure for dissolution will allow the administrative dissolution of certain companies without having them to go through a formal judicial liquidation procedure.

If there is clear and consistent evidence that a company meets the conditions set out in the law, the Public Prosecutor is authorised to request the administrator of the Luxembourg Trade and Companies Register to initiate the procedure for the administrative dissolution of the company. This request may not be made by the company itself or by any interested third party and is the sole competence of the Public Prosecutor.

The RCS administrator must notify the company of the decision to initiate the administrative dissolution procedure and publish this decision in two newspapers published in the Grand Duchy of Luxembourg and in the Luxembourg Official Gazette RESA.



## Administrative dissolution without liquidation (Continued)

Thereupon, the RCS administrator will verify whether the relevant legal conditions are met. If all conditions are met, the RCS administrator will issue a confirmation to the Public Prosecutor's office. The administrative dissolution procedure will then be completed, which will be published in the RESA, and the company will be dissolved.

If the conditions are not met, the administrative dissolution procedure is automatically suspended. This decision will be also published in the RESA.

The company concerned or any interested third party who considers that the conditions have not been met may appeal against this decision to the District Court of Luxembourg within one month of publication in the RESA.

It must finally be noted that in the event assets appear after the conclusion of the administrative dissolution procedure, the Court may, at the request of the Public Prosecutor, revoke the decision to close the administrative dissolution procedure and order the liquidation of the company through a formal procedure of judicial liquidation.

## FATF/GAFI in Luxembourg

The Financial Action Task Force (FATF / *Groupe d'Action Financière* – GAFI) visited the Grand Duchy of Luxembourg in November 2022 and held the plenary discussion in December 2022. The mutual evaluation of Luxembourg is expected in 2023 and has not yet been published, so the evaluation of Luxembourg's AML/CFT regime, including its legal and regulatory framework and operational effectiveness, is yet to be determined.

The last evaluation dates back to 2014, which certified that Luxembourg had made significant progress in addressing the deficiencies identified in the mutual evaluation report of February 2010. As a result, the FATF had decided to remove Luxembourg from the regular follow-up process.

## New AML/CTF measures for all AIF supervised by the AED

The Registration Duties, Estates and VAT Authority (*Administration de l'enregistrement, des domaines et de la TVA* – AED) is stepping up in their Anti-Money Laundering and Counter Terrorist Financing (AML/CTF) supervisory role of Alternative Investment Funds (AIFs) and imposing new measures. The AED has now clearly imposed on all AIFs under their supervision to appoint a person responsible for AML/CTF Compliance (*Responsable du Respect* or RR) and AML/CTF Compliance Officer (*Responsable du Contrôle* or RC).



## Setting up a monitoring committee for restrictive measures in financial matters

The published law of 20 July 2022 establishes a monitoring committee for the implementation of restrictive financial measures. This law aims to establish an inter-institutional committee to monitor restrictive measures and to define the tasks, composition and functioning of this committee. Its main tasks are, on the one hand, to monitor the implementation of financial sanctions and, on the other hand, to contribute to the development of national policies in this regard.

The above-mentioned law also provides that a criminal offence, as provided for in Article 10 of the law of 19 December 2020 on the implementation of restrictive measures in the financial field and related implementing measures and decisions, now falls under the offences listed in Article 506-1, item 1) of the Criminal Code (offence of money laundering).

Through this new provision, the central reporting office is now empowered to receive reports of suspicious transactions suspected of violating the law of 19 December 2020 on the implementation of restrictive measures in the financial sector.

## Important reminder on sanctions lists

The Grand-Ducal Regulation of 14 November 2022 now provides more clarification on the law of 19 December 2020. It concerns the implementation of restrictive financial measures, i.e. the review of sanctions. While the message of this regulation is not entirely new, it is a reminder that the application of sanction measures must be immediate.

In concrete terms, this means:

- Restrictive financial measures should be applied without delay or prior notice.
- These measures must be notified to the Minister of Finance without delay when they are applied.
- Luxembourg's credit and financial institutions should (at least) adhere to the sanctions list provided by the UN and the EU.

On the last point, it should be clarified that the UN and EU lists are an absolute minimum and that other sanctions lists may be used or even required depending on the specific circumstances of the client. For example, US residents are also subject to Office of Foreign Assets (OFAC) sanctions.

## RCS – Formalism (« NINL »)

- Update -

The LBR project - that all natural persons registered in a company registered in the RCS (*Registre de commerce et des sociétés*) – as shareholder of a limited liability company, managing director, member of the board of directors, auditor, depository, liquidator,... – should be obliged to provide their **Luxembourg national identification number** (« NINL ») - is still in limbo.

As the RCS has not communicated anything more on this topic until today, it is uncertain for us whether this project will be implemented and completed in 2023 ...

## Electronic Invoicing (E-Invoicing)

- Reminder -

While large and medium-sized economic operators have already been obliged since last year to send their invoices electronically to the state within the framework of public contracts and concession agreements, **small and newly established economic operators will also be affected by this from 18 March 2023**, regardless of the invoice amount.

# TAXATION OF LEGAL ENTITIES

## Law on the State Budget 2023

### ➤ Amendments to the Income Tax Act

Article 115, item 13a is supplemented by clarifying the determination of the participation premium in the context of integrated groups within the meaning of Article 164bis, paragraph 1, item 5.

The positive result serving as a basis for calculating the threshold of the participation premium shall be determined by the positive algebraic sum of the results of the members of the integrated group.

Each member of the integrated group must meet the eligibility criteria listed in Article 115, point 13a, numbers 1. to 4.

The costs generated by the relocation of an impatriate from abroad to the Grand Duchy may be borne by the employer. The eligibility threshold for this coverage according to Article 115, point 13b, indent 4 is reduced from a fixed annual remuneration of at least EUR 100,000 to EUR 75,000.



# TAXATION OF LEGAL ENTITIES

## Law on the State Budget 2023 (Continued)

### ➤ Amendment of the General Tax Act

The deadline for filing returns for **income tax**, **corporate income tax** and **communal business tax** in a given year is extended to 31 December of the following year.

The return for **net wealth tax** for a given year must be submitted by 31 December of that year at the latest.



# TAXATION OF LEGAL ENTITIES

## ATAD 3: Draft EU « Unshell » Directive

On 22 December 2021, the European Commission published the proposed ATAD 3 Directive, known as the « Unshell » Directive, which aims to limit the use of « shell entities ».

**The aim of this directive is to tackle aggressive tax arrangements within the European Union by setting up entities with no or little economic substance.**

The European Parliament submitted a number of amendments **on 12 May 2022** including the **postponement of the entry into force by one year to 1 January 2025.**

**This text has not yet been adopted and still raises many questions.**



# TAXATION OF LEGAL ENTITIES

## ATAD 3: Draft EU « Unshell » Directive (Continued)

### Entities at risk covered by ATAD 3:

Companies meeting the following 3 criteria:

- More than 80% of the income **of the last 2 tax years** is passive income (interest, dividends, royalties, real estate income, lease income, insurance income...);
- More than 65% of the passive income comes from abroad or more than 55% of the book value of the assets consists of assets located abroad;
- The company has outsourced the management of its day-to-day operations and decision making on important functions to an entity that is not an associated enterprise in the same jurisdiction.



# TAXATION OF LEGAL ENTITIES

## ATAD 3: Draft EU « Unshell » Directive (Continued)

### ATAD 3 does not apply to:

- Listed companies and regulated financial undertakings;
- holding companies resident in a Member State with beneficial owners resident for tax purposes in the same Member State.
- companies with at least five full-time equivalent employees exclusively engaged in the activities generating the relevant income and working in the same Member State as the company.



# TAXATION OF LEGAL ENTITIES

## ATAD 3: Draft EU « Unshell » Directive (Continued)

### Reporting obligation:

ATAD 3 risk entities will have to report annually - as part of their tax return - whether the following substance indicators are met:

- The provision of premises for exclusive use in its state of residence;
- The use of at least one active bank account in the EU;
- The presence of at least one local director or sufficiently qualified full-time local employees.

Companies will have to provide the tax administration with written evidence to support the reality of this minimum substance (address of the premises, activities carried out to generate the passive income, staff information, IBAN).



# TAXATION OF LEGAL ENTITIES

## ATAD 3: Draft EU « Unshell » Directive (Continued)

### Consequences:

If any of these three criteria are not met, the entities will be presumed to have no substance and will not be able to receive a certificate of residence, with the consequence that double taxation treaties will not apply.

Furthermore, taxation of these companies may be applied by the State of residence of the shareholder, which could create situations of double taxation.

### Penalties:

Failure or misrepresentation in relation to the risk entity criteria and the substance test will be subject to a fine of at least 2.5% of the entity's turnover (income).



# TAXATION OF LEGAL ENTITIES

## ATAD 3: Draft EU « Unshell » Directive (Continued)

### Reversal of qualification:

Entities presumed not to have a sufficient level of substance will be able to rebut this presumption by providing evidence of the economic reasons for the entity's existence, information on personnel and concrete evidence that strategic decisions are taken from the State of residence of the entity.

Although the Directive is not yet adopted and is not expected to take effect before 1 January 2025, **its potential consequences should be anticipated.**



# TAXATION OF NATURAL PERSONS

## Adjustment of the accelerated depreciation rate on newly built rental properties

- Reminder -

Note and extract from the Grand-Ducal Regulation of 23 December 2022 amending the amended Grand-Ducal Regulation of 19 November 1999 implementing Article 106, paragraphs 3 and 4 of the amended law of 4 December 1967 on income tax (flat-rate depreciation base and depreciation rates for tenement houses):

*„... The building or part of a building to be taken into account first shall be the building or part of a building whose completion date is the longest in the past as of 1 January 2023. The building or part of a building to be taken into account second is the building or part of a building whose completion date immediately follows the date chosen for the building or part of a building taken into account first ...“.*



# NEWS FROM THE SOCIAL SECTOR

## Adaptation of the « Mutuality of employers »

Class	1	2	3	4
Rate 2022	0,60%	1,13%	1,66%	2,98%
	↓	↓	↓	↓
Rate 2023	0,72%	1,22%	1,76%	2,84%

Applicable to recurring emoluments only.

Increase of all classes - except class 4



# NEWS FROM THE SOCIAL SECTOR

## Accident insurance

Class	1	2	3	4	5
Rate 2022	0,675%				
Rate 2023	0,6375%	0,75%	0,825%	0,975%	1,125%

The rate is applicable according to a bonus-malus factor determined by the competent fund (17 existing classes related to the main activity of the company).

Please note that the basic rate for accident insurance remains unchanged compared to 2022 (0.75%).

**As of 01.01.2023**, in order to raise awareness of safety and health at work and to reward companies that have made efforts in this area, the bonus factor will decrease from 0.9 to 0.85.



## Occupational health

	2022	2023
Rate	0,14%	

The tax rate remains unchanged for the year 2023.

**Attention:** However, an increase is being discussed and could take place in the course of 2023.

# NEWS FROM THE SOCIAL SECTOR

## Increase in minimum wages

	2022 (01/04/22)	2023
SSMNQ	2,313.38 €	2,387.40 €
SSMQ	2,776.05 €	2,864.88 €
Index (general)	877.01	877.01
Index 100	263.78	272.22
CCSS maximum limit (monthly)	11,566.88 €	11,936.98 €



## Indexation of minimum wages

The last global wage increase (+ 2.5%) was implemented on **01.04.2022**.

The next known global wage increase (+ 2.5%) is set for **01.04.2023**.

The monthly ceiling applied by the *Centre Commun de la Sécurité Sociale* (CCSS) for the calculation of contributions is thus also increased.

The general index (base 100) was adjusted on **01.01.2023** (+3.2%).

Therefore, only the minimum wages have been increased.

## Non-residents – tax class

### Change of tax class via the tax return

All non-residents who request a change of tax class in their tax return for year X **must** submit this declaration to the tax authorities **before 31 March X + 1**.

**No changes will be accepted after this date!**

## Homeoffice & COVID-19 – payroll taxes

Current:

- **French residents** employed in Luxembourg are entitled to **34 days of telework per year** without having to pay income tax in France (**since 01.01.2023**).
- in **Belgium**, the number of days is **34**
- in **Germany**, the number is **19 days**

Exceptions related to the pandemic: teleworking days falling within the period mentioned below are not taken into account for the above limits:

- **France**: period from 14 March 2020 to 30 June 2022
- **Belgium**: period from 11 March 2020 to 30 June 2022
- **Germany**: period from 11 March 2020 to 30 June 2022

## Homeoffice & COVID-19 – CCSS affiliation

Luxembourg and Germany, France and Belgium have agreed to maintain an exemption provision not to take into account teleworking days related to the COVID 19 crisis at the level of determining social security rules applicable to cross-border workers **until 30 June 2023**.

This new extension prevents a change of membership if the 25% threshold provided for in EU legislation for cross-border workers is exceeded.

A cross-border worker who performs his work from his place of residence (for reasons related to COVID-19) will therefore remain affiliated to the Luxembourg social security system until the end of June 2023.

## CCSS invoices: Abolition of the advance payment

Within the framework of the Tripartite Agreement measures and in order to help enterprises in the current situation, the government has decided to abolish the advance payment on social security contributions.

In other words, **with effect from 1 January 2023**, the advance required as an advance on social security contributions has been abolished.

Due to the two-month delay in invoicing, the invoice issued in March 2023 will be the first invoice showing only the contributions due for the month of January 2023. Similarly, invoices issued thereafter will only show contributions owed.

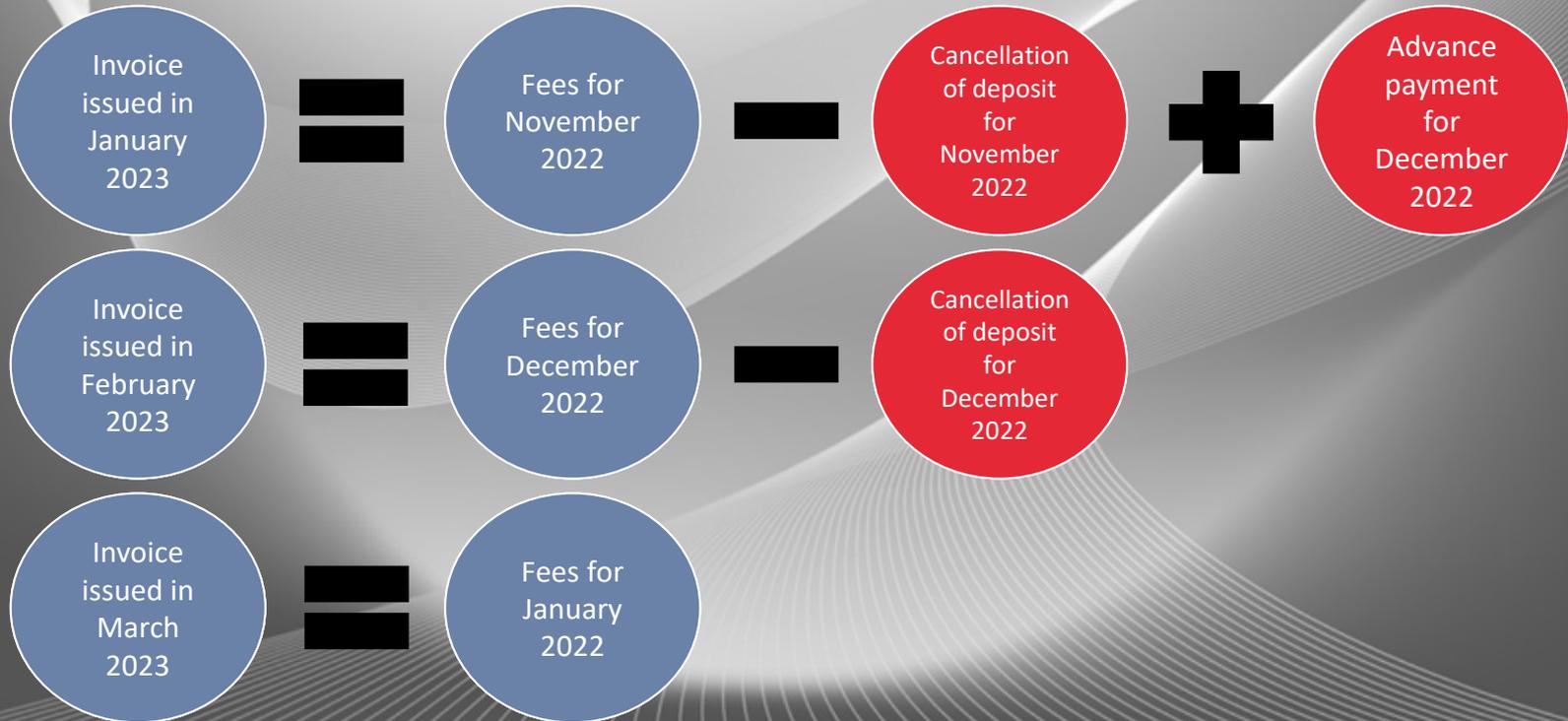
**Companies** will receive a statement of account in February 2023 corresponding to contributions levied on excess wages for the month of December 2022 (Contribution 12.22 - Reversal Advance 12.22) – **Profit** in February 2023: a financial relief equivalent to approximately one month of contributions collected.

For **self-employed persons**, the contribution in February 2023 will be zero in most cases.

# NEWS FROM THE SOCIAL SECTOR

## CCSS invoices: Abolition of the advance payment (Continued)

The abolition of the advance payment will already be reflected in the first statement of account for all **new employers or self-employed persons**, as this will only contain the contributions actually owed, as opposed to a previous double charge at the beginning of the activity.



## « Energy » tax credit

Also under the Tripartite Agreement, a new tax credit was introduced, namely the « energy » tax credit (*crédit d'impôt énergie* - CIE).

This has been granted since July 2022 and is still to be taken into account until 31 March 2023.

It is usually €84 per month; but depends on the employee's monthly gross salary. Indeed, above a certain threshold, the tax credit becomes degressive and tends towards zero.

### Formula for the calculation:

- Monthly gross from € 78 to € 3,667  
→ 84 €/month,
- Monthly gross from 3,667.01 € to 5,667 €  
→  $[84 - (\text{Monthly gross} - 3,667) \times (8/2,000)]$ €/month,
- Monthly gross from 5,667.01 € to 8,334 €  
→  $[76 - (\text{Monthly gross} - 5,667) \times (76/2,667)]$  €/month.

**It should be noted that self-employed persons and pensioners can also benefit from this tax credit under certain conditions.**

# VALUE ADDED TAX

## VAT reduction

The law of 26 October 2022 introduced a 1% reduction in VAT rates for the period from 1 January 2023 to 31 December 2023, with the exception of the super-reduced rate.

	Standard rate	Intermediate rate	Reduced rate	Super-reduced rate
2022	17%	14%	8%	3%
	↓	↓	↓	↓
<b>2023</b>	<b>16%</b>	<b>13%</b>	<b>7%</b>	<b>3%</b>

The chargeable event for VAT is the date of supply of goods or the date of completion of a service, and VAT becomes chargeable on the date of the invoice.

An invoice must be issued no later than the fifteenth day of the month following the month in which the chargeable event occurred.



## VAT reduction (Continued)

Practical examples:

1. An invoice is issued for the sale of a vehicle, the delivery of which took place in December 2022. The invoice must be issued by 15 January 2023 at the latest and will be subject to the VAT rate of 16%. If the invoice had already been issued at the time of the supply, the applicable VAT rate would have been 17%.
2. A painting service was carried out and completed in October 2022, but the invoice was not issued within the legal time limit, i.e. by 15 November 2022. The situation is regularised in 2023 and the invoice will be subject to 17%.
3. A credit note is issued in 2023 for services completed and invoiced during 2022. The credit note will have to bear the same VAT rate as the original invoice.
4. In the case of rental payments subject to VAT, without an invoice being issued, the applicable rate will be that in force during the period to which the rental payment relates.

**The same rules apply to invoices and credit notes received from foreign suppliers and service providers, for which the Luxembourg taxpayer must self-assess VAT.**

## VAT reduction (Continued)

### ➤ Changes in the lists of goods and services subject to the reduced and super-reduced rates

#### Annex A: Reduced rate

Point 7 has been replaced as follows:

*"Repair of household appliances, footwear and leather goods, clothing and household linen (including mending and alteration)"*

Item 10 was added as follows:

*"Bicycles, including pedal cycles, and their hire and repair"*

#### Annex A: Super-reduced rate

Item 23 was added as follows:

*"The supply and installation of solar panels on and in the immediate vicinity of private dwellings, housing and public and other buildings used for activities of general interest"*

# VALUE ADDED TAX

## VAT OSS

The deadline for filing the quarterly OSS VAT returns for taxable persons engaged in e-commerce has been extended. The tax returns must now be submitted by the end of the month following the taxable period (calendar quarter) and no longer by the twentieth.

Period	Date of submission
1 <sup>st</sup> quarter: 1 January to 31 March	30 April
2 <sup>nd</sup> quarter: 1 April to 30 June	31 July
3 <sup>rd</sup> quarter: 1 July to 30 September	31 October
4 <sup>th</sup> quarter: 1 October to 31 December	31 January of the following year

Even if no turnover was carried out in the calendar quarter in question, a tax return (so-called zero return) must be submitted by the specified dates.





## FIDUCIAIRE EUROLUX

196, rue de Beggen  
L-1220 LUXEMBOURG

Tél.: + 352 33 59 39 – 1

Fax : +352 33 59 36

Email : [info@eurolux.lu](mailto:info@eurolux.lu)

Website : [www.eurolux.lu](http://www.eurolux.lu)



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Independent member