

How to mitigate the Net Wealth Tax? Practical aspects

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Purposes of this seminar

- Is the (minimum) Net Wealth Tax (**NWT**) provision computed properly?
- If the NWT charge is significant, how could it be reduced?
- Do you take the necessary actions from a tax and legal standpoints in order to apply for the NWT reduction?

AGENDA

1. Introduction
2. Normal Net Wealth Tax: Computation and mitigation
3. Minimum Net Wealth Tax
4. Comparison Normal Net Wealth Tax vs Minimum Net Wealth Tax
5. Reduction of the Normal Net Wealth Tax
6. Questions and Answers

1. Introduction

Introduction


Compagnies subject to Normal NWT and Minimum NWT

Entities	Normal NWT	Minimum NWT
Luxembourg resident corporations (e.g. S.à r.l., S.A., S.C.A.)	V	V
Permanent establishments in Luxembourg of a non-resident entity (e.g. Luxembourg branch)	V	X
Luxembourg resident transparent entities (e.g. S.C.S., S.C.Sp)	X	X
Securitization companies	X	V
SICARs and RAIFs (corporation)	X	V
SEPCAVs (corporation)	X	V
ASSEPs (corporation)	X	V
Funds (corporation or Unit trust, e.g. SICAFs, SICAVs, etc.)	X	X

Introduction

Process to compute the NWT

1. Normal NWT to be computed based on the unitary value
2. Minimum NWT to be determined based on the balance sheet
3. Compare Normal NWT vs Minimum NWT
4. Normal NWT reduction

A man in a dark suit is seen from behind, looking out a large window at a dense city skyline with several tall skyscrapers under a clear sky. A red rectangular box is overlaid on the left side of the image, containing white text.

2. Normal NWT: Computation and mitigation

Normal NWT: Computation and mitigation

Normal NWT basis

- The Normal NWT is determined annually on January 1st of each year (*)
- The Normal NWT is calculated based on the Unitary Value (**UV**)
- Unitary Value = Assets – Debts/Provisions
with some exemptions and adjustments

(*) For non-calendar accounting years, accounting year-end values are tolerated

Normal NWT: Computation and mitigation

Normal NWT rates

- Normal NWT is computed based on sliding scale rates:
 - Portion of UV \leq EUR 500 million: **Unitary Value x 0.5%**
 - Portion of UV $>$ EUR 500 million: **Unitary Value x 0.05%**

Normal NWT: Computation and mitigation


Unitary value: exemptions and adjustments

- Exemptions: (*)
 - Important participations qualifying to the Lux participation exemption regime
 - Intellectual properties (IPs) eligible to Art. 50bis (until 2021) or 50ter LITL
 - Properties located in a country which has a DTT with Luxembourg
- Adjustments: (*)
 - Properties located in Luxembourg are taxable only on their unitary value (and not on their net book value)
 - Debts directly related to an exempt asset are not deductible (up to the amount of the exempt asset)

(*) Only the exemptions and adjustments which are relevant for NWT mitigation are mentioned

Normal NWT: Computation and mitigation

How to mitigate the Normal NWT? (1)

- Invest into exempt assets such as:
 - Exempt participations (no holding period condition)
 - Eligible IPs
 - Properties located in Luxembourg (taxable on their UV)
 - Properties located abroad (if DTT with Luxembourg)
- Convert fully taxable assets into exempt assets (e.g. a receivable against a subsidiary converted into an increase in the participation)
- Operation to be performed before year-end 

Normal NWT: Computation and mitigation

How to mitigate the Normal NWT? (1)

Example:

BAD

Balance sheet	
Exempt assets (e.g. <ul style="list-style-type: none">- Exempt participations- Eligible IPs, etc.)	Equity Liabilities
Taxable assets (e.g. <ul style="list-style-type: none">- Receivables- Stock- Cash- Etc.)	
→ High Unitary Value	

GOOD

Balance sheet	
Exempt assets (e.g. <ul style="list-style-type: none">- Exempt participations- Eligible IPs- Etc.)	Equity Liabilities
Taxable assets (e.g. <ul style="list-style-type: none">- Receivables- Cash, etc.)	
→ Low Unitary Value	

Normal NWT: Computation and mitigation

How to mitigate the Normal NWT? (2)

- Financing of the assets:
 - Exempt assets have to be financed in priority by Equity
 - Taxable assets should then be financed by tax deductible liabilities
- The apportionment of the financing has to be properly managed in the appendices to the tax return and tracked on an historical basis

Normal NWT: Computation and mitigation

How to mitigate the Normal NWT? (2)

BAD Example:

If receivables are financed by equity

Balance sheet			
Exempt participations	100M	Equity	100M
Receivables	100M	Payables	100M

Unitary Value	
Exempt participations	100M
./. Exempt assets	(100M)
Receivables	<u>100M</u>
	100M
./. Payables	(100M)
+ Payables fi. exempt assets	<u>100M</u>
	0
Unitary Value	100M
Normal NWT	500K

Normal NWT: Computation and mitigation

How to mitigate the Normal NWT? (2)

GOOD Example:

If exempt participations are financed by equity

Balance sheet			
Exempt participations	100M	Equity	100M
Receivables	100M	Payables	100M

Unitary Value	
Exempt participations	100M
./. Exempt assets	(100M)
Receivables	<u>100M</u>
	100M
./. Payables	(100M)
+ Payables fi. exempt assets	<u>0</u>
	(100M)
Unitary Value	0
Normal NWT	0

Normal NWT: Computation and mitigation

How to mitigate the Normal NWT? (3)

- E.g. if you have a lot of cash



Distribute a dividend or an interim dividend

An interim dividend can be distributed under the following conditions:

- The annual accounts of the previous year must be approved
- Must be decided based on an interim accounting situation dated max. 2 months before the decision date
- Can be decided by the board of directors if it is provided by the articles of association of the Company
- Withholding tax return to be filed within the 8 days following the dividend payment

- Etc.



Normal NWT: Computation and mitigation

How to mitigate the Normal NWT? (3)

Example:

BAD

Balance sheet before dividend distribution	
Exempt assets	Equity
Taxable assets (e.g. <ul style="list-style-type: none">- Receivables- Cash- Etc.)	
	Liabilities
→ High Unitary Value	

GOOD

Balance sheet after dividend distribution	
Exempt assets	Equity
Taxable assets (e.g. <ul style="list-style-type: none">- Receivables- Cash- Etc.)	Liabilities
→ Low Unitary Value	



3. Minimum Net Wealth Tax

Minimum Net Wealth Tax

Historic

- **Minimum Corporate Income Tax (CIT)**

- 2011: EUR 1,575 for resident and non-resident financing companies (i.e. sum of the accounts 23, 50 and 51 > 90% total balance sheet)
- 2013: EUR 3,210 for resident companies only (if the sum of the accounts 23, 41, 50 and 51 > 90% total balance sheet) or from EUR 535 until EUR 21,400
- 2015: new criteria for EUR 3,210 (i.e. sum of the accounts 23, 41, 50 and 51 > EUR 350,000)



Minimum CIT 2013 to 2015 to be considered as an advance

- **Minimum NWT**

- 2016: EUR 3,210 or from EUR 535 until EUR 21,400 for resident companies
- 2017: EUR 4,815 or from EUR 535 until EUR 32,100 for resident companies

But to be reduced by the CIT of the previous year...



Minimum Net Wealth Tax

The Minimum NWT is computed in 2 steps

- **Step 1:** Computation of the Minimum NWT based on the last balance sheet of the previous year
- **Step 2:** Reduction of this Minimum NWT by the CIT of the previous year in order to determine the “adjusted Minimum NWT”

Minimum Net Wealth Tax

Step 1 (1/2)

- Minimum NWT = EUR 4,815 if:
 - More than 90% of the total balance sheet is composed by:
 - Financial assets (23)
 - Receivables against related companies (41)
 - Transferable securities (50)
 - Cash deposit (51)

AND

- The sum of the accounts 23, 41, 50 and 51 > EUR 350,000

Minimum Net Wealth Tax

Step 1 (2/2)

- If at least one of the 2 conditions is not met:

Total Asset (closing date N-1)	Minimum NWT
Up to EUR 350,000	EUR 535
From EUR 350,001 to EUR 2,000,000	EUR 1,605
From EUR 2,000,001 to EUR 10,000,000	EUR 5,350
From EUR 10,000,001 to EUR 15,000,000	EUR 10,700
From EUR 15,000,001 to EUR 20,000,000	EUR 16,050
From EUR 20,000,001 to EUR 30,000,000	EUR 21,400
More than EUR 30,000,000	EUR 32,100

Minimum Net Wealth Tax

Step 2

- The Minimum NWT determined on step 1 has to be reduced by the CIT of the previous year after deduction of the possible (carried forward) tax credits:

$$\begin{aligned} &\text{Minimum NWT (determined as explained on step 1)} \\ &- (\text{CIT N-1} - \text{tax credits actually deducted in N-1}) \\ &= \text{« Adjusted » Minimum NWT} \end{aligned}$$



Do not confuse this step 2 with the reduction of the Normal NWT
(i.e. special five-year reserve)



Minimum Net Wealth Tax

Example 1

- *CIT 2018: EUR 218,000*
./. Tax credits 2018: EUR 200,000
= CIT due in 2018: EUR 18,000
- *Unitary value as at 01/01/2019: EUR 5,000,000*
Normal NWT 2019: EUR 25,000
- *Total balance sheet as at 31/12/2018: EUR 35,000,000*
Sum of financial assets as at 31/12/2018: EUR 20,000,000
Step 1: Minimum NWT 2019: EUR 32,100
Step 2: Adjusted Minimum NWT 2019: EUR 14,100 (= EUR 32,100 – EUR 18,000)
- *Normal NWT due in 2019: EUR 25,000 but could be (partially) reduced...*



Minimum Net Wealth Tax

Example 2

- *CIT 2018: EUR 21,000*
./. Foreign tax credit 2018: EUR 5,000
./. Minimum CIT 2015 to be considered as an advance: EUR 10,000
= CIT due in 2018: EUR 6,000
- *Unitary value as at 01/01/2019: EUR 600,000*
Normal NWT 2019: EUR 3,000
- *Total balance sheet as at 31/12/2018: EUR 25,000,000*
Sum of financial assets as at 31/12/2018: EUR 10,000,000
Step 1: Minimum NWT 2019: EUR 21,400
Step 2: Adjusted Minimum NWT 2019: EUR 400 (= EUR 21,400 – EUR 21,000)
- *Normal NWT due in 2019: EUR 3,000 but could be (partially) reduced...*

Minimum Net Wealth Tax

Balance sheet to be considered

- Principle: Total of the last **commercial balance sheet** to be considered
- Exceptions:
 - Adjustments according to the valuation rules applicable (e.g. tax balance sheet)
 - Properties and permanent establishments (PE) located in a country with a DTT
- Assets to be considered at their NBV (no adjustment required)
 - Participations
 - Properties located in Luxembourg
 - Transparent entities,...

Minimum Net Wealth Tax

Specific adjustments: Foreign property and PE

- 1st step: Check whether the property / PE is located in a country which has a DTT with Luxembourg
- 2nd step: If there is a DTT, the NBV of the assets taxable in a treaty country have to be excluded from the balance sheet
- 3rd step: Minimum NWT to be determined based on this adjusted balance sheet

Minimum Net Wealth Tax

Specific adjustments: Foreign property and PE

Example

Total balance sheet		Assets taxable in a treaty country		Adjusted balance sheet for the computation of the Minimum NWT	
221 French property	22M	221 French property	22M		
41 Intragroup receivables	2M			41 Intragroup receivables	2M
513 Cash at bank	1M			513 Cash at bank	1M
Total	25M	Total	22M	Total	3M

Minimum NWT determined based on the adjusted balance sheet: EUR 4,815

Minimum Net Wealth Tax

Liquidation of the Company

- The Minimum NWT for year N is not due if the company does not exist anymore as at 1st January N
- Same principle in case of merger, migration of the Company to a foreign country, etc.
- Examples:
 - *If the Company is liquidated on 31 December 2019, no (Minimum) NWT 2020*
 - *If the Company is liquidated on 1st January 2020, (Minimum) NWT 2020 applies*

Minimum Net Wealth Tax

Fiscal unity

- Companies resident and fully taxable in Luxembourg or a PE of a non-resident company with a comparable tax can apply to the fiscal unity under conditions
- Fiscal unity does not apply to the NWT: all the companies remain subject to the NWT on a standalone basis
- Specific rules apply for the determination of the Minimum NWT (e.g. the sum of the Minimum NWT of the integrated companies cannot exceed EUR 32,100, etc.)

A person is sitting at a light-colored, curved table. They are holding a tablet with their right hand and pointing at the screen with their left index finger. On the table, there is a blue spiral notebook and a yellow pencil. The background is a blurred view of a building and greenery. A red rectangular box is overlaid on the left side of the image, containing white text.

4. Comparison Normal Net Wealth Tax vs Minimum Net Wealth Tax

Comparative Normal NWT vs Minimum NWT

Determination of the Net Wealth Tax charge due

- If Minimum NWT $>$ Normal NWT




Minimum NWT is due

- If Normal NWT $>$ Minimum NWT



Normal NWT is due

But Normal NWT could be reduced (5-year special reserve) under conditions

A photograph of two men in business suits sitting at a desk in an office. The man on the right is looking down at a document he is holding, while the man on the left is partially visible, also looking at the document. The background is a bright, out-of-focus office window.

5. Reduction of the Normal Net Wealth Tax

Reduction of the Normal NWT

Conditions for the NWT reduction as from year 2016

- 1st Limit: NWT reduction limited to the CIT (before deduction of the possible tax credits) of the previous year (N-1)
- 2nd Limit: NWT due after reduction cannot be lower than the adjusted Minimum NWT of the year N
- NWT reduction has to be requested in the corporate tax return of the previous year (N-1)
- Unavailable reserve (corresponding to 5 times the Normal NWT reduced for year N) has to be recorded in the annual accounts of year N and has to be maintained during 5 years



The tax authorities no longer grant an administrative tolerance of one year



Reduction of the Normal NWT

Tracking table of the NWT reserves

Year	Reduction limited to CIT	Reduction to be requested in the tax return	Unavailable reserve to be recorded in the FS	Reserve to be maintained until
NWT 2013	2013	2013	2014	01/01/2019
NWT 2014	2014	2014	*\$ 2015	01/01/2020
NWT 2015	2014	2014	*\$ 2015	01/01/2020
NWT 2016	2015	2015	\$ 2016	01/01/2021
NWT 2017	2016	2016	2017	01/01/2022
NWT 2018	2017	2017	2018	01/01/2023
NWT 2019	2018	2018	2019	01/01/2024

* **2015 = transition year:** Only one unavailable reserve has to be recorded in the annual accounts 2015 for the reduction of both the NWT 2014 and the NWT 2015. This reserve should correspond to five times the higher amount between the reduced NWT 2014 and the reduced NWT 2015.

\$ Administrative tolerance of one year.

Reduction of the Normal NWT

Example 1

- *Normal NWT 2019: EUR 60,000*
- *Adjusted Minimum NWT 2019: EUR 7,000*
- *1st limit: CIT 2018: EUR 125,000*
- *2nd limit: Normal NWT – Adj. Minimum NWT: EUR 53,000
(= EUR 60,000 – EUR 7,000)*
- *NWT Reduction granted: EUR 53,000*
- *NWT reserve to be recorded in the FS 2019: EUR 265,000
(= EUR 53,000 x 5)*
- *Normal NWT 2019 due: EUR 7,000
(= EUR 60,000 – EUR 53,000)*



Reduction of the Normal NWT

Example 2

- *Normal NWT 2019: EUR 4,000*
- *Adjusted Minimum NWT 2019: EUR 0*
- *1st limit: CIT 2018: EUR 30,000*
- *2nd limit: Normal NWT – Adj. Minimum NWT: EUR 4,000
(= EUR 4,000 – EUR 0)*
- *NWT Reduction granted: EUR 4,000*
- *NWT reserve to be recorded in the FS 2019: EUR 20,000
(= EUR 4,000 x 5)*
- *Normal NWT 2019 due: EUR 0
(= EUR 4,000 – EUR 4,000)*



Reduction of the Normal NWT

Legal aspects: Allocation to the five-year reserve

- To be decided by the annual ordinary general meeting (e.g. NWT reduction for year 2020 has to be recorded in the FS 2020 and then should be decided by the OGM held in year 2020 which approves the FS 2019 and allocates the profit 2019)
- In case of forgetting the allowance to the five-year reserve (e.g. allocation of the profit 2018 to the NWT reserve 2019 in the FS 2019):
 - The board of directors can decide to allocate the profit 2018 to a five-year reserve in the FS 2019
 - This five-year reserve must be recorded in the accounting 2019
 - The annual ordinary general meeting 2020 approving the FS 2019 will ratify the board's decision

Reduction of the Normal NWT

Distribution / cancellation of the NWT reserve

- Principle: If the unavailable reserve is not maintained entirely or partially in the balance sheet for the 5-year minimal period, the NWT charge of the year following the distribution year increases by 1/5 of the amount of the distributed reserve
- Example:
 - Unavailable reserve: EUR 100,000
 - Amount distributed before the end of the 5-year period: EUR 40,000
 - NWT charge due in N+1: EUR 8,000 (= EUR 40,000 / 5)

Reduction of the Normal NWT

Distribution / cancellation of the NWT reserve

- Exceptions:
 - **Dissolution:** NWT of the year of the liquidation has to be increased by 1/5 of the amount of the reserves distributed before the end of the 5-year period
 - **Merger:** the NWT reduction still applies as long as the reserves are maintained or continued in the FS of the absorbing company
 - **Migration** (i.e. transfer of the registered office and central administration in a foreign country): the NWT reduction still applies as long as the reserves are maintained or continued in the FS of the foreign company

6. Questions & Answers

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Thank you