

<p>Q&A CNC 24/032</p>	<p><u>QUESTIONS / ANSWERS :</u></p> <p>“PILLAR 2” LAW AND OPTION TO PRESENT IN THE NOTES TO THE ANNUAL ACCOUNTS* FOR FINANCIAL YEAR 2023** DEFERRED TAX ASSETS AND LIABILITIES</p>
--	--

* This Q&A applies to annual accounts prepared for legal / statutory purposes and presented in accordance with LUX GAAP or LUX GAAP – FV.

** This Q&A refers to the latest financial year beginning before the entry into force of the rules introduced by the “Pillar 2” law¹, i.e. in practice any financial year beginning no later than 30 December 2023².

Context:

This Q&A follows on from Q&A CNC 24/031 entitled “Impact of the ‘Pillar 2’ law on the notes to the annual and consolidated accounts for financial year 2023 presented under LUX GAAP or LUX GAAP – FV” and applies to constituent entities that fall within the scope of the “Pillar 2” law^{3/4} as soon as such law comes into force.

Article 53, paragraph 2 of the “Pillar 2” law provides that the multinational enterprise group (MNE) or the large-scale domestic group “shall take into account all deferred tax assets and deferred tax liabilities reflected or disclosed in the financial statements⁵, of all constituent entities in a jurisdiction (...)”.

In this context, the question arises as to whether a Luxembourg undertaking that is part of a multinational enterprise group or of a large-scale domestic group is entitled to present its deferred tax assets and liabilities in the notes to its annual accounts, as prepared for legal / statutory purposes⁶, for the last financial year preceding the first application of the “Pillar 2” law. It is considered that disclosing deferred tax assets and liabilities in the notes to the annual accounts of an undertaking that is part of a multinational enterprise group or of a large-scale domestic group has the advantage of providing better traceability (by entity and by jurisdiction) than disclosure in the parent undertaking's consolidated accounts alone⁷.

Furthermore, there is also the question of how to calculate deferred tax assets and liabilities (base and rate) relating to tax attributes⁸ and to temporary differences to be disclosed, where applicable, in the notes to the annual accounts for financial year 2023** of a Luxembourg undertaking that is part of an MNE group or of a large-scale domestic group.

*

¹ Law of 22 December 2023 on minimum effective taxation with a view of transposing Council Directive (EU) 2022/2523 of 15 December 2022 on ensuring a minimum level of global taxation of multinational enterprise groups and large-scale domestic groups in the Union. Official Journal of the Grand Duchy of Luxembourg, Memorial A, No. 864 of 22 December 2023.

² It should be noted that deferred tax assets and liabilities must also be recognised in the accounts or disclosed in the notes to the accounts for the transition year as defined in Article 53(1) of the “Pillar 2” law, as well as in the accounts for each of the following tax years.

³ Namely, constituent entities to which the “Pillar 2” law applies from the tax year beginning between 31 December 2023 at the earliest and 30 December 2024 at the latest.

⁴ It should be noted that Luxembourg undertakings that will fall within the scope of the “Pillar 2” law later will face similar considerations.

⁵ In the French version of Council Directive (EU) 2022/2523 of 15 December 2022 on ensuring a minimum level of global taxation for multinational enterprise groups and large-scale domestic groups in the Union, known as the “Pillar 2” Directive: “(...) constatés dans les états financiers, ou tels qu'ils ressortent des états financiers (...)”.

⁶ Annual accounts prepared for legal / statutory purposes refer, within the meaning of this Q&A, to annual accounts prepared and filed in accordance with the Law of 19 December 2002 on the trade and companies register, as well as on the bookkeeping and annual accounts of undertakings.

⁷ It should be noted that where deferred tax assets and liabilities have been recognised or disclosed in the notes to the consolidated accounts of the MNE group or of the large-scale domestic group, then a presentation of the deferred tax assets and liabilities in the notes to the annual accounts of a constituent entity does not replace this recognition or disclosure in the notes to the consolidated accounts. On the contrary, in such a case, the disclosure in the notes to the annual accounts is complementary to the information included in the consolidated accounts of the group, facilitating the traceability of the deferred taxes (by entity and by jurisdiction).

⁸ “Tax attributes” correspond in particular, but are not limited to, tax losses carried forward and tax credits that can be used.

Q&A CNC 24/032	<u>QUESTIONS / ANSWERS</u> : “PILLAR 2” LAW AND OPTION TO PRESENT IN THE NOTES TO THE ANNUAL ACCOUNTS* FOR FINANCIAL YEAR 2023** DEFERRED TAX ASSETS AND LIABILITIES
---	---

Questions:

Is a Luxembourg company that is part of an MNE group or a large-scale domestic group within the meaning of the “Pillar 2” law entitled to disclose its deferred tax assets and liabilities in the notes to its annual accounts for financial year 2023**? If so, on what basis and at what tax rate should its deferred tax assets and liabilities be calculated?

Answers:

With regard to the possibility for a Luxembourg undertaking that is part of an MNE group or a large-scale domestic group within the meaning of the “Pillar 2” law to disclose its deferred tax assets and liabilities in the notes to its annual accounts for financial year 2023**, CNC notes that pursuant to Article 26(4) LRCS⁹, it is incumbent upon the undertaking, where applicable, to provide in the notes to its annual accounts any additional information which, in its opinion and in the light of the “Pillar 2” rules, contributes to the true and fair view objective referred to in Article 26(3) LRCS¹⁰.

As regards the method of calculating the amount of deferred tax assets and liabilities to be disclosed in the notes to the annual accounts for financial year 2023**, CNC is of the opinion that deferred tax assets or liabilities should be calculated on the basis of the gross amount of the tax attributes or temporary differences, applying, where applicable, the income tax rate in force in Luxembourg, i.e. a rate of 24.94% for undertakings that have their registered office in Luxembourg City. Thus, taking the example of tax losses carried forward¹¹, an undertaking based in Luxembourg City will apply the income tax rate of 24.94% to all tax losses carried forward that the undertaking believes it can claim¹². It should be noted that the undertaking is not required to analyse the recoverability of deferred tax assets in relation to tax losses carried forward, as it may base its calculation on the gross amount of such tax losses carried forward.

*

⁹ Article 26(4) LRCS provides that:
“Where the application of the provisions set out hereafter would not be sufficient to give a true and fair view within the meaning of paragraph (3), additional information must be given.”

¹⁰ Article 26, paragraph 3 LRCS provides that:
“The annual accounts shall give a true and fair view of the undertaking’s assets, liabilities, financial position and results.”

¹¹ It should be noted that in the case of tax credits, unlike tax losses carried forward, the entire amount of the tax credit would be taken into account as deferred tax assets without applying the tax rate.

¹² These are therefore tax losses carried forward as declared in a tax return (adjusted, where applicable, following tax assessment and not subject to dispute by the taxpayer) as well as realised tax losses that have not yet been declared. If a tax loss carried forward is disputed or is expected to be disputed, the disputed amount should be disclosed in the notes to the annual accounts, provided that it is material in relation to the true and fair view objective.

Q&A CNC 24/032	<u>QUESTIONS / ANSWERS :</u> “PILLAR 2” LAW AND OPTION TO PRESENT IN THE NOTES TO THE ANNUAL ACCOUNTS* FOR FINANCIAL YEAR 2023** DEFERRED TAX ASSETS AND LIABILITIES
-----------------------------------	---

Disclaimer

This document – provided as a courtesy – is an unofficial translation of the French original document entitled “Loi «Pilier 2» et option de présentation en annexe des comptes annuels de l'exercice 2023 des actifs et passifs d'impôts différés”. In case of discrepancy in interpretation, the French version shall prevail.

The “questions and answers” published by the “Commission des normes comptables (CNC)” (Accounting Standards Board):

- are of a general nature and do not refer to the specific situation of any natural or legal person;
- are intended to contribute to the development of accounting doctrine in accordance with Article 73(b) of the amended Law of 19 December 2002 on the trade and companies register, as well as on the bookkeeping and annual accounts of undertakings;
- only represent the opinion of the GIE CNC on a number of doctrinal and interpretative issues;
- do not prejudge the tax implications that may arise from the accounting treatments mentioned.

The administrative or management bodies of undertakings remain responsible in accordance with general law for any decisions taken based on this document.