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Net wealth tax: Court confirms non-deductibility of debt linked to exempt property

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On 21 April 2026, the Luxembourg Administrative Court issued its judgment in case n°52991C, ruling on an appeal against the Administrative Tribunal's judgment of 30 April 2025 (case n°47382).

Background

The appeal raised three distinct sets of issues:

- procedural aspects concerning the legal standing of a dissolved company to initiate proceedings;
- the applicability of the non-aggravation principle in connection with double tax treaties; and
- the compatibility of the applicable Luxembourg domestic tax rules with EU law, in particular the freedom of establishment and the free movement of capital.

The case concerned a Luxembourg limited liability company (the 'Company'), ultimately liquidated, which held a 49.95% interest in a Polish fiscally transparent entity (the 'Polish Entity'). The Polish Entity in turn owned an immovable property under construction in Poland, financed by debt.

For Luxembourg net wealth tax purposes for the years 2013 and 2014, the Company had included in its taxable wealth basis the Polish immovable property (valued at 10% of its market value, using the method applicable to Luxembourg immovable properties as at 1 January 1941) and the thereto related debt, thereby generating a net negative balance that reduced its taxable wealth and, consequently, its Luxembourg net wealth tax.

The Luxembourg tax authorities rejected this treatment and excluded from the Company's taxable wealth both the Polish immovable property and the debt financing it, relying on the Luxembourg-Poland double tax treaty (the 'Treaty') and the provisions of the Luxembourg valuation law (Bewertungsgesetz, 'BewG') and net wealth tax law (Vermögenssteuergesetz, 'VStG').

Following the tax authorities' rejection, the Company challenged the assessments before the Administrative Tribunal and, after its claim was dismissed, appealed to the Administrative Court. Because the Company had in the meantime been placed in liquidation and its liquidation had been closed before the appeal was filed, the Court first had to determine who had standing to pursue the case on its behalf before turning to the substantive tax issues.

1. Admissibility

The Court confirmed that, at the time the first-instance proceedings were introduced, only the liquidator had standing to act on behalf of the Company (then in liquidation but not yet dissolved).

The Court further held that, following the definitive closure of the liquidation, the dissolved company survives passively in order to defend against claims by its creditors – including actions brought by the dissolved company against tax assessments, which constitute, in substance, a defence against the tax authorities as creditors. The liquidator alone is entitled to act in that capacity.

2. Non-aggravation Principle

The Court reaffirmed that double tax conventions have the sole effect of delimiting the contracting States' respective taxing rights (negative effect) and do not create new or increased tax obligations. They respond, by construction, to the non-aggravation principle.

The Court then distinguished the leading precedent cited by the appellant (Cour adm. 10 August 2005, n°19407C), in which the non-aggravation principle had been invoked to allow the deduction of foreign negative income. In that case, Luxembourg domestic law (before its 2001 amendment) did not itself exclude foreign negative income from the taxable basis; the exclusion was attributable solely to the treaty.

In the present case, by contrast, the exclusion of the debt from the Company's taxable wealth follows directly from Luxembourg domestic law: §§62 and 74 BewG expressly exclude from the taxable wealth base any debt economically linked to an asset that is itself excluded from the wealth basis by reason of an exemption under any other legislation (including double tax conventions). Accordingly, the exclusion of the debt does not result from an unfavourable treaty interpretation, but from a consistent domestic rule that symmetrically mirrors the exclusion of the underlying asset. The Court therefore rejected the non-aggravation argument.

3. Conformity with EU Law

The Court first addressed the threshold question to determine which EU fundamental freedom applied. It held that the Company's 49.95% participation in the Polish Entity conferred a 'certain influence' over the latter's decisions within the meaning of the CJEU's case law, so that the investment fell under the freedom of establishment (Article 49 TFEU) rather than the free movement of capital.

On the existence of a restriction, the Court acknowledged that the refusal to take into account, in the Company's wealth tax base, both the Polish immovable property and the thereto related debt – while a Luxembourg company holding an immovable property through a Luxembourg transparent entity could include both the asset and the debt – could in principle constitute a disadvantageous treatment. However, it went on to examine whether the two situations were objectively comparable.

Applying the CJEU's case law on non-resident permanent establishments (Timac Agro Deutschland, C-388/14; W AG, C-538/20), the Court held that the situations were not objectively comparable. By concluding the Treaty with Poland, Luxembourg renounced its taxing power over the Polish immovable property. In the CJEU's settled case law, a company holding assets in a State to which the residence State has ceded taxing rights is not in a comparable situation to one holding assets solely in the residence State, for the purpose of measures taken to prevent or mitigate double taxation (or double loss deduction). The case fell squarely within this line of authority.

The Court also distinguished the CJEU's judgment in Bevola (C-650/16), in which the CJEU had found a comparable situation where a non-resident permanent establishment had definitively ceased all activity and its losses could no longer be taken into account in the State where it operated.

In the present case, Poland had no net wealth tax against which a negative balance of the Polish Entity could ever have been recognised, so there was no such 'trapped' negative element that Luxembourg was called upon to absorb.

The Court further held that even if the situations had been found comparable, the restriction would in any event have been justified by the objective of preserving the balanced allocation of taxing powers between Member States – a ground of justification firmly established in the CJEU's case law (Marks & Spencer, C-446/03; Argenta Spaarbank, C-350/11). Luxembourg could validly rely on the allocation of taxing powers agreed under the Treaty to refuse recognition of a negative balance arising from assets situated in Poland, in the absence of any Polish wealth tax against which such a negative balance would have been relevant.

As a result, the Court declined to refer a preliminary question to the CJEU. Although, as a court of last instance, it is in principle required to make such a reference when a question of EU law arises, the Court found that the existing CJEU case law had already addressed the relevant issues with sufficient precision to allow it to exclude, with adequate certainty, any incompatibility with the freedom of establishment, without any reasonable doubt remaining (*acte clair*, following Consorzio Italian Management, C-561/19). The subsidiary request for a preliminary reference was accordingly rejected.

Conclusion

The Court dismissed the appeal and confirmed the Administrative Tribunal's judgment in its entirety. The exclusion of both the Polish immovable property and the thereto economically linked debt from the Company's Luxembourg net wealth tax basis was upheld as fully consistent with the Treaty, the BewG, and the VStG, and as compatible with EU law.

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