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Luxembourg Insights

Summer 2023

Simmons & Simmons Luxembourg LLP

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17 May 2023

ESMA: Opinion on undue costs of UCITS and AIFs

On 17 May 2023, ESMA published an Opinion relating to "undue costs of UCITS and AIFs" that follows its Common Supervisory Action ("CSA") on the supervision of costs and fees of UCITS launched in January 2021.

The CSA showed divergent market practices on what was reported as "due" or "undue" costs and this persuaded ESMA that defining the notion of "undue costs" more specifically would provide greater convergence.

The new ESMA Opinion suggests to clarify the UCITS Directive (Article 14) and the AIFMD (Article 12) with respect to the notion of "undue costs" by adding the following items:

- management companies and AIFMs shall act in such a way as to prevent undue costs being charged to a UCITS and an AIF, and/or to their investors;
- management companies and AIFMs shall assess the eligibility of costs by way of referring to the categories of costs set out under Annex VI Part 1.I of the of the Commission Delegated Regulation (EU) 2017/653, taking into account the investment policy of respectively the UCITS or the AIF;
- ESMA shall develop draft regulatory technical standards to:

i. specify the circumstances in which costs should be considered as undue/not eligible, also taking into account the investment policy of respectively the UCITS or the AIF;

ii. specify under which conditions NCAs may authorise on a case-by-case basis additional cost categories which are not included under Annex VI Part 1.I of the Commission Delegated Regulation (EU) 2017/653.

ESMA further argues that the assessment whether a cost is due/undue should also consider the amount of the cost as there can be cases where a cost meets the eligibility test, but it is "undue" in terms of its quantum.

For more information, please click here.

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17 May 2023

Consolidated Q&As on the SFDR and the PRIIPs Key Information Document

On 17 May 2023, the ESAs published a new consolidated Q&A on the SFDR and consolidated Q&As on the PRIIPs KID to pull together a variety of documents setting out interpretation of the SFDR and the PRIIPs KID.

It should be noted that neither document adds new guidance or interpretation. In each case, the document contains the (a) consolidated responses given by the European Commission to questions requiring interpretation of EU law (i.e. these are coloured blue in the documents) and (b) consolidated responses generated by the ESAs, which relate to the practical application or implementation of the relevant rules (which are left uncoloured).

For more information, please click here.

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23 May. 2023

ESMA: Consultation Paper on the draft regulatory technical standards under the revised ELTIF Regulation

European Long-term Investment Funds ("ELTIFs") were introduced in December 2015 (Regulation 2015/760 of the European Parliament and of the Council of 29 April 2015) but did not prove to be as attractive as the European Commission had expected.

An initiative was therefore launched to overhaul the ELTIF regime which led to revise the existing regulation to help ELTIF to become a more popular brand. Regulation (EU) 2023/606 ("ELTIF 2.0") was published in the Official Journal of the European Union on 20 March 2023 and amends Regulation (EU) 2015/760. Key changes contemplated under the new ELTIF 2.0 are detailed in our article.

In this context, ESMA has been mandated to develop draft regulatory technical standards ("RTS") under ELTIF 2.0, notably with respect to:

- criteria for establishing the circumstances in which the use of financial derivative instruments solely serves hedging purpose;
- the circumstances in which the life of an ELTIF is considered compatible with the life-cycles of each of the individual assets, as well as different features of the redemption policy of the ELTIF;
- the circumstances for the use of the matching mechanism, i.e. the possibility of full or partial matching (before the end of the life of the ELTIF) of transfer requests of units or shares of the ELTIF by exiting ELTIF investors with transfer requests by potential investors;
- the criteria to be used in relation to the orderly disposal of the ELTIF assets; and
- the costs disclosure.

On 23 May 2023, ESMA published a Consultation Paper which represents the first stage in the development of the draft RTS and sets out proposals for their content on which ESMA is seeking the views of external stakeholders in respect of the above items.

The consultation period closes on 24 August 2023, following which the ESMA will consider the feedback it has received. ESMA will then publish a Final Report with the draft RTS by 10 January 2024 when the ELTIF 2.0 will come into effect.

For more information, please click here.

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06 June 2023

ESMA publishes follow-up report on Guidelines on ETFs and UCITS issues

On 6 June 2023, ESMA published a follow-up report (the "Report") to its 2018 peer review on the Guidelines on ETFs and other UCITS issues.

Although the Report finds that the national competent authorities have strengthened their supervisory practices, it highlights that there are still concerns in relation to the level of costs for some UCITS using Efficient Portfolio Management techniques.

In particular, the Report assessed how and whether the BaFin in Germany, the Estonian Financial Supervision Authority (EFSA), and the CSSF in Luxembourg have improved their practices following the findings and recommendations of the 2018 peer review.

ESMA also assessed the supervisory work carried out by the AMF in France, BaFin, the Irish Central Bank, and the CSSF in relation to the attribution of revenues and costs derived from securities lending activities by UCITS.

More information can be found in the Report and our article.

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14 June 2023

ESMA: update of the Q&A on the application of the UCITS Directive

On 14 June 2023, the ESMA has updated its Q&A on the application of the UCITS Directive. Please find below a summary of the latest answers provided by the ESMA.

QUESTIONS	ANSWERS BY ESMA
Section I, questions 8: Management of AIFs and pension schemes by UCITS management companies	
Pursuant to Article 6(2) of the UCITS Directive, are UCITS management companies allowed to manage AIFs as a registered AIFM under Article 3 of AIFM Directive 2011/61/EU?	Yes, UCITS management companies are allowed to manage AIFs as AIFMs registered under Article 3 AIFMD. Pursuant to the UCITS Directive, management companies can manage other collective investment vehicles, for which the management company is subject to prudential supervision. According to ESMA, registered AIFMs can be considered as prudentially supervised within the meaning of the UCITS Directive.
Pursuant to Article 6(2) of the UCITS Directive, are UCITS management companies allowed to manage pension schemes under Directive (EU) 2016/2341?	Yes, provided that it is authorised by national legislation implementing the UCITS Directive. Member States can authorise UCITS management companies, in addition to the management of UCITS, to manage investment portfolios of pension funds only on a mandate basis, acting as service providers and not as investment managers of the pension funds.

For more information, please click here.

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14 June 2023

ESMA: update of the Q&A on the application of the AIFM Directive

On 14 June 2023, the ESMA has updated its Q&A on the application of the AIFM Directive. Please find below a summary of the latest answers provided by the ESMA.

QUESTIONS	ANSWERS BY ESMA
Section II: Notifications of AIFs	
Where an investment strategy is developed by a third party (the fund initiator), are the obligations set out in Article 30a of the AIFM Directive (i.e. conditions for pre-marketing) applicable to this third party?	Yes. Pursuant to Article 30a(3) AIFM Directive, pre-marketing can be conducted by the EU AIFM or by a third party on behalf of an authorised EU AIFM only if that third party is authorised as an investment firm, a credit institution, a UCITS management company, an AIFM in accordance with AIFM Directive, or acts as a tied agent. Moreover, such third party is subject to the conditions for pre-marketing set out in Article 30a AIFM Directive.
Are registered AIFMs referred to in Article 3(2) of the AIFM Directive, which do not qualify as EuSEF manager or EuVECA manager, subject to the obligation to notify pre-marketing pursuant to Article 30a(1) of the AIFM Directive?	No, unless it is required otherwise under national rules.

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2023

ESMA: update of the Q&A on the application of the UCITS Directive

Section IV, question 9: De-notification of marketing arrangements for UCITS	
In case there are no investors in a host Member State, do UCITS wishing to de-notify the arrangements previously made for marketing their units have to comply with the obligations set out in Article 93a(1) of the UCITS Directive?	Yes. In case there are no investors in a host Member State, UCITS wishing to de-notify the arrangements previously made for marketing their units, will still have to comply with all the obligations set out in Article 93a(1) of the UCITS Directive, making sure that there are no investors uninformed about the UCITS' market exit, that all marketing is publicly terminated and any marketing arrangements with third parties are terminated or modified to prevent any further marketing of the de-notified UCITS.
Section IV, question 10: Scope of activities passported by UCITS management companies	
When a management company intends to pursue the activities for which it has been authorised in a host Member State, either directly or through a branch, may that management company passport in that host Member State only the administration or marketing functions referred to in Annex II of the UCITS Directive, without also passporting investment management functions?	No. The UCITS passporting regime is linked to the management of UCITS by UCITS management companies on a cross-border basis. A UCITS management company intending to manage UCITS established in another Member State, either directly or through the creation of a branch in another Member State, shall communicate to the competent authorities of its home Member State a program of operations referring to the services it intends to provide. That requirement cannot be interpreted otherwise than referring to investment management foremost, whereas auxiliary services remain as such auxiliary (i.e. administration or marketing functions) and are to be performed only in relation to the management of a UCITS

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2023

Publication of the bill of law 8183 amending the SICAR, SIF, RAIF, UCI and AIFM Laws

In case there are no investors in a host Member State, do AIFMs wishing to de-notify the arrangements previously made for marketing the units or shares of the EU AIFs they manage have to comply with the obligations set out in Article 32a(1) of the AIFM Directive (i.e. conditions regarding marketing de-notification)?	Yes, all the conditions laid down in Article 32a(1) AIFM Directive are to be complied with, making sure that there are no investors uninformed about the AIFM's market exit, that all marketing is publicly terminated and any marketing arrangements with the third parties are terminated or modified to prevent any further marketing of the de-notified AIF. Finally, Article 32a(1), second subparagraph, AIFM Directive, requiring the AIFM to cease any new or further marketing of units or shares of the AIF it manages in the Member State in respect of which it has submitted a de-notification, remains applicable. Article 32a(1), point (a), AIFM Directive lays down the only explicit exemption referring to closed-ended European long-term investment funds (ELTIFs) governed by Regulation (EU) 2015/760.
Section IV: Notifications of AIFMs	
When an AIFM intends to provide the activities and services for which it has been authorised in a host Member State, either directly or through a branch, may that AIFM passport in that host Member State only the other functions that an AIFM may additionally perform in the course of the collective management of an AIF, which are referred to in point (2) of Annex I to the AIFM Directive, without also passporting investment management functions?	No. The AIFM Directive passporting regime is linked to the management of an EU AIF. The activities referred to in Annex I, point 2 (e.g. administration and marketing) are ancillary to the activities referred to in Annex I, point 1 (i.e. investment management) and cannot be exercised independently from those. An AIFM intending to manage EU AIFs established in another Member State is to communicate to the competent authorities of its home Member State a program of operations referring to the services it intends to provide and the EU AIF it intends to manage. That requirement cannot be interpreted otherwise than referring to investment management foremost whereas auxiliary services remain as such auxiliary and are to be performed only in addition

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2023

Launch of the SFDR data collection for investment fund managers

Section VII: Calculation of leverage	
When calculating the leverage of an AIF whose core investment policy is to invest in real estate directly or indirectly, shall the AIFM include the exposure contained in financial or legal structures involving third parties controlled by that AIF as referred to in Article 6(1) and (3) of Delegated Regulation (EU) 231/2013?	Yes. Under Article 6(3) of Delegated Regulation (EU) 231/2013, an AIFM must include the exposure contained in financial or legal structures involving third parties controlled by the AIF when calculating the leverage of such AIF, where these structures are specifically set up to directly or indirectly increase the exposure at the level of the AIF (e.g. financial or legal structures involving third parties, such as special purpose vehicles controlled by the AIF, put in place to acquire real estate assets, which obtain leverage for that purpose). The exemption referred to in the second sentence of Article 6(3) of Delegated Regulation (EU) 231/2013 for AIFs whose core investment policy is to acquire control of non-listed companies or issuers, applies solely to non-listed companies (mostly venture capital and private equity funds), provided that the AIF or the AIFM acting on behalf of the AIF does not have to bear potential losses beyond its investment in the respective company or issuer.

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2023

FAQ regarding the AML/CFT Market Entry Form (Funds and IFMs)

The CSSF has recently updated its FAQ regarding the AML/CFT Market Entry Form applicable to investment funds and investment funds managers ("IFM") in order to clarify when should a Market Entry Form be completed and which specific eDesk request needs to be used.
The CSSF has drawn up the following table to facilitate the assessment when filing or updating a Market Entry Form in eDesk:

Entity	Event	eDesk Request type
Fund	Set-up of a UCITS, UCI Part II, SIF, SICAR, or when asking authorisation/registration of a label (ELTIF, EUSEF, EUVECA or MMF)	Initial Market Entry
	Approval of (a) new sub-fund(s) in an existing Fund	Market entry with new sub-fund(s)
IFM	Set-up of an authorised Investment Fund Manager or the registration of an Investment Fund Manager	Initial Market Entry
Authorised IFM	Approval of an additional licence or a licence extension	Market entry with extension of license
Authorised IFM	Entry of a qualified shareholder in the shareholding structure of the IFM	Market entry with new qualified shareholder(s)
Authorised IFM	Merger (only if the merger leads to a change to the information provided in the Market Entry Form for the absorbing IFM)	Market entry due to merger

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30 Jun. 2023

New reporting module for UCI administrators in accordance with Circular CSSF 22/811 on the authorisation and organisation of entities acting as UCI administrator now available on eDesk

On 16 May 2022, the CSSF published Circular CSSF 22/811 ("UCI Administrator Circular"). By means of reminder, the UCI Administrator Circular introduced new annual reporting for entities performing UCI administration function(s) ("UCIAs") to further strengthen the CSSF's risk-based supervision.

In accordance with point 104 of the UCI Administrator Circular, a UCIA must file information regarding its business activities and resources as detailed in Annex B of the UCI Administrator Circular, at the latest five months after its financial year-end, starting from **30 June 2023**. For example, a UCIA with a financial year ending on 30 June 2023 should first report the requested information no later than 30 November 2023. A UCIA with a financial year ending on 31 December 2023 should provide the CSSF with the UCIA reporting no later than 31 May 2024.

The UCIA annual reporting, as referred to in point 7 and detailed in Annex B of the UCI Administrator Circular, can be submitted since 30 June 2023 to the CSSF via the following channels:

- On the CSSF eDesk platform, in the section "UCI Administrator Reporting Tool". The eDesk homepage can also be accessed via the CSSF website. A user guide on eDesk authentication and user account management can also be found on the eDesk homepage.
- Via a solution based on the submission of a structured file through S3 ("simple storage service") protocol. This solution allows for an automation by UCIAs and, if needed, a testing of the reporting file submission before going into production.

For more information, please click here.

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30 Jun. 2023

SFDR data collection exercise applicable to investment fund managers (IFMs)

The CSSF has published a new communiqué on 30 June 2023 which follows up on (i) the CSSF communiqué published on 27 July 2022 announcing the intention of the CSSF to launch a data collection exercise related to SFDR and the Taxonomy Regulation and (ii) the CSSF communiqué published on 24 March 2023 in relation to the data collection exercise dedicated to pre-contractual disclosures.

The objective of this new communiqué is to provide industry participants with information regarding the launch of the data collection exercise relating to the disclosures in periodic reports for financial products disclosing under Article 8 or Article 9 of SFDR which will be provided in a digital format on an annual basis in accordance with the financial year-end of the financial products.

In light of the requirement of financial market participants within the meaning of SFDR to include sustainability-related information in the periodic reports of financial products disclosing under Article 8 or Article 9 of SFDR, the CSSF's communiqué introduces practical and technical guidance laying down further explanations on the data collection exercise.

Further information on the data collection and technical details can be found here.

04 May 2023

Judgment of the CJEU n°C-78/22

On 4 May 2023, the Court of Justice of the European Union ("CJEU") issued a ruling in response to a reference for a preliminary ruling on combating late payment in commercial transactions.

Case background:

Two Czech law governed companies entered into multiple contracts for the rental of movable property. The first company had an obligation to issue individual invoices for the services rendered, while the second company was responsible for making payments on the specified due dates stated in the invoices. However, the second company failed to meet these obligations.

Afterwards, the second company went bankrupt and a receiver was appointed. The first company sought payment of its claim, along with interest for late payment and collection costs.

Inquiries to the CJUE:

On the bases of the above, the Prague Higher Regional Court raised the following inquiries to the CJEU for a preliminary ruling:

1. Under Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions (the "Late Payment Directive"), for contracts involving recurring or continuous services, what specific conditions must be satisfied to qualify for the lump sum compensation of EUR 40 referred to in Article 6(1) of the Late Payment Directive, to cover recovery costs from the creditor?

04 May 2023

Judgment of the CJEU n°C-78/22

2. Is it permissible for the courts of the Member States to deny claims made under Article 6(1) of the Late Payment Directive?

Ruling of the CJEU:

- In cases where a single contract involves periodic payments, each with its designated timeframe, the creditor is entitled to a minimum lump sum of EUR 40 as compensation for recovery costs, for each late payment.
- It is essential to adhere to the principle of primacy of the European Union law, meaning a national court cannot refuse or reduce the specified lump sum.

For more information, please click here.

Bill of law number 8053/02: Implementation of the Mobility Directive

On 10 May 2023, the Luxembourg Bar Association gave its opinion on the bill of law number 8053 (the "Bill") which transposes, inter alia, Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019, amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions (the "Mobility Directive").

The Luxembourg Bar Association has observed that the Bill merely transposes the Mobility Directive as it stands, without making any reference to Luxembourg law. To avoid any ambiguities in interpretation, it is necessary to specify whether a company is governed by Luxembourg law and whether Luxembourg law is applicable. The Luxembourg Bar Association therefore recommends clarification in this regard, particularly concerning European cross-border mergers' conditions, publicity, the role of the independent expert, approval procedures, creditor protection, preliminary certificates, liability action, draft terms of European cross-border division and control of legality.

The Luxembourg Bar Association notes that the general meeting called to approve the intended transaction is traditionally used as the reference date for the various stages of the transaction, and even for its effectiveness. However, the Mobility Directive and the Bill fail to take into account the possibility, provided for by the European legislator, that the general meeting may not have to be convened for the purpose of approving the intended transaction (e.g. when this formality is merely optional and the parties to the transaction choose not to have recourse to it).

Bill of law number 8053/02: Implementation of the Mobility Directive

In order to fill this legal gap, the Luxembourg Bar Association strongly recommends this point to be expressly provided for in the Bill. This specifically pertains to matters like submission of comments by shareholders, creditors and employee representatives on the draft terms of cross-border merger or division, the provision of preparatory documents for the transaction, the exercise of the minority shareholders' right of withdrawal, the notary's supervision with a view to issuing the preliminary certificate, the approval of the common draft terms and the effectiveness of the division against third parties. One suggestion proposes considering the date of the general meeting of the other merging company or companies.

Furthermore, the Luxembourg Bar Association aims to introduce additional crucial points related to commercial companies' mobility. This includes addressing the transformation regime applicable to the special limited partnership (société en commandite spéciale), in particular through a change of registered office, and the so-called "triangular merger", an essential mechanism in international mergers and acquisitions.

Bill of law number 8053/02: Implementation of the Mobility Directive

Proposal to adjust the general and special merger regimes to include triangular mergers:

The Luxembourg Bar Association proposes to include these triangular merger transactions in the Bill, by adjusting the general merger regime as well as the special regime for cross-border European mergers and taking into account the following two requirements:

- At least one of the three companies involved in the triangular merger is subject to Luxembourg law; and
- The acquiring subsidiary company is 100% owned by its issuing parent company.

The proposed changes aim to extend mutatis mutandis the provisions of traditional mergers to triangular mergers, ensuring that shareholders and creditors are not adversely affected by the implementation of this new regime. The Luxembourg Bar Association seeks to treat triangular mergers on par with traditional mergers.

Regarding triangular mergers involving companies incorporated under foreign law, the Luxembourg regime would only apply to the Luxembourg aspect of the transaction. This adheres to the principle of the distributive application of laws, while fully recognizing equivalent mechanisms under foreign law.

The recognition of the Luxembourg triangular merger abroad would be contingent upon the interpretation of the applicable foreign laws.

For more information, please click here.

June
2023

Bill of law number 7885 : Foreign direct investments into Luxembourg

The bill of law number 7885 (the "Bill"), introduces a mandatory notification and pre-approval requirement for certain foreign direct investments made by non-European investors in a Luxembourg entity operating in a critical sector in the territory of Luxembourg. The Bill amends articles 9 and 12 of the bill adopted by the Committee on Foreign and European Affairs, Cooperation, Immigration and Asylum (the "Amendments"), which was adopted by the Chamber of Deputies on 13 June 2023 and was declared exempt from the second constitutional vote on 20 June 2023.

The Amendments relate to mandatory notification and pre-approval requirements for certain foreign direct investments ("FDIs"). In particular;

- Article 9 shall now reflect that (i) the competent minister may only suspend the voting rights of securities, belonging directly or indirectly to the investor, that exceed the 25% threshold, and (ii) the Luxembourg law-governed entity or its shareholders may take legal action against such decision, subject to a limitation period of five years; and
- Paragraph 2 of article 12 shall reflect that the limitations of the right of access referred to in paragraph 1 of the same article shall now apply to the personal data provided by the members of the future interministerial committee and the group of experts.

For more information, please click here.

01 Jun. 2023

Corporate duty of care

On 1 June 2023, the European Parliament adopted its position with a view to discussions with the Member States on the rules allowing the integration of human rights and the environmental impact in corporate governance.
Companies will be required to identify and prevent, stop or reduce the negative impact of their activities on human rights and the environment such as:

- child labour;
- slavery;
- labour exploitation;
- pollution ;
- environmental degradation; and/or
- loss of biodiversity.

This is accompanied by the introduction of a duty of care for directors and a company engagement with stakeholders as well as sanctions and a monitoring mechanism.

The Member States have already adopted their position on the draft legislation in November 2022. Negotiations with them can begin.

For more information, please click here.

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06 Jun. 2023

A study launched by the competition authority on the blockchain

On 6 June 2023, the competition authority (*autorité de la concurrence*) has announced that it is launching a market study on blockchain in order to better understand the relationship between products and services based on blockchain technology (known as "*projets web3*") and existing digital companies (known as "*entreprises web2*").

The study is meant:
1. to document web3 dynamism and its competitive landscape;
2. to assess where and how web2 companies compete with web3 projects;
3. to map existing interactions between web2 companies and web3 projects; and
4. to document potential implemented anticompetitive practices against web3 projects.

"Given the high potential of the Web3 sector, it is important to ensure that Web3 players can evolve in a competitive and well-functioning market," said the *Autorité de la Concurrence*.

The Authority invites those who have relevant information to share it with them at blockchain@concurrence.etat.lu.

For more information, please click here.

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20 Jun. 2023

Bill of law number 7968: Amendments to 1915 Law

The bill of law number 7968 (the "Bill") aims for the transposition of Directive (EU) 2019/1151 of the European Parliament and of the Council of 20 June 2019, amending Directive (EU) 2017/1132. The Bill of Law in fact relates to the use of digital tools and processes in the law of 10 August 1915 on commercial companies, as amended (the "1915 Law") and the implementation of the digitalisation of the notarial profession.
The Bill was adopted on 15 June 2023 and was declared exempt from the second constitutional vote on 20 June 2023. Amendments to, inter alia, the 1915 Law will in due course establish rules regarding the following:

- Online registration of branches, and online incorporation of certain company types

The online incorporation of companies namely relates to public limited liability companies (sociétés anonymes), private limited liability companies (sociétés à responsabilité limitée), and partnerships limited by shares (sociétés en commandite par actions). Online registration and incorporation includes the online filing of deeds and information relating thereto and aim to improve the access to the information on companies and branches in Luxembourg.

- Digitalisation of notarisation

In line with the foregoing, the notarisation process shall be digitalised and the transposition of Directive 2019/1151 thus requires the establishment of a notarial electronical exchange platform.
Further information can be found here and here.

For more information, please click here.

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28 Jun.
2023

National Health Plan

On 28 June 2023, the Minister of Health and the Minister of Social Security presented the National Health Plan, which highlights twelve strategic priorities around three different dimensions, being:

- The improvement of the populations state of health, and notably (i) elaborating and implementing the promotion of health and prevention, and (ii) strengthening the communication and collaboration between citizens and the professionals of the health system;
- The improvement of patients' treatment pathway, notably by (i) strengthening the role of primary treatment, (ii) developing strategies and integrated treatment pathways for the most impactful pathologies, (iii) critically evaluating relevance and quality of treatments, and (iv) optimising and enhancing the value of hospital medicine and supporting ambulatory care; and
- The improvement of the general functioning of the health system, including (i) the improvement of collection, analysis and use of health data, (ii) the development of a data-driven health system, (iii) the promotion of innovation, (iv) guaranteeing the availability of healthcare professionals by improving the professions, (v) centralising governance and planning, and (vi) adjusting the financial scope.

For more information, please click here.

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01 Jul. 2023

Update of CNS status: registration on the positive list of medicinal products

On 1 July 2023, the Caisse Nationale de Santé, Luxembourg's national health fund, published a consolidated version of its articles, notably regarding the registration on the positive list of medicinal products reserved to hospital use.

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§ Corporate

14 Jul. 2023

Law of 14 of July on the control of Foreign direct investments into Luxembourg

On 14 July 2023, the law on the control of foreign direct investments, which introduces a mandatory notification and pre-approval requirement for certain foreign direct investments made by non-European investors in a Luxembourg entity operating in a critical sector in the territory of Luxembourg, was adopted.

For more information, please click here.

Swipe to continue

Amendments to the law of 10 August 1915

On 19 July 2023, Parliament voted in favour of the Bill of law 8007 regarding amendments intended to address certain disparities and uncertainties that emerged from the 2016 modifications to the Luxembourg Law of 10 August 1915 concerning commercial enterprises, as revised (referred to as the "Company Law").

The main changes are:

- Suspension or Waiver of Voting Rights and Calculation of Quorum and Majority

Since the implementation of the 2016 reforms, the Company Law explicitly grants shareholders of an SA or an SARL the right to relinquish their voting rights, and the management body can suspend these rights under specific conditions. However, the question regarding whether such shares should be considered in the determination of quorum and majority remained unresolved.

This issue has now been definitively settled: shares for which voting rights are suspended or waived will not be factored into the calculations. Similarly, redeemed shares of an SARL (held in treasury) will not be taken into account for the purpose of quorum and majority thresholds.

Swipe to continue

§ Corporate

19 Jul. 2023

Amendments to the law of 10 August 1915

- Correction of Typographical Errors in the Provisions for Single-Member SARLs

Due to cross-referencing, a number of contradictions had surfaced in the Company Law. It has now been elucidated that the articles of association of a single-member SARL may stipulate, among other provisions, (i) the possibility of conducting shareholder general meetings remotely, (ii) authorization for managers to relocate the registered office within the same municipality, and (iii) establishment of an authorized share capital.

- Uniform Majority for Liquidation Approval in an SARL

Before 2016, modifying the articles of association of an SARL required a dual majority. Although this double majority was eliminated from the Company Law, the oversight occurred in extending this change to the clauses governing liquidations. This discrepancy has been rectified, ensuring that the same majority thresholds applicable to amendments to the articles of association also apply to liquidation decisions.

- Liability Actions against SAS Directors

The president and executive officers of an SAS are now bound by the 5-year statute of limitations, mirroring the constraints imposed on directors of an SA and managers of an SARL.

For more information, please click here.

Swipe to continue

19 Jul. 2023

Law of 19 July 2023 to preserve businesses and modernise bankruptcy law

On 19 July 2023, Parliament voted in favour of the bill of Law 6539A to preserve businesses and modernise bankruptcy law (the "Law"), which embodies the provisions of EU Directive 2019/1023 of 20 June 2019. The Law introduces three new preventive reorganisation procedures, on the basis to the scale of the relevant company:

(1) Conciliation (Conservatory Measure)
(2) Judicial reorganisation proceedings; and
(3) Reorganisation by mutual agreement (Out-of-Court Procedure)

The Law also establishes mechanisms for early identification of financially distressed and potentially bankrupt enterprises. With the Minister for the Economy and the Minister for Small and Medium-Sized Enterprises now responsible for identifying debtors in financial distress. A dedicated public body, the "Cellule d'évaluation des entreprises en difficulté" will also be created to assess the viability of bankruptcy petitions.

The Law is expected to enter into force into Q4 2023.

For more information, please click here.

Swipe to continue

Law amending the Law of 2 September 2011 regulating the access to the professions of craftsmen, merchants, manufacturers and certain liberal professions

On 20 July 2023, the Bill of Law 7989 amending the Law of 2 September 2011 regulating the access to the professions of craftsmen, merchants, manufacturers and certain liberal professions, as amended (the "Law"), was adopted by Parliament and will enter into force on 1 September 2023.

The main changes are as follows:

➢ More activities will be subject to a business licence, among them:

- real estate business introducer ("apporteur d'affaires immobilier");
- selling motor vehicles ("autorisation d'établissement pour activité et services commerciaux de vente de véhicules").
- renting out shared offices or workspace ("autorisation d'établissement pour activité et services commerciaux de location d'espace de travail partagé ou bureaux avec services auxiliaires").
- sale of food products ("autorisation d'établissement pour activité et services commerciaux de commerce alimentaire").
- commercial services of high-value movable goods, ("autorisation d'établissement pour activité et services commerciaux de biens meubles de grande valeur").

Swipe to continue

§ Corporate

20 Jul. 2023

Law amending the Law of 2 September 2011 regulating the access to the professions of craftsmen, merchants, manufacturers and certain liberal professions

There will be a two-year transitional period starting on 1 September 2023, with businesses that fall within the scope of these activities will have to apply for a new business licence, even if they already hold one based on the former law.

- Real link with the company

The Law will require a tangible link between company and representative, with the latter to be registered with the Luxembourg Trade and Companies Register in case of a commercial company.

- New list of activities with fewer requirements

The Law will set up a new list (the list C) which will no longer have stringent requirements to obtain the related business licences, in order to facilitate the establishment of those businesses.

- Limit on the of the amount of business licences that a person can hold

There will be a restriction for someone to hold licenses between unrelated activities that fall between A & B list. Professions in the C list will not be subject to this limit.

- More opportunities for person involved in bankruptcies to be licences holders again.

The Law will establish clear guidelines for people previously involved in bankruptcies so that they may still hold further licences, subject to conditions stated in the Law.

For more information, please click here.

14 Jun. 2023

Digital

Artificial Intelligence

On 14 June 2023, the European Parliament adopted its negotiating position on the Artificial Intelligence Act. This ACT aims to regulate the use of artificial intelligence in the EU and to ensure better conditions for the development and use of this innovative technology in a safe environment for the users. Adoption of the final version is expected around the end of 2023, and the regulation should be applicable in 2025.

Digitalisation of tools under the 1915 Law

On 15 June 2023, bill of law number 7968 was adopted pursuant to which digital tools and processes, including the notarial profession, will be digitalised and amend the law of 10 August 1915 on commercial companies, as amended, accordingly.
Further details on these amendments can be found under the Corporate section of this Newsletter.

DORA: Public consultation from the ESAs

On 19 June 2023, the European Supervisory Authorities (ESAs) launched a public consultation on the first batch of policy products under the Digital Operational Resilience Act (DORA), which entered into force on 16 January 2023 and will apply from 17 January 2025. The ESAs are mandated to develop thirteen policy instruments in two batches and the first batch covers the following regulatory technical standards (RTS) and implementing technical standards (ITS, together with the RTS, the Standards):

- The RTS on ICT risk management tools, methods, processes and policies can be found here;
- The RTS on criteria for the classification of ICT-related incidents, materiality thresholds for major incidents and significant cyber threats can be found here;

14 Jun. 2023

Digital

DORA: Public consultation from the ESAs

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- The RTS on ICT risk management tools, methods, processes and policies can be found here;
- The RTS on criteria for the classification of ICT-related incidents, materiality thresholds for major incidents and significant cyber threats can be found here;
- The ITS to establish the templates for the register of information relating to contractual arrangements on the use of ICT services can be found here; and
- The RTS to specify the content of the policy on contractual arrangements on the use of ICT services can be found here.

The Standards are expected to be submitted to the European Commission by 17 January 2024.

Report on Metaverse published by the European Parliament

In the course of June 2023, a study report on Metaverse was prepared and published by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs, at the request of the JURI Committee. The report addresses various applications of the metaverse and notably digital aspects.

Digital

European Commission: Adoption of the new EU-US Data Privacy Framework

On 10 July 2023, the European Commission (the EC) adopted a new adequacy decision for safe and trusted EU-US data flows. The EC's decision in fact introduces new binding safeguards, which aim to:

- address the points that had been raised by the Schrems II Judgment, in which the Court of Justice of the European Union had examined limitations to the personal data protection; and
- establish a 'Data Protection Review Court', which EU individuals will have access to.

According to the EC, the foregoing will facilitate data flows to the US in general, since the safeguards put in place by the US in the area of national security shall now also apply when data is transferred other than by standard contractual clauses and binding corporate rules.

For key information on what that means for data transfers and the practical implications, read our FAQ.

Swipe to continue

24 May
2023

EU proposes new rules aiming to safeguard and empower retail investors

On 24 May 2023, the European Commission (EC) published the final version of their Retail Investment Strategy and Annexes (RIS). The RIS, which stems from the Capital Markets Union Action Plan, seeks to improve access for retail investors to financial markets while ensuring investor protection.

Proposed changes affect several areas including the Markets in Financial Instruments Directive (MiFID), PRIIPs, the AIFMD, and UCITSs. The RIS has garnered controversy, particularly over inducements and product governance. The document must now pass through the EU Parliament and Council before becoming law, a process that could take a year or more and potentially be influenced by the European Parliament elections in May 2024. As such, the final version may differ significantly from the current one.

Swipe to continue

§ Regulatory

25 May 2023

ESMA issues a statement to highlight the risks arising from the provision of unregulated products and/or services by investment firms

On 25 May 2023, the European Securities and Markets Authority (ESMA) has issued a statement expressing concern over investment firms offering unregulated products/services, including crypto assets, real estate, gold and certain non-transferable securities. These unregulated entities pose substantial risks, particularly investor misunderstanding regarding protections afforded and potential product misrepresentation.

ESMA warns of reputational risks to investment firms engaging with such unregulated products/services. Their involvement may jeopardize adherence to regulatory obligations linked to their regulated activities.

The Authority recommends investment firms ensure client comprehension of the product/service's regulatory status and clearly disclose any absence of regulatory protections. Firms should operate in compliance with Article 24(1) of MiFID II, upholding client interest and maintaining fair, clear, and non-misleading communications.

ESMA advises firms to incorporate potential impacts of unregulated activities into their risk management systems and policies, emphasizing the importance of recognizing both regulated and unregulated activity risks to secure compliance with investment service provision requirements.

For more information, please click here.

Swipe to continue

§ Regulatory

22 Jun. 2023

FATF report on Luxembourg adopted by plenary

On 22 June 2023, the Financial Action Task Force (FATF) has adopted the mutual evaluation report of Luxembourg which assessed the effectiveness of that country's measures to combat money laundering and terrorist financing, and their compliance with the FATF Recommendations.

The Plenary has praised Luxembourg for its high level of compliance with FATF's AML/CFT requirements and it's AML/CFT regime is seen as effective. As the plenary pointed out, this is especially notable given Luxembourg's position as a significant regional and international financial center. The country has also exhibited strong domestic and international cooperation, including the effective use of financial intelligence and access to beneficial ownership information.

The full report will be made available in September 2023.

For more information, please click here.

28 Jun. 2023

New EU Commission proposals: PSD III & PSR

On 28 June, 2023, The European Commission has published proposals for the Payment Services Directive 3 (PSD3) and the Payment Services Regulation (PSR), aimed at addressing issues identified in the previous iteration, the Payment Services Directive 2 (PSD2).

PSD2 was primarily designed to revolutionize the EU payment market by enhancing user protection, promoting innovation, and providing a level playing field for all Payment Service Providers (PSPs). However, it fell short in some areas, prompting the need for new regulation that could keep pace with the rapid advancements in the payments sector.

The Commission notes that PSD2 was successful in implementing Strong Customer Authentication (SCA) and improving payment efficiency, transparency, and user choice. Yet, it had limitations in creating a level playing field, particularly for non-bank PSPs, and faced issues related to Open Banking, cross-border payment services, and other areas.

PSD3 and PSR aim to address these challenges, focusing on four key problems: persistent fraud risks, an imperfect Open Banking framework, inconsistent powers and obligations for EU supervisors, and an unlevel playing field between banks and non-bank PSPs.

For more information please see the ABBL publication here and access the EC proposal here

Swipe to continue

§ Regulatory

2023

Virtual Assets: Targeted Update on Implementation of the FATF Standards on Virtual Assets and Virtual Asset Service Providers

The Financial Action Task Force (FATF) recently issued a report indicating that most jurisdictions worldwide are struggling to fully implement its anti-money laundering and counter-terrorist financing (AML/CFT) standards. The standards were devised for virtual assets (VAs) and virtual asset service providers (VASPs) to prevent criminal and terrorist misuse.

The report emphasizes that a significant percentage of countries need to improve their understanding of potential money laundering and terrorist financing (ML/TF) risks associated with VAs and VASPs. To mitigate these risks, the FATF urges faster implementation of its Recommendation 15 and its Interpretative Note (R.15/INR.15), including the Travel Rule, which mandates that VASPs and other financial institutions share relevant originator and beneficiary information alongside virtual asset transactions.
Despite the Travel Rule's critical role in preventing the misuse of virtual assets, many jurisdictions have shown insufficient progress in implementing this requirement. Out of 98 responding jurisdictions to the FATF's survey, only 29 have passed relevant Travel Rule laws, and fewer have commenced enforcement, demonstrating the urgency of the situation.
The report also highlights emerging market trends and potential ML/TF threats such as Decentralized Finance (DeFi), Non-Fungible Tokens (NFTs), and unhosted wallets. The FATF pledges to monitor the growth and potential illicit financing risks associated with these areas.
To address the report's findings, the FATF will continue to promote the implementation of its R.15/INR.15, observe market trends for significant changes or developments that may require additional work, and engage with member countries and the private sector. The FATF plans to conduct a further review of progress and challenges for implementation by June 2024.
In conclusion, the report underscores the growing complexities in mitigating the risks associated with VAs and VASPs and the necessity for proactive, coordinated actions across global jurisdictions.

For more information, please click here.

2023

New EU Commission proposals: PSD III & PSR

The objectives of PSD3 and PSR include:

1. Strengthening user protection and confidence by improving SCA application, fraud information exchange, customer education on fraud, IBAN verification, and more.
2. Improving Open Banking competitiveness through mandatory data access interfaces for Account Servicing Payment Service Providers, permissions dashboards for users, and detailed specifications for Open Banking data interfaces.
3. Improving enforcement and unifying implementation by replacing ambiguous aspects of PSD2 with PSR, reinforcing penalty provisions, and integrating the e-money regime within PSD3 and PSR.
4. Facilitating access for non-bank PSPs by widening their accessibility to a bank account and granting them the possibility of direct participation in all payment systems.

One key difference between PSD3 and PSR is their application. PSD3 remains an EU Directive that needs to be transposed into national laws of EU Member States. In contrast, PSR is an EU Regulation that applies directly across the EU, thus creating a single legal framework for all operations and reducing uncertainty and inequality between national legislations.

The provisions for Open Banking under PSR impose a dedicated interface for data access and remove the requirement for Account Servicing Payment Service Providers to maintain a 'fallback' interface. It also requires Account Servicing Payment Service Providers to offer users a "dashboard" to manage their data access to any Open Banking provider.

Lastly, the new legislation eliminates the distinction between E-money institutions and payment institutions, proposing that only payment institutions remain, which can be granted authorization to offer e-money services.

These proposals will now be reviewed by the Council and the European Parliament. Once agreed upon and adopted, they will become enforceable, with a transitional period for PSR rules and a timeframe for PSD3 implementation into national legislation.

For more information please see the ABBL publication here and access the EC proposal here

Swipe to continue

§ Tax

25 May 2023

Luxembourg administrative tribunal denies the qualification of permanent establishment to a US branch

On 26 May 2023, Luxembourg's administrative tribunal has upheld the Luxembourg tax authorities' decision to deny the permanent establishment status to the US branch of a Luxembourg-based company (n°45030). The Luxembourg administrative tribunal ruled that the branch failed to provide sufficient evidence of a physical presence in the United States, leading to doubts about its existence. This decision was rendered on the grounds of the Luxembourg definition of foreign permanent establishment in its version prior to 2019.

For more information, please click here.

09 Jun. 2023

Luxembourg adopts new Taxpayer Identification Number (TIN) Codes for FATCA Reporting

On 9 June 2023, the Luxembourg tax authorities (LTA) have announced their acceptance of the new TIN codes introduced by the Internal Revenue Service (IRS). These codes, as outlined in the FATCA FAQs, complement existing instructions without replacing them.

The updated TIN codes, issued in response to Notice 2023-11, aim to provide reporting relief for Model 1 FFIs unable to obtain U.S. TINs for their pre-existing U.S. reportable accounts.

For the transition year 2022, Model 1 FFIs can choose between using the TIN codes issued in May 2021 or the newly updated codes. Going forward, the updated codes must be used for reporting in 2023 and 2024. By employing these codes, the IRS seeks to gain deeper insights into the reasons behind the absence of U.S. TINs, considering relevant circumstances and compliance efforts by reporting Model 1 FFIs.

The LTA strongly encourages the utilisation of these codes, particularly as a means to enhance understanding of missing U.S. TINs.

For more information, please click here.

09 Jun. 2023

Luxembourg tax authorities (LTA) issue guidelines for reverse hybrid rules

On 9 June 2023, the LTA issued a new administrative circular (Circular L.I.R n°168 quater/1) dealing with the interpretation of the provisions of article 164 quater of the Luxembourg Income Tax Law (LITL) which covers reverse hybrid entities.

Reverse hybrid rules were introduced in Luxembourg in line with the transposition of the Anti-Tax Avoidance Directive (ATAD II). Under these rules, a Luxembourg entity is classified as a reverse hybrid entity if it meets the criteria of being transparent for Luxembourg tax purposes while being opaque in other jurisdictions. The circular clarifies that the reverse hybrid entities will not fall under the traditional tax concepts in Luxembourg, creating a sui generis tax status. This unique status necessitates an assessment of their taxable basis and provides specific guidelines for determining their net income.

The circular outlines the calculation of net income for reverse hybrid entities subject to Corporate Income Tax (CIT). It specifies that CIT will apply to certain categories of net income, including income from movable capital, rental property, and miscellaneous income. Non-deductible expenses and specific rules related to the determination of taxable basis, such as the absence of step-up in basis and the non-recognition of a realisation event, are also addressed. The circular emphasises the application of existing tax rules to ensure that reverse hybrid entities are not subject to double taxation, but rather to taxation on the portion of their net income that has not been taxed elsewhere

For more information, please click here and here.

Swipe to continue

§ Tax

14 Jun. 2023

New Luxembourg decision on the tax treatment applicable to classes of shares

On 14 June 2023, the Administrative Court (*Tribunal Administratif*) of Luxembourg handed down a ruling concerning the improper use of classes of shares by individuals constitutive of an abuse of law (case n°45759).

In brief, the Administrative court confirmed in this decision the qualification of a redemption of a class of shares followed by its immediate cancellation as a partial liquidation for Luxembourg tax purposes. However, such partial liquidation could be requalified into a dividend distribution (subject to Luxembourg 15% WHT) if it cannot be justified economically and where the proof of these economic motives cannot be demonstrated by the taxpayer.

The Administrative Court already ruled on the existence of abuse of law in case of use of classes of shares by individuals in the past but its decision is interesting as it provides with further argumentation and practical explanations on the motives of such recognition of an abusive situation.

For more information, please click here.

Swipe to continue

19 Jun. 2023

EU Commission proposes Faster and Safer tax system to boost cross-border investments

On 19 June 2023, the European Commission has introduced the Faster and Safer Relief (FASTER) initiative, a comprehensive plan aimed at addressing constraints faced by investors, financial intermediaries, and national tax authorities in the European Union (EU) system regarding withholding tax (WHT) recovery.

One of the primary challenges faced by investors is obtaining double taxation relief on their investments. EU Member States have signed double taxation treaties, allowing investors to claim refunds for excess tax paid in another Member State. Currently, the refund procedures have been proven lengthy and burdensome, discouraging cross-border investments.

To address these issues, FASTER proposes different measures:

- A common EU digital tax residence certificate, enabling investors with diversified portfolios within the EU to reclaim multiple refunds using a single certificate.
- Fast-track relief procedures: “relief at source” and “quick refund” system, aiming to harmonise and expedite the tax relief process across the EU, providing investors with more efficient and timely reimbursement.

The European Commission has initiated a feedback period until August 2023 to gather input from stakeholders, with the proposal expected to come into force January 1 2027.

For more information, please click here.

Swipe to continue

§ Tax

30 Jun. 2023

DAC 6 clarifications from the Luxembourg tax authorities

On 30 June 2023, the Luxembourg tax authorities updated the Frequently Asked Questions ("FAQ") already available on their website regarding the interpretation of DAC 6 rules in Luxembourg.

Amongst the various clarifications provided, further details are provided regarding the interpretation of Hallmarks C.1 a (with respect to the concept of default of residence) and C.1.d (in light of the interpretation of the concept of preferential tax regime) but also regarding Hallmark E.3 (regarding the definition of transfer and of EBIT, and their impact on the transactions falling within the scope of the hallmark).

For more information, please click here.

Swipe to continue

§ Tax

13 Jul. 2023

Luxembourg government proposes in-depth modernization of investment tax credit

On 13 July 2023, the Luxembourg government unveiled a draft law aiming to comprehensively modernize the existing investment tax credit. The reform, part of the "Solidaritéitspak 2.0" package agreed upon in September 2022, seeks to bolster the competitiveness of Luxembourg companies in various sectors, including digital transformation and green industries.

The proposed changes to the investment tax credit are significant and include the following key modifications:

- The tax credit for additional investments would be replaced with a new tax credit based on both investments and operational expenses related to digital transformation or ecological and energy transition for eligible taxpayers;
- The tax credit for overall investments would see a substantial increase from 8% to 12% without any threshold for investments made during the relevant financial year. For projects linked to digital transformation or ecological and energy transition, the rate would be further raised to 18%.
- To be eligible for the tax credit associated with digital transformation or ecological and energy transition, projects must meet specific criteria outlined in the draft law, and a certification process will be put in place.

If enacted, the new investment tax credit regime is expected to be effective from the 2024 financial year.

For more information, please click here.

Swipe to continue

§ Tax

13 Jul. 2023

New Luxembourg administrative tribunal decision on abuse of law regarding tax losses carried forward

On 13 July 2023, the Luxembourg administrative tribunal rendered a decision on the use of tax losses carried forward (n°46446), which consists actually in the continuation of prior decisions of the administrative court dated 16 February 2016 (n°35978C and n°35979C).

In the 2016 decisions, the administrative court recognised the existence of an abuse of law where a Luxembourg company, after having changed its activity, intended to use prior tax losses carried forward to offset a capital gain derived from the new activity performed.

In the decision of July 2023, the administrative tribunal, questioned about the tax treatment applicable for subsequent years, ruled that tax losses generated during a period which have been considered as abusive could not longer be used to offset profits derived for other tax years.

For more information, please click here.

13 Jul. 2023

CJEU advocate general opines on board directors' VAT obligations

On 13 July 2023, the Advocate General (AG) of the CJEU provided an opinion (C-288/22) in response to a preliminary ruling request from the Administrative Tribunal of Luxembourg, stating that board directors may not be required to charge and account for VAT on their fees as their activities do not constitute an independent economic activity under the VAT Directive.

The case referred to in Luxembourg involved a lawyer member of the board of a Luxembourg entity, which challenged the application of VAT on its remuneration, as he considered that his activity as board member was not constitutive of an economic activity for VAT purposes.
In confirming the individual's view, the AG's opinion emphasizes the importance of an assessment to be performed at individual's level to determine whether an activity is to be seen as of economic nature for VAT purposes, by notably considering certain elements such as the personal economic risk taken by the individual in the realisation of the activity. With respect to the activity of board member, the AG considers that the fact of being part of such board – which constitutes an obligation for Luxembourg entities – does not constitute an economic activity as the liability for the decisions taken does not lie on the individuals but rather on the board as a legal body.
Final decision should be then rendered by the CJEU but we note that the AG mentioned that a room of interpretation would need to be left to the local court to determine concretely whether the activity of the individual would be constitutive of an economic activity for VAT purposes based on the specific facts at stake.

For more information, please click here.

14 Jul. 2023

EU Commission initiates infringement procedure against Luxembourg for non-compliance with ATAD 1

On 14 July 2023, the EU Commission launched an infringement procedure against Luxembourg for insufficiently ATAD 1. As a reminder, ATAD 1 required notably Member States to limit certain interest deductions with an entry into force as from 1 January 2019.

Despite the transposition of ATAD 1 into national law on 21 December 2018, Luxembourg's law exempted certain securitisation companies and financial undertakings from the application of the interest limitation rules, while subjecting others to it.
The EU Commission had previously urged Luxembourg to amend its legislation. The Luxembourg government prepared a draft bill to comply properly with ATAD 1 rules but this bill remains unvoted. So that with no satisfactory response, the matter has now been referred to the Court of Justice of the European Union ("CJEU").
If the CJEU endorses the Commission's stance, it could affect the tax position of several Luxembourg securitisation vehicles that haven't converted into securitisation funds, which are not covered by ATAD 1.

For more information, please click here.

Swipe to continue

19 Jul. 2023

Luxembourg ratifies the new double tax treaty with the United Kingdom ("UK")

On 19 July 2023, Luxembourg has officially ratified the new double tax treaty with the UK. The double tax treaty, which was signed on 7 June 2022 and previously ratified by the UK in October 2022, introduces significant changes compared to the existing ones notably regarding provisions related to capital gains and withholding tax on dividends.

With respect to capital gains, the new double tax treaty provides that gains derived by Luxembourg resident entities from the disposal of shares or comparable interests, deriving more than 50% of their value directly or indirectly from immovable property situation in the UK, may be taxed in the UK. With respect to dividends, a 0% withholding tax rate is introduced for dividends paid by Luxembourg resident entities to UK shareholders who would qualified as beneficial owners of the income.

This revised double tax treaty will enter into force as from April 2024 for UK corporation tax/capital gains tax and from January 2024 for withholding taxes. As regards Luxembourg, it will become effective as from 1 January 2024.

A dedicated Simmons & Simmons news flash is also available by following this link.

For more information, please click here.

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