



Luxembourg: Recent legal developments in Real Estate

I. Introduction

The Luxembourg legislators and administration have brought several legislative changes impacting the real estate industry in Luxembourg, and further legal initiatives have been announced in draft bills. The Luxembourg Constitutional Court also issued an important decision.

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II. Recent changes in laws and regulations

1. New Tax measures

i. New Double Tax Treaty (“DTT”) between Luxembourg and the UK

On 19 July 2023, the Luxembourg Parliament ratified the new DTT between Luxembourg and the United Kingdom.

The new DTT has introduced a so-called “Property-Rich” provision in Article 13.2.

According to that provision, the right to tax gains realized through a sale of shares or corporate interests (or comparable interests, e.g., partnership or trust interests) in an entity deriving more than 50% of its value directly or indirectly from immovable property situated in the other state (a property-rich entity) is attributed to the state where the immovable property is located.

Also, the full withholding tax exemption on dividend distributions to the recipient who is beneficial owner of the income will not apply to distributions by investments whose income derives from immovable property that is tax exempt. In such a case, the DTT will allow for a 15% withholding tax. The exemption will however in such case still apply to certain pension funds.

The provisions of the new DTT apply as from 1 January 2024.

ii. New domestic real estate sector tax provisions

With the introduction of the Law of 16 May 2023, amending the modified Law of 30 July 2002 on various tax measures to encourage the marketing and acquisition of building land and residential property, the amount of the tax credit (*Bëllegen Akt*), was increased from EUR 20,000 to EUR 30,000 for each purchaser.

Currently, the standard rate for real estate acquisitions (house, apartment, building plot) adds up to 7%, 6% for registration duties and 1% for transcription duties.

Previously, subject to certain conditions, individuals wishing to acquire real estate property for their own personal use benefitted from a tax credit of up to EUR 20,000, deductible from registration and transcription duties.

2. Reform of the right of establishment

Luxembourg’s right of establishment regime was impacted by the adoption of the Law of 26 July 2023 amending the Law of 2 September 2011 regulating access to the professions of craftsperson, merchant, manufacturer as well as to certain liberal professions.

Concretely, concerning the aspects relevant to Luxembourg real estate professionals, we can note the following.

First, the new law introduces two new regulated professions subject to permits: “*real estate business introducers*” and “*short-term accommodation lessors*”.

The activity of “*real estate business introducer*” is a commercial activity consisting of putting a real estate agent in touch with a real estate developer or any other person wishing to sell or rent a property, without necessarily intervening in the transaction as such.

That of “*short-term accommodation lessor*” is a commercial activity consisting of renting one or several accommodation units for ninety nights or more accumulated over one year.

The second category mainly concerns persons who offer “Airbnb” type rentals.



Secondly, the reform subjects to a business permit the activity of “rental of shared office space”, something which risks directly impacting a large number of economic operators.

3. Housing assistance reform

The adoption of the Law of 7 August 2023 on affordable housing and the Law of 7 August 2023 individual housing assistance has reformed the right to housing assistance, until now mainly regulated by a 1979 law.

In summary, we note the following main new points:

- Legal definition of "affordable housing";
- Overhaul of the system of individual housing subsidies, in particular by introducing new systems of grants and subsidies, and by relaxing the conditions for granting them;
- Overhaul of construction subsidy system;
- Introduction of new concepts (social developer, low-cost sales, social landlord, etc.);
- Review of the affordable housing allocation process and introduction of a one-stop shop; and
- “Social rental management” concept enshrined into law.

4. Entry into force of the Law of 7 January 2022 on accessibility to all public places, public roads and collective housing.

The Law of 7 January 2022 on the accessibility to all public places, public roads and collective housing came into force on 1 July 2023.

It establishes the principle that any place accessible to the public (whether public or private) must have the necessary facilities to enable access to all persons, including those with disabilities.

As of 1 July 2023, all new building permit applications must take these accessibility requirements into account.

The law stipulates that existing buildings must be brought into compliance by 1 January 2032 at the latest.

Violators of the law may be subject to sanctions, as well as closure of their establishment and a ban on participating in public contracts.



III. Bills currently in process

1. The Reform of the Property Tax (*Impôt foncier*) - Bill 8082

The Property Tax was first introduced in Luxembourg under the First French Republic in the form of the “*contribution foncière*” (land tax) by the law of 3 *Frimaire de l'an VII* (23 November 1798).

The Property Tax reform has been part of political discussions for years. To mitigate the housing shortage, on 10 October 2022, the Luxembourg government adopted Bill 8082 on the property tax, the land mobilization tax and the tax on the non-occupation of housing (*Projet de Loi sur l'impôt foncier, l'impôt à la mobilisation de terrains et l'impôt sur la non-occupation de logements*).

Bill 8082 not only aims at modernizing the property tax but also proposes to introduce two new taxes to encourage landowners to mobilize building land and unoccupied dwellings and entails a fundamental reform of the Luxembourg property tax regime.

The legislative process is currently underway before the Parliament.

2. Creation of the National and Municipal Registers of Buildings and Dwellings - Bill 8086

On 1 June 2022, the government in council confirmed the principle that the reform of the property tax and the introduction of a tax on the non-occupation of dwellings are intrinsically linked and must be developed in parallel. The collection of the tax on non-occupation of dwellings requires the creation of a National Register of Buildings and Dwellings (*Registre National des Bâtiments et des Logements*) and a Municipal Register of Buildings and Dwellings in each municipality (*Registre Communal des Bâtiments et des Logements*), as well as the creation of a register of taxation on non-occupancy of dwellings. The latter register is provided under the bill introducing the tax on non-occupation of dwellings.

Two levels of registers will thus be created.

The following data shall be entered in the municipal register:

- 1° existing buildings and dwellings; and
- 2° buildings and dwellings whose projects are subject to planning permission within the meaning of Article 37 of the amended Act of 19 July 2004 on municipal planning and urban development.

The entry must be made within eight days of the granting of a building permit.

The data in the municipal register thus shall be the identifier of the buildings and dwellings, and the “reference information”.

The reference information of buildings and dwellings includes data concerning the:

- 1° geolocation or cadastral reference;
- 2° address reference;
- 3° type and allocation;
- 4° status; and
- 5° technical characteristics.



A grand-ducal regulation shall specify the details on the reference information, as well as the methods of entry.

For the maintenance of the municipal registers, the following sources may be used to gather reference information:

- 1° Land Registry and Surveying Administration geolocation data;
- 2° municipality building permit files; and
- 3° on-site inspection findings.

For the initialization of the municipal registers, the following sources may be used by the communes to provide the reference information:

- 1° Administration of *Cadastre* and Topography geolocation and dimension data, if available;
- 2° building permit files from municipalities or any other useful source of information available from the communes;
- 3° on-site inspection findings; and
- 4° data to be provided by the owners at the municipalities' request.

A national register of buildings and dwellings shall be established with the following data:

- 1° the unique alphanumeric identification of buildings and dwellings, as well as the registration and maintenance of data relating to them;
- 2° the provision of data on buildings and dwellings;
- 3° the preservation of the history of such data; and
- 4° the centralization of municipal registers of buildings and dwellings at the national level.

The national register data will be derived from the reference information, including the data of the municipal registers of buildings and dwelling.

The municipalities are responsible for any data entered or modified and for any information communicated to the national register, as well as for the conformity of the supporting documents. The municipalities shall also be responsible for any missing data that may be included in the national register.

3. Amendment of the “*Baulandvertrag*” (building land contract) – Bill 7139

On 27 October 2022, the Committee on Internal Affairs and Gender Equality tabled new amendments to the *Baulandvertrag*.

Bill 7139, introduced in 2017, aims to improve the effectiveness of measures for the implementation of urban development plans (“**PAG**”) to cope with the chronic lack of housing in Luxembourg.

The bill has once again been restated by the amendments, and now revolves around three measures:

i. Introduction of new easements

The amended bill introduces new easements, the purpose of which is to limit the mode and degree of land use over time in accordance with the PAG implementation concept.



More specifically, the new easements are divided in two categories: those determining a limited servicing period (“**CTV**”) and those determining a limited construction period (“**CTL**”).

The implementation of CTV is mandatory each time a municipality is willing to reclassify a plot of land that was not primarily intended for housing into a housing zone or into a mixed zone subject to the elaboration of a specific development plan “new development” (“**PAP NQ**”).

As from the municipal council’s vote, the owners of the lands subject to the CTV have a maximum of six years to significantly begin the servicing works, failing which the land will be automatically reclassified in its prior classification.

The implementation of CTL is mandatory each time a municipality is willing to reclassify into a housing zone or into a mixed zone a plot of land that was not primarily intended for housing.

The owners of the land have a maximum of four years as from the municipal council’s vote, or as from the expiry of the servicing delay (PAP NQ) to significantly begin the construction works, failing which, a deferred development zone will automatically be superimposed on the land.

ii. Introduction of a simplified modification procedure for the PAG

The amended bill allows the municipalities to use a simplified procedure to amend their PAG, which is supposed to shorten the timeframe from 12 to 7 months.

However, this simplified procedure will only be available for minor adjustments of the PAG which do not affect its comprehensive structure and orientation.

iii. Amendment of the urban re-parcelling procedure

Finally, the amended bill introduces a new procedure for urban re-parcelling which should allow the lands owned by recalcitrant landlords who refuse to cooperate in the servicing of the PAP NQ, but are vital for its development, to be exchanged with plots within the PAP NQ that can be developed at a later stage.

However, in the absence of a political consensus and in the face of numerous criticisms from the State Council, the text was once again referred to the Home Affairs Committee on 24 November 2023, so it is highly likely that the draft will be reworked before being put to a vote.

4. Amendment of the Law of 21 September 2006 on residential leases – Bill 7642

Bill 7642, tabled on 31 July 2020 by the Luxembourg Ministry of Housing plans to reform the Law of 21 September 2006 on residential leases.

The explanatory memorandum of the bill points out that the continuous rise of residential rents in Luxembourg makes it increasingly necessary to establish new protective measures for tenants and find new mechanisms to combat the housing shortage in Luxembourg.

The initial bill was amended on 14 October 2022 and 6 April 2023 following the filing of government amendments.

In broad terms, the bill now provides for the following changes to the existing legal framework:

i. Exclusion of verbal leases and compulsory statements

The bill provides that a lease must systematically be documented in writing and must specify the following minimum information:

- amount of capital invested;



- amount of rent (excluding charges) and the statement that the rent asked by the landlord complies with the legal rent ceiling, as well as a statement on the option for the parties to refer to the rental commission in case of a dispute over the rent;
- down payments or lump sums on charges that are to be indicated separately from the rent;
- any potential addition to the rent for furniture to be indicated separately from the rent; and
- the amount of any potential additional service fees.

ii. Establishment of a mandatory legal regime specific to co-tenancy

The bill aims at establishing a mandatory co-tenancy regime, defined as the rental by several tenants of the same dwelling through a single lease in the context of which the tenants are all held jointly and severally liable to the landlord.

The regime will not apply to couples who are married or in civil law unions but could apply to common-law couples.

The government deems that the adoption of an autonomous mandatory legal regime, characterized by the obligation for the co-tenants to sign a co-tenancy agreement governing their respective obligations, has become necessary given the increase in the number of co-tenancies in Luxembourg, an increase which is promoted by the current shortage of housing available on the Luxembourg market.

iii. Redesign of the mechanisms for the legal rent ceiling and rent adjustment

The bill introduces new rules regarding the reassessment of the maximum annual rent that an owner of a leased property can receive (from 5% to 3.5% or even 3% of the capital invested, depending on the energy class of the property) and overhaul of the rules on the valuation and discounting of the capital invested, which shall be reassessed more regularly than is done currently.

As indicated above, a lease must contain a statement on the capital invested. The latter shall be determined based on supporting documentation, failing which an expert assessment may be used.

The rent may only be adjusted every 2 years, and the rent increase may not exceed 10% of the ongoing rent.

iv. Agency fees

In case of use of a real estate agent in the tenant's search, the bill introduces a mandatory sharing of the agency fees equally between the owner and the tenant.

Currently, landlords frequently require tenants to support those fees.

v. Rental guarantee

The maximum rental guarantee that the landlord could ask for would be capped at two and no longer three months' rent.

The restitution of the rental guarantee will also have a specific procedure.

With some exceptions (in particular in case of payment arrears), the landlord will be held, on pain of financial penalties, to reconstitute half of the rental guarantee within one month of the end of the lease, and the balance within the month following receipt of the final accounting of the charges.



vi. Repeal of the concept of "luxury housing"

Bill 7642 abolishes the concept of "luxury housing", defined by the current Article 5 of the Law of 21 September 2006, as all "housing with modern, non-standard comforts".

The characterization of "luxury housing" currently allows the parties to contractually exclude a certain number of mandatory provisions which protect a tenant (legal rent and rental guarantee ceilings, in particular).

However, in the absence of a political consensus and in the face of numerous criticisms from the State Council, the text was once again referred to the commission for housing and regional planning on 24 November 2023, so it is highly likely that the draft will be reworked before being put to a vote.

5. Package of measures to revitalize the housing market – Bill 8353

After Luxembourg's parliamentary elections on 8 October 2023, a new government was sworn in which, on 7 February 2024, introduced before the Parliament in Bill 8353 several measures aimed at revitalizing the housing and construction markets. They consist primarily of short- and long-term housing tax incentives as follows:

i. Short-term housing tax incentives for 2024 only

- Further increase of tax credit for registration and transcription duties (*Bëllegen Akt*) from EUR 30,000 to EUR 40,000 per purchaser for the primary residence, when notarial deed is passed between 1 January and 31 December 2024, to be applied to registration and transcription fees described in section II, 1.(ii) above. After 2024, the abatement will return to EUR 30,000 per purchaser;
- Introduction of a new tax credit for investments in rental housing by natural persons – applies to purchases of an off-plan building or a portion thereof with same notarial deed requirements as above and other conditions;
- Reduction of the capital gains tax rate to one quarter of the income tax, a maximum of 12.845%, to boost property sales by natural persons, return to a maximum of 24.29% after 2024;
- Introduction of a 2% "accelerated amortization" for 6 years (1 year increase in duration) as well as a special construction abatement of 4% of the amortization base, capped at EUR 250,000, for housing built to be rented – applies to off-plan rental housing purchased between period described above; and
- Immunization of real estate capital gains transferred onto social housing or housing attaining a class A+ energy performance – applies capital gains on the transfer of built or unbuilt buildings held for at least two years in an individual's personal assets.

ii. Long-term housing tax incentives

- Increase in debt interest tax deductibility for primary residence – starting in 2024, EUR 4000 from 1 to 5 years; EUR 3000 from 6 to 10 years; and EUR 2000 for over 10 years (draft amendments to 1969 Grand-Ducal Regulations on rental value of certain property types);
- Increase in the tax exemption of net rental revenues from social housing from 75% in 2023 to 90% in 2024;



- Extension of the capital gains tax exemption regime to the Housing Fund (*Fonds de Logement*), the local affordable housing institution (currently applies to the State, municipalities and municipality associations);
- Partial tax exemption of rental subsidies paid by an employer to an employee – 25% exemption limited to EUR 1000 per month per salaried employee; and
- Increase in the holding time required for speculation profits to be converted into capital gains – through 2024, property held less than or equal to two years generates speculation profits taxed at a scaled rate, that held over two years generates transfer capital gains taxed at the current half-total rate (or quarter-total rate if above 2024 reduction rate is adopted), starting in 2025 holding less than or equal to five years generates speculation profits taxed at a scaled rate, after five years it generates transfer capital gains, taxed at the half-total rate.



IV. Recent case law

1. Ruling of the Constitutional Court of 23 December 2022 on commercial leases and judgment of the Esch-sur-Alzette Peace Court of 2 November 2023

By judgment no. 176 of 23 December 2022, the Constitutional Court declared unconstitutional Article 1762-6, paragraph 4 of the Civil Code, which provides that “except in the case of a sublease where investments specific to the sublessee's activity have been made by the lessee, the rents paid to the lessee by the sublessee may not be higher than the rents paid by the lessee to the lessor”.

The Constitutional Court noted that the restriction imposed by the aforementioned article does not allow an economic operator who has leased commercial premises to sublet them at a price that covers even its operating costs relating to the sublease, nor *a fortiori* to receive a reasonable profit from the sublease. According to the court, the ceiling on the rent of the sublease imposed by Article 1762-6(4) therefore constitutes a disproportionate restriction on the freedom of trade and industry guaranteed by the Constitution.

However, it is important to note that the ruling does not automatically mean that the unconstitutional norm disappears. Legislators will have to intervene to re-establish conformity of the law with the Constitution.

Following referral of the case by the Constitutional Court, the Esch-sur-Alzette Peace Court was called upon to interpret the aforementioned judgment and to issue a ruling on the matter dated 2 November 2023.

In particular, the Court found that the main tenant's collection of a margin equivalent to 10% of the main rent in addition to the rent re-invoiced to its sub-tenant constituted a “reasonable profit” within the meaning of the judgment of 23 December 2022.

The Court considered that this 10% rate was intended to apply to all subleasing relationships until legislators intervene to correct the situation, since this method avoids the need for the parties to have recourse to the systematic appointment of an expert and creates a certain degree of legal certainty.

It should be noted, however, that the decision has been appealed, and the Appeals Court, or even the Court of Cassation, may have a different opinion on the interpretation to be given to the 23 December 2022 ruling.

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