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. Package of measures to revitalize the housing market – indirect taxation

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

This tax credit is temporarily increased to 40,000 euros per person (or 80,000 euros per purchasing couple) for all deeds signed in 2024.

In principle, it will fall back to 30,000 euros (i.e., 60,000 euros per purchasing couple) in 2025, barring renewal measures.

Currently, the standard rate for real estate acquisitions (house, apartment, building plot) is 7%, 6% for registration fees and 1% for transcription fees.

As regards the tax base, when a purchaser-investor acquires a property intended as a tenant's main residence, the tax base is reduced by 50%, subject to certain conditions, including the submission of a request for the 50% reduction, which must be contained in the deed of acquisition signed before a notary. This measure applies to deeds notarized between 1 October 2024 and 30 June 2025.

ii. Other measures aiming to boost the Luxembourg real estate market – direct taxation

Prior to 1 January 2025, for direct tax purposes, the sale or transfer of a privately-owned property was, in principle, taxed as miscellaneous income as disposal profits and benefited from the half-rate if the property in question had been held for more than 2 years.

From 1 January 2025, the above-mentioned holding period has been increased from 2 to 5 years.

Additionally, as of the 2024 tax year, the amount of deductible debt interest for the acquisition of a principal residence occupied for less than 6 years is no longer capped.

iii. Potential extension of certain measures

Exceptional tax measures to revitalize the housing market should be extended to the end of June 2025 if Bill 8470 is passed.

The main measures are:

- Further increase in “Bëllegen Akt” tax credit to 40,000 euros per person;
- Return of the rental tax credit up to 20,000 euros per person;
- Application of the quarterly overall rate for real estate capital gains taxed in the miscellaneous income category as disposal profits; and
- Return of the “special construction allowance” for new homes. This is an additional 4% depreciation (on top of the current 2%, for a total of 6%), applicable in the year of completion and the following 6 years. This allowance applies to the purchase of a VEFA property (as defined below). The amount of this allowance is capped at 250,000 euros.

2. Amendment of residential lease rules

By the Law of 23 July 2024, Luxembourg amended several points of the legal regime applicable to residential leases.

According to the parliamentary documents, the text aims to protect tenants against unfair rents by bringing more transparency into the landlord/tenant relationship, by regulating shared rentals and encouraging "investors to return to the real estate market" to "meet the growing demand for housing".

The main new features can be summarized as follows.

i. Obligation to document the lease agreement in writing

Since the law came into force (1 August 2024), all residential lease agreements must, on pain of nullity, be documented in writing and contain a certain number of mandatory mentions specified in the law.

ii. New rent increase framework

The "annual thirds" rule that previously governed rent increases has been repealed. Rent increases may now not exceed 10% of the agreed monthly rent over a two-year reference period.

The Luxembourg government has indicated that it will soon introduce another bill to overhaul the current rent cap mechanism.

iii. Disappearance of the concept of "luxury housing"

The concept of "luxury housing" has also been abolished. This referred to housing "with modern, non-standard comforts" and for which the monthly rent exceeded 269 euros, the value of the 1 January 1948 weighted cost-of-living index, expressed as 100.

Qualification as "luxury housing" made it possible to exclude the application of a certain number of provisions of the law aimed at specifically protecting the tenant (rent ceilings, in particular).

iv. Rental guarantee

The maximum amount of the rental guarantee to be paid by the tenant has been lowered from 3 to 2 months' rent, legislators considering that this sum is generally sufficient to guarantee the tenant's obligations under the lease.

At the end of the lease, the landlord is now subject to strict deadlines for returning the guarantee:

- 50% of the security deposit must be returned to the tenant within 1 month of receiving the keys, except in the case of rent arrears or damage noted at the departure inventory.
- The remaining balance must be paid within 1 month of receipt of the final statement of charges.

Failure or delay on the part of the landlord in returning the rental guarantee may give rise to a penalty of 10% of the rent for each month's delay.

v. Sharing of intermediary fees

Commissions paid to intermediaries (real estate agents or other third parties) in connection with the rental of a property are to be shared equally between the tenant(s) and the landlord, any clause to the contrary in the lease being automatically deemed unwritten.

vi. Introduction of a specific regime for shared rentals

Finally, the law introduces a new regime for shared rentals, defined as "the rental of the same dwelling by several tenants, called co-tenants, who opt, with the express agreement of the landlord, for the application of rules specific to shared rental".

This regime, which presupposes the express agreement of the landlord and the co-tenants, has a number of specific rules, such as the establishment of a co-tenancy agreement specifying the various obligations applicable between co-tenants and the means for simultaneous termination by some or all of the co-tenants of the co-tenancy lease.

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. Amendment of the "*Baulandvertrag*" (building land contract) – Bill 7139A

On 16 September 2024, the Parliament's Home Affairs Committee decided to split Bill No. 7139 (the "**Baulandvertrag**"), intended to make far-reaching changes to the Law of 19 July 2004 on municipal planning and urban development, into two separate bills.

Bill No. 7139A brings together the measures initially proposed in Bill No. 7139 for better implementation of general and specific development plans, while Bill No. 7139B, the text of which is not yet available, will take up the more "controversial" measures of Bill No. 7139, including mainly easements determining temporary slots for servicing and construction.

Below are the two main points of new Bill No. 7139A.

i. Abolition of the general development plan one-off amendment procedure

The option of resorting to a one-off amendment to a general development plan is no longer proposed in the new bill.

The drafters of the text justify this deletion as follows:

"Following the work carried out by the 'Administrative Simplification' working group, set up by the Government at the National Housing Meeting in February 2024, the Government decided to draw up a bill with the aim of harmonizing the procedures for adopting specific and general development plans, while reducing procedural timescales.

It is therefore proposed to dispense with establishing a one-off amendment procedure for general development plans by means of the bill under the heading of "General Development Plan".

In fact, it is intended to significantly shorten the procedural deadlines for adopting general development plans so that the one-off general development plan amendment procedure, although shorter than the current procedure for amending a general development plan, no longer serves any purpose."

ii. Ministerial reparcelling

By contrast, Bill No. 7139A still includes the proposal to reform the urban land reparcelling procedure.

Urban reparcelling is a procedure for implementing a specific "new district" development plan or land subdivision, which involves reshaping an existing parcel of land so as to bring it into line with the lots delineated by the specific "new district" development plan or land subdivision.

The proposed new procedure, known as "ministerial land reparcelling", is primarily intended to guarantee the implementation of land reparcelling projects that do not receive the agreement of all the owners concerned, given that the procedures currently in force in this respect under the Law of 19 July 2004 ("conventional" land reparcelling and "legal" land reparcelling) have in practice never been completed, according to the drafters of the bill.

3. Draft law on the right of pre-emption to promote housing - Bill No. 8216

Introduced on 15 May 2023, the draft law on pre-emptive rights to promote housing is currently making its way through the legislative process, with the aim, according to its drafters, of "reviewing the provisions governing the legal right of pre-emption and designing them to meet current and future housing policy requirements".

The properties subject to the right of pre-emption and the pre-emptive powers provided for in the bill remain broadly the same as those set out in the Law of 22 October 2008 on long-term lease and surface rights and introducing various administrative and fiscal measures to promote housing ("**Housing Pact 1.0**").

However, we note the addition of a right of first refusal in favor of municipalities for undeveloped plots of land located entirely or partially in public building and equipment zones ("**BEP Zones**").

Contrary to Housing Pact 1.0, the draft also defines the concept of "non-constructed plots" (to which the right of pre-emption applies) as "plots free of any construction intended for the prolonged residence of persons".

For projects to be carried out on the pre-empted land, Article 2 of Bill No. 8216 specifies that the right of pre-emption may only be exercised for projects that meet at least 1 of the following public interest objectives:

1. implementation of an affordable housing project pursuant to the Affordable Housing Act;
2. realization of community facilities, roadworks and public amenities; and
3. gradual acquisition of properties in anticipation of the total or partial achievement of an objective referred to in points 1 to 2.

Bill No. 8216 also specifies that the decision to exercise the right of pre-emption must indicate the nature of the project on which the right of pre-emption is based, in line with Luxembourg's administrative courts' case law in this area.

Regarding the scope of the right of pre-emption, Bill No. 8216 intends to retain the provisions of Housing Pact 1.0, while adding to the list of transactions including the transfer of corporate rights and the transfer of undivided rights over real estate, except where the transfer is granted to one of the co-dividers.

According to the drafters of the bill, this addition "is intended to avoid abuses that have been observed in practice (...) namely 'share deal' arrangements and the creation of 'artificial' undivided interests with the sole aim of circumventing the legal right of pre-emption".

Similarly, the list of transactions that do not fall under the right of pre-emption remains the same as under Housing Pact 1.0, except for the addition of the following transactions:

- Alienations between a person and the descendants of his/her spouse or legal partner; and
- Alienations to and by the State.

Other interesting aspects of the bill include:

- The introduction of an "acquisition proposal" procedure from the seller to the pre-empting authority, which, according to the authors of the project, would allow knowledge of the pre-empting authority's position on the possible exercise of its right of pre-emption at an early stage in the procedure; and
- The legal enshrinement of a principle sanctioning any "abusive misuse of the provisions of the law" in order to escape the application of a right of pre-emption.

4. MP Paulette LENERT's (LSAP) 10 December 2024 motion

Faced with the bankruptcy of several major real estate developers in Luxembourg in recent years (including CENARO and GREENFINCH), many political actors are calling for a thorough reform of the legislation and regulations currently applicable to VEFA (sales before completion), to ensure better protection for purchasers in the event of default by real estate developers.

In this context, MP Paulette LENERT (LSAP) tabled a motion on 10 December 2024 calling on the Luxembourg government to:

- Develop and introduce standardized, detailed and mandatory specifications to ensure greater transparency and protect buyers from unforeseen additional costs;
- Prohibit automatic price indexation clauses in VEFA contracts, to stabilize costs and ensure greater financial predictability;
- Bring greater precision and constraint to delivery times, by requiring that the contract mandatorily stipulate the start date of the work, the performance or delivery period, and damages and interest for late performance or delivery;
- Require that such damages and interest equal at least normal rent for the completed property to which the contract relates;

- Make it mandatory for sellers to take out ten-year civil liability insurance to protect purchasers against any defects or faults discovered within 10 years of delivery;
- Subject the requirement to pay successive instalments subject to certification of the work carried out by an architect or other qualified person authorized to practice in Luxembourg;
- Study the desirability of setting up a dedicated control unit to investigate and record breaches of the VEFA law and its implementing regulations, along the lines of what has recently been introduced in Belgium;
- Introduce a fast-track procedure for noting non-completion of a building sold forward or in a future state of completion;
- Extend the repayment guarantee to cover not only payments already made for work, but also the full value of the land; and
- Amend the Grand-Ducal Regulation of 24 February 1977 implementing Article 1601-5 of the Civil Code to extend its scope to also allow insurance companies to issue completion guarantees.

To our knowledge, no bill to this effect has yet been introduced.

IV. Recent case law

1. Ruling of the Constitutional Court of 23 December 2022 on commercial leases, judgment of the Esch-sur-Alzette Peace Court of 2 November 2023 and appeal decision of 7 May 2024 (sublease rent for commercial leases)

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.

This point of the decision was simply confirmed by the Luxembourg District Court, ruling on appeal, on 7 May 2024, and to our knowledge no cassation appeal has been lodged against the decision to date.

2. Court of Cassation ruling of 4 July 2024 (indication of the reason for termination in the termination letter for commercial leases)

Subject to the payment of an eviction indemnity after the 9th year of tenancy and termination for fault, the Law of 3 February 2018 on commercial leases provides for only 3 restrictive cases allowing the landlord to terminate a commercial lease.

In a 4 July 2024 ruling, the Court of Cassation reiterated that there is no legal provision requiring the landlord to state the reason for termination of a commercial lease directly in the termination letter.

The judgment in question was therefore quashed, on the grounds that the appeal judges had wrongly considered that the termination letter sent by the landlord was ineffective, since it did not specifically indicate the reason for termination pursuant to which the lease was terminated.

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