

REVIEW OF THE CONTENTS OF ACT NO 107/2015

On 4 November this year the Icelandic parliament *Althingi* passed amendments to the Income Tax Act, the Act on a Special Tax on Financial Undertakings, the Act on Financial Undertakings and the Act on a Stability Levy (regarding compositions of the estates of failed financial undertakings), cf. the accompanying translation.

The following is a brief account of the main points of this legislation and their significance for LBI hf. and the company's creditors.

1. Amendments to the Act on Financial Undertakings, No. 161/2002, as subsequently amended:

Conclusion of winding-up proceedings

It is stated clearly that a financial undertaking's winding-up proceedings conclude with the approval of composition.

The amendment removes any doubt as to when winding-up proceedings are considered to be completed and thereby when the tax liability provided for in Art. 2 of Act No. 60/2015, on a Stability Levy, no longer applies.

Weighting of votes

The composition proposal of a financial undertaking is considered to be approved if it receives the same proportion of votes, weighted with the claims amounts of voters participating in the voting, as the proportional waiver of contractual claims proposed under the proposal; however, with a minimum of 60% and a maximum of 85% of these votes.

The amendment reduces the maximum proportion of votes by amount of claim needed for approval from 90% to 85%, and furthermore provides for the calculation of this proportion to include only the weighted votes of creditors participating in the voting. Previously the threshold was a proportion of all claims regardless of participation and the maximum which could be required for approval was 90%.

Work of the Winding-up Board following conclusion of winding-up proceedings

Provision is made for the fourth paragraph of Art. 101 of the Act on Financial Undertakings, No. 161/2002 to apply to the work of the Winding-up Board from the time a composition has been confirmed until a new Board of Directors has been elected.

This concerns the period from the time the winding-up proceedings of a financial undertaking are formally completed, with the confirmation of a composition, until a shareholders' meeting is held where creditors, as new shareholders, elect a new Board of Directors for the re-established company. This clarifies the legal status during the interim period and in fact implies that during this period the status of the Winding-up Board is similar to what it was during winding-up proceedings.

Composition payments for disputed claims etc.

If, due to its nature, payment provided for in a composition cannot be deposited to an escrow account and/or a custody account the Winding-up Board may take other measures to ensure that a creditor receives payment once a dispute had been resolved or when a creditor is able

to receive the payment. An account shall be given of such measures in the composition proposal and, once the measures have been taken, the composition payment is considered to have been made to the creditor concerned.

This amendment ensures, among other things, that problems cannot arise in fulfilment of the composition if payment is to be made, in full or in part, by a means of payment which, due to its nature cannot be preserved in an escrow account; this is primarily directed at composition payments made with new share capital.

Scope of the Act

The newly adopted legislation applies to financial undertakings in winding-up proceedings which have not held a meeting to vote on a composition proposal.

As LBI hf. has not held a creditors' meeting to vote on a composition proposal, cf. the first paragraph of Art. 151 of Act No. 21/1991 on Bankruptcy etc., cf. the third paragraph of Art. 103 a of Act No. 161/2002, on Financial Undertakings, it is evident that the said amendments apply to the company's composition process and eventual composition.

2. Amendment to the Act on a Stability Levy, No. 60/2015

Termination of tax liability - Altered time limit for concluding winding-up proceedings

A Temporary Provision prescribes that, notwithstanding the provisions of Art. 2 of the Act, those parties which previously operated as commercial banks or savings banks, cf. Art. 4 of Act No. 161/2002, on Financial Undertakings, but are currently in winding-up proceedings as provided for in Art. 101 of the same Act, shall not be included in taxable entities as referred to in the Act if they have concluded winding-up proceedings prior to 15 March 2016.

The extended time limit to conclude winding-up proceedings is conditional upon those parties covered by the provision having obtained approval of a composition proposal at a meeting convened on the basis of the second sentence of the third paragraph of Art. 103 a of Act No. 161/2002, on Financial Undertakings, and having submitted a written request for confirmation of the composition to a District Court, as provided for in Chapter IX of Act No. 21/1991 on Bankruptcy etc., prior to 31 December 2015.

The Winding-up Board of LBI hf. has, as is generally known, been preparing a composition proposal for the company in recent weeks and months. The intention is to hold a creditors' meeting on 23 November this year, to vote on the composition proposal of LBI hf. Provided the proposal receives the required creditor support, the Winding-up Board will then, within one week of the conclusion of voting, submit a written petition to the Reykjavík District Court for confirmation of the composition of LBI hf. With the above-mentioned amendment it is clear that there should be sufficient time to conclude the process of obtaining confirmation of the composition of LBI hf. by the courts, in order that the company's liability for tax under Art. 2 of Act No. 60/2015 will not arise.

3. Amendment to the Act on a Special Tax on Financial Undertakings, No. 155/2010 (bank tax)

Termination of tax liability

Provision is made for those parties to be exempt from the tax pursuant to Act No. 155/2010 who previously operated as commercial banks or savings banks, cf. Art. 4 of the Act on Financial Undertakings, No. 161/2002, who have obtained approval for a composition proposal at a

meeting convened on the basis of the second sentence of the third paragraph of Art. 103 of Act No. 161/2002, on Financial Undertakings, and have submitted a written petition for confirmation of the composition to a District Court judge.

This amendment ensures that if the composition of LBI hf. is approved at the proposed voting meeting and a petition for confirmation submitted to the Reykjavík District Court thereafter, then the bank tax will not be levied on the company in the 2016 assessment even if the courts' conclusion on confirmation of the composition is not available before the end of this year.

4. Amendment to the Income Tax Act, No. 90/2003, as subsequently amended

Registration of interest-free notes with depositaries

Provision is made for interest paid on notes issued in connection with the fulfilment of a composition and in their own name by legal entities, which previously operated as commercial banks or savings banks but are in winding-up proceedings or have completed winding-up proceedings with a composition which has been confirmed by the courts, to be exempt from tax, cf. 1. Point 8 of Art. 3 of the Income Tax Act, No. 90/2003.

The notes which are to be issued in fulfilment of the composition of LBI hf. will not bear interest, but this amendment ensures that the notes can be registered with depositaries such as Clearstream and Euroclear.

Utilisation of operating losses carried forward in connection with debt waived under a composition

Temporary Provision LVI was amended by Act No. 38/2015 to apply, with the amended time limits, to assessment of public levies in 2016 and 2017 for the 2015 and 2016 income years. Substantial changes prescribe that waiver of debt under a composition does not create taxable income in excess of losses carried forward.

The amendment has no effect on LBI's tax position.