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Banking & Financial Services

EU anti-money laundering package - AML IV Directive: In June 2015 the EU updated and extended its legal framework in order to further strengthen the European Union's defence system against money laundering and terrorist financing. To this effect, the AML IV Directive (Directive 2015/849/EU) implements the International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation, adopted by the Financial Action Task Force (FATF) in February 2012. The main changes introduced by the AML IV Directive notably comprise an extended scope of the persons and activities subject to the Directive, the inclusion of "tax crimes" within the definition of predicate offenses, the development and slight reshaping of the risk-based approach, the extension of enhanced customer due diligence measures to domestic politically exposed persons, enhanced transparency with regards to beneficial owners and enhanced sanctioning powers of the competent authorities.

EU Member States have two years to implement this Directive into their national law. Read more …

Although Luxembourg has already adapted its legal and regulatory framework with a view to implementing the FATF standards prior to the adoption of the AML IV Directive, the fact that the new EU rules not only implement but even expand on the FATF requirements in providing additional safeguards has led to the adoption of a grand ducal regulation specifying the conditions under which professionals carrying out online payment services may apply simplified customer due diligence measures and amendments to the Criminal Code introducing new terrorism offenses, now included in the list of predicate offenses.

EU anti-money laundering package - revised WTR: In parallel to the adoption of the AML IV Directive, the EU legislator adopted in May 2015 a further piece of legislation in its efforts to align the EU legislative framework with the Financial Action Task Force's (FATF) February 2012 anti-money laundering and counter-terrorist financing standards. The revised Wire Transfer Regulation or WTR (Regulation (EU) 2015/847) is designed to improve the effectiveness of the existing WTR regime. It sets out the minimum requirements essential to ensure the traceability of transfers of funds and will ensure a sufficient level of consistency between national rules. The revised WTR will apply to transfers of funds, in any currency, sent or received by a payment service provider or an intermediary payment service provider established in the EU. It will not apply, *inter alia*, to transfers of funds carried out using a payment card, an electronic money instrument or a mobile phone, or any other digital or IT prepaid or postpaid device with similar characteristics if certain conditions are met. However, it applies to person-to-person transfers of funds performed through such devices.

An EU Member State may decide not to apply this Regulation to transfers of funds within its territory to a payee's payment account permitting payment exclusively for the provision of goods or services if certain conditions are met (among others, if the amount of the transfer of funds does not exceed EUR 1,000).

The Regulation also defines, *inter alia,* the information which shall accompany transfers of funds depending on the circumstances, the obligations incumbent upon the payment service provider of the payee in case of missing or incomplete information, record-retention and data protection requirements.

The revised Wire Transfer Regulation came into effect on 25 June 2015 and will apply from 26 June 2017. It will repeal Regulation (EC) 1781/2006 (*i.e.* the existing Wire Transfer Regulation).

Luxembourg implementation of BRRD and DGSD: In December 2015, Luxembourg implemented Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms (BRRD) and Directive 2014/49/EU on deposit guarantee schemes (DGSD) by way of adopting a legislative pack wrapped-up in the law of 18 December 2015. The law of 18 December 2015 is divided into four parts:

- The first part defines measures for early intervention and the resolution of credit institutions and some investment firms, either on an individual or a group basis (the BRRD institutions), and appoints the *Commission de Surveillance du Secteur Financier* (CSSF) acting through a resolution council as the resolution authority for Luxembourg. The main resolution tools granted to the resolution council are (i) the sale of businesses by competent authorities without shareholder consent, (ii) the creation of a bridge institution, (iii) an asset segregation allowing for a transfer of toxic assets to a "bad institution", and (iv) a bail-in permitting the recapitalisation of the BRRD institution.

- The second part gathers the measures pertaining to the re-organisation and winding-up of credit institutions, investment firms (as defined in the Capital Requirement Regulation or CRR) and other professionals of the financial sector.

- The third part deals with resolution financing measures. The existing *Association pour la Garantie des Dépôts Luxembourg* will be replaced by the public *Fonds de garantie des dépôts Luxembourg*. The reimbursement period shall be reduced to seven days and the reimbursement amounts up to EUR 100,000.

- The fourth part introduces amendments to the Luxembourg law of 5 April 1993 on the financial sector dealing with crisis prevention measures. BRRD institutions will be required to draw up recovery plans and to take steps to improve recovery. This part also defines early intervention measures to be implemented by the CSSF (convening shareholders, changing management, appointing temporary administrator, etc.).

European deposit insurance scheme (EDIS): In November 2015, the EU Commission published a legislative proposal for a Regulation that will amend the Regulation for the Single Resolution Mechanism (SRM, Regulation (EU) No 806/2014) to establish a European deposit insurance scheme (EDIS). The EDIS will be operated by the Single Resolution Board and will provide additional funding for deposit guarantee schemes (DGSs) established in EU Member States participating in the Single Supervisory Mechanism (SSM). The EDIS is intended to be the third pillar of the banking union, alongside the SSM and the SRM.

CRD IV Directive and CRR: On 21 December 2015, the European Banking Authority (EBA) published its final guidelines on sound remuneration policies under the CRD IV Directive (Directive 2013/36/EU) and disclosures under the Capital Requirements Regulation or CRR (Regulation (EU) 575/2013). The EBA guidelines relate to issues including remuneration policies, the structure of remuneration and the remuneration of specific functions. They also consider the payment of variable remuneration and disclosures made by firms about remuneration. The guidelines will apply from 1 January 2017. The guidelines on remuneration policies and practices published by the Committee of European Banking Supervisors (CEBS), the EBA's predecessor, in December 2010 will be repealed on 31 December 2016. The EBA has also

published an opinion on the application of the principle of proportionality to the CRD IV Directive remuneration provisions.

In July 2015 Luxembourg implemented the CRD IV Directive by way of amending the law of 5 April 1993 on the financial sector through the modification of definitions and extension of the scope of the law on the financial sector, the strengthening of the requirements relating to corporate governance and remuneration policies, the mandatory creation of "capital buffers", in addition to capital requirements, and the strengthening of financial and administrative sanctions. The technical details for the implementation of this legislative package are further defined in various EU as well as CSSF regulations and circulars. Read more …

Reporting obligations for credit institutions: A new Circular 15/602, published by the *Commission de Surveillance du Secteur Financier* (CSSF) in January 2015, introduces new reporting practices for credit institutions, such reporting practices varying depending on the respective credit institution's status as significant and less significant within the meaning of the Single Supervisory Mechanism (SSM) or as a branch of an EEA or non-EEA credit institution.

Luxembourg law on electronic archiving: After a legislative process lasting more than seven years, the Luxembourg legislator adopted in July 2015 the law relating to electronic archiving (Electronic Archiving Law) specifying the conditions for the dematerialisation of documents and their safekeeping as copies. The Electronic Archiving Law is accompanied by two grand ducal regulations (Grand Ducal Regulation on Electronic Archiving). The main feature of the Electronic Archiving Law is to acknowledge the legal value of electronic copies of documents, which will be deemed to have the same value in evidence as the original, if they have been created in accordance with the applicable legal conditions set out mainly in the Grand Ducal Regulation on Electronic Archiving. The Electronic Archiving Law even goes a step further and introduces a reversal of the burden of proof as to the value in evidence of electronic copies digitalised and archived in accordance with said law.

However, only an electronic copy of a document which was digitalised and archived by a certified Digitalisation and Archiving Service Provider (PSDC) in accordance with the Grand Ducal Regulation on Electronic Archiving will be deemed to be in conformity with and equivalent to the original document, and will as such benefit from a reversal of the burden of proof. For this purpose and in order to target the Luxembourg financial industry, the Electronic Archiving Law has introduced two new statuses for support professionals of the financial sector (support PSFs) enabling them to act as PSDCs: (i) the digitisation support PSF; and (ii) the archiving support PSF.

Securities Financing Transactions Regulation (SFTR): The SFTR (Regulation (EU) 2015/2365) aims at increasing the level of transparency in securities financing transactions (SFT) such as securities or commodities lending, repos and margin lending which may take place outside of the regulated financial sector (so-called shadow banking). In this respect,

- financial and non-financial counterparties are required to declare the relevant elements of the SFT to trade repositories. This information must be stored in a centralised manner and must be directly accessible to competent authorities;
- collective investment undertakings are subject to new transparency requirements *vis-à-vis* investors;
- collateral transactions with a right of re-use are subject to restrictions and risk-disclosure.

Furthermore, the SFTR imposes far-reaching new disclosure and information obligations on counterparties which receive financial instruments as collateral with a right of use. Read more …

The SFTR was published in the Official Journal of the EU on 23 December 2015 and will enter into force on 12 January 2016. It will apply from 12 January 2016.

Markets in financial instruments directive (MiFID II) and regulation (MiFIR): The MiFID II (Directive 2014/65/EU) and the MiFIR (Regulation 600/2014) will repeal and recast the Markets in Financial Instruments Directive (2004/39/EC). They are scheduled to come into effect on 3 January 2017. It is possible however that MiFID II, or at least parts of it, may be delayed by one full year. The European Securities and Markets Authority (ESMA) has recognised that there are some areas where it is unfeasible for firms to have in place the necessary systems to comply with all of the requirements and recommended in November 2015 that the Level 1 text be deferred. Following this, the EU Parliament announced that it is prepared to accept a one-year delay in respect of MiFID II, subject to certain conditions. At the time of this publication, no further development with regard to a possible delay has occurred.

Meanwhile, work on formulating level 2 measures under MiFID II is well under way and is ongoing. Throughout the second half of 2015 ESMA published technical advice intended for the EU Commission on the possible content of delegated acts required by MiFID II and a number of papers on regulatory technical standards (RTS) and implementing technical standards (ITS).

Proposal for an EU regulation on securitisation: On 30 September 2015 the EU Commission published a legislative proposal for a Regulation laying down common rules on securitisation and creating an EU framework for simple and transparent securitisation (STS). The proposed regulation, referred to by the EU Commission as the Securitisation Regulation, contains provisions relating to (i) all securitisations in setting out uniform definitions and rules across financial sectors, with the aim of harmonising rules on risk retention, due diligence and disclosure, and to (ii) STS securitisations in setting out the criteria for STS securitisation for all financial sectors, eligible asset classes and transaction structures, as well as relevant market participants across sectors. In this context, the EU Commission also published a legislative proposal for a Regulation amending the CRR that will delete Articles 404 to 410 of the CRR (which will be transferred to the Securitisation Regulation) and extensively revise the capital requirements for securitisations.

Investment Management

UCITS V implementation in Luxembourg: Bill of law 6845 (the Bill of Law) implementing the UCITS V Directive (Directive (EU) 2014/91) was tabled before the Luxembourg parliament on 5 August 2015. The Bill of Law is merely a transcription of the UCITS V Directive and will amend the Luxembourg law of 17 December 2010 on undertakings for collective investment. Read more … At the date of this publication, the Bill of Law is still pending. As a reminder, the UCITS V Directive must be implemented by Member States by 18 March 2016.

Pending the implementation, the *Commission de Surveillance du Secteur Financier* (CSSF) has extended the transition deadline for CSSF Circular 14/587 applicable to Luxembourg credit institutions acting as depositaries for UCITS from 31 December 2015 to 18 March 2016. Read more …

Proposed level 2 measures for the UCITS V Directive published: In December 2015, the EU Commission's proposal for a Commission Delegated Regulation (proposed Delegated Regulation) supplementing the (amended) UCITS Directive with regard to obligations of depositaries was published. The long-awaited level 2 measures for the UCITS V Directive will contain more detailed requirements and organise the cooperation between the depositary and the management company or investment company permitting the effective implementation of the UCITS V Directive. Once final and published, the Commission Delegated Regulation will apply six months after the entry into force of the Regulation. Read more …

FAQ concerning Luxembourg UCITS eligibility and diversification rules: In December 2015, the *Commission de Surveillance du Secteur Financier* (CSSF) published a frequently asked questions document (FAQ) covering a total of ten questions and answers in relation to UCITS eligible assets and risk diversification rules. The FAQ generally reflects the longstanding practice of the CSSF. Read more …

Remuneration policies under the UCITS V Directive and AIFMD: In July 2015, the European Securities and Markets Authority (ESMA) launched a consultation on proposed guidelines on sound remuneration policies under the UCITS V Directive and AIFMD. The proposed UCITS remuneration guidelines will further clarify the provisions of the UCITS V Directive, and will, among others, provide guidance on issues such as proportionality, governance of remuneration, requirements on risk alignment and disclosure. Once approved, the UCITS remuneration guidelines will apply to UCITS management companies. ESMA also conducted a consultation on a proposed revision of the AIFMD remuneration guidelines. The respective amendments relate to the guidelines for alternative investment fund managers forming part of a group.

ESMA is currently considering the feedback provided on the consultation and aims to finalise and publish the UCITS remuneration guidelines together with a final report during the first quarter of 2016, ahead of the implementation deadline for the UCITS V Directive of 18 March 2016. It is expected that the final report will also include the revision of the respective AIFMD remuneration guidelines as proposed in the consultation paper.

For information on the EBA's final guidelines on sound remuneration policies under the CRD IV, please refer to the section "Banking & Financial Services".

ESMA's call for modification of the UCITS Directive: In May 2015, the European Securities and Markets Authority (ESMA) published an opinion on the impact of the European Market Infrastructure Regulation (EMIR) on UCITS. In its opinion, ESMA calls for a modification of the (amended) UCITS Directive to take into account the clearing obligation of certain types of over-the-counter (OTC) financial derivative transactions under EMIR. ESMA is of the opinion that the (amended) UCITS Directive should no longer require a distinction between OTC financial derivative transactions that are centrally cleared and exchange-traded derivatives (ETDs). Instead, a distinction should be made between cleared and non-cleared OTC financial derivative transactions. Furthermore, ESMA is of the view that the provisions on the counterparty risk limits for OTC financial derivative transactions in the (amended) UCITS Directive should be amended to take into account the clearing obligation for certain types of OTC financial derivative transactions under EMIR. For OTC financial derivative transactions that are not centrally cleared, ESMA is of the view that there is no need to modify the (amended) UCITS Directive and the current counterparty risk limits of Article 52 of the (amended) UCITS Directive should continue to apply.

For further information on EMIR, please refer to the section "Securities".

ESMA guidelines on ETFs and other UCITS issues: In January 2015, the European Securities and Markets Authority (ESMA) published an updated version of its document questions and answers in relation to the ESMA guidelines on exchange-traded funds (ETFs) and other UCITS issues (ESMA Guidelines). In this update, ESMA made clear that where the role of the counterparty to a financial derivative instrument involves only implementing a set of rules agreed in advance with the UCITS management company and does not permit the exercise of any discretion by the counterparty, in such circumstances the counterparty to the financial derivative instrument will not be deemed to have any discretion over the composition of the underlying assets of the financial derivative instrument. As a result, the counterparty will not be treated as an investment manager of the UCITS. Furthermore, with regard to collateral management, ESMA provides that the short-term money market fund in which a UCITS may reinvest cash collateral in compliance with the ESMA Guidelines must comply with Article 50(e)(iv) of the UCITS Directive (*i.e.* the short-term money market fund should not invest more than 10% of their assets in aggregate in other money market funds).

Money market funds: Progress was slow in 2015 regarding the EU Commission's initiative for new rules on money market funds (MMFs), *i.e.* the proposed Regulation on Money Market Funds (the proposed MMFR). While the EU Parliament has consolidated its position for the final negotiations with the Council of the EU and the EU Commission, the Council of the EU still needs to agree on a common general approach. The main political differences concern the approach towards constant net asset value money market funds (CNAV MMFs).

The Proposed MMFR shall apply to all MMFs that invest in money market instruments, regardless of whether the MMF is governed by the UCITS framework or whether the MMF operates as an alternative investment fund (AIF) in line with the definition contained in the AIFMD. If adopted, the MMFR will introduce a general framework of requirements to enhance the liquidity and stability of MMFs and as such introduce an additional layer of product rules (*inter alia*, regarding eligible assets and diversification) over and above the (amended) UCITS Directive respectively AIFMD.

For an update on the Benchmark Regulation, please refer to the section "Company Law – Capital Markets".

Securities Financing Transactions Regulation (SFTR): For further rules increasing the level of transparency in securities financing transactions as required by SFTR, please refer to the section "Banking & Financial Services".

Common reporting standard (CRS): As regards the reporting obligations by investment funds under CRS and the entailing automatic exchange of financial information, please refer to the section "Tax".

For AIFMD, please refer to the section "Private Equity".

Company law – Capital Markets

Modernisation of the companies' law: The process of modernisation of the Luxembourg companies' law is entering its final phase. As a reminder, the bill of law considers amending existing types of companies, adding a new type of company (the simplified limited company - *société par actions simplifiée*, S.A.S.), and consecrating certain existing market practices. The bill of law is expected to be adopted in the first half of 2016. Read more **…**

Non-financial disclosure by large companies: Luxembourg is currently implementing Directive 2014/95 amending the Accounting Directive (Directive 2013/34/EU) regarding disclosure of non-financial and diversity information by certain large companies and groups. The main aim of the text is to increase EU companies' transparency and performance in respect of environmental and social matters. Large companies (*i.e*. large EU public-interest entities, listed or unlisted) will be obliged to disclose in their management reports relevant information on, *inter alia*, policies, outcomes and risks, anti-corruption and bribery issues, board diversity as well as relevant non-financial key performance indicators relating to environmental, social and employee-related matters. The new obligations will be effective from the financial period starting on 1 January 2017.

Market abuse: The Market Abuse Regulation (Regulation 596/2014, MAR) will apply from 3 July 2016 and the Market Abuse Directive (Directive 2003/6/EC) and its implementing legislation will be repealed. The directive on criminal sanctions for insider dealing and market manipulation (Directive 2014/57/EU, CSMAD) must be implemented into national law by 3 July 2016. Read more…

Transparency Amended Directive: The Transparency Directive (Directive 2004/109/EC) has been amended by Directive 2013/50/EU (Transparency Amended Directive). The Transparency Directive requires issuers of securities admitted to trading on regulated markets in the EU to ensure appropriate transparency for investors via the regular dissemination of information by disclosing periodic and ongoing regulated information. Luxembourg is in the process of implementing the Transparency Amended Directive. The main changes relate to clarification of the definition of the home Member State and the reduction of administrative burdens regarding publication (the interim management statement will be abolished and the deadline for publication of the half-year financial report has been extended).

Prospectus: On 30 November 2015, the EU Commission adopted a proposal for a new prospectus regulation aimed at repealing and replacing the Prospectus Directive together with its related implementing measures (*i.e*. including the current Prospectus Regulation 809/2004). The key points of the proposal are

among others: (i) exempting the smallest capital raisings (*i.e.* a higher threshold will be required to determine when companies must issue a prospectus), (ii) creating a lighter prospectus for smaller companies, (iii) shorter and clearer prospectuses, (iv) simplifying secondary issuance for listed firms; (v) creating a fast track and simplified frequent issuer regime and (vi) having a single access point for all EU prospectuses. The draft Regulation will be submitted to the EU Parliament and the Council of the EU for discussion and adoption under the co-decision procedure.

Benchmark Regulation: On 25 November 2015, the Luxembourg Presidency of the Council of the EU reached a preliminary agreement with the EU Parliament on the proposed Regulation on indices used as benchmarks in financial instruments and financial contracts (Benchmark Regulation). The key issues concerning the agreement relate to the categorisation of benchmarks and the third country regime, which will allow third country indices to continue to be used in the EU. The preliminary political agreement was formalised by EU Member States at the meeting of the Permanent Representatives Committee on 9 December 2015. The draft Regulation will now be submitted to the EU Parliament for a vote at first reading and to the Council of the EU for final adoption.

Private Equity

Reserved alternative investment funds (RAIF): Luxembourg will supplement its funds structuring toolbox in 2016. The new regime will allow fund initiators and authorised alternative investment fund managers (AIFMs) to set up a new type of alternative investment fund (AIF) offering the legal and tax features of the well-known specialised investment fund (SIF) and *société d'investissement de capital à risque* (SICAR) fund regimes without the regulatory oversight of the *Commission de Surveillance du Secteur Financier* (CSSF). Read more…

CSSF Regulation 15/03: In November 2015, the CSSF published Regulation 15-03 which provides for the conditions of application of Article 46 of the Luxembourg law on alternative investment fund managers dated 12 July 2013 (AIFM Law) and which relates to alternative investment fund managers (AIFMs) wishing to market foreign open-ended alternative investment funds (AIFs) to retail investors in Luxembourg. The Regulation does not apply to the marketing of foreign AIFs to professional investors and well-informed investors. It enables authorised AIFMs established in Luxembourg or in another EU Member State (or in a third country if and when the passport extension applies) to market the foreign AIFs they manage to retail investors in Luxembourg after receiving approval from the CSSF. Read more…

CSSF Circular 15/612: The CSSF has issued a circular on the information to be communicated by AIFMs established in Luxembourg in respect of non-regulated AIFs and regulated non-EU AIFs they are managing or which they will manage. AIFMs are requested to notify the CSSF within 10 days of commencing the management of a non-regulated AIF or regulated non-EU AIF. Read more…

CSSF AIFMD FAQs: In August 2015, the CSSF published the ninth version of its frequently asked questions document which includes among others clarification on reverse solicitation and marketing in respect of AIFs in Luxembourg. According to the CSSF, reverse solicitation consists in providing information regarding AIFs and making units or shares of AIFs available for purchase following an initiative of the investor in the absence of any solicitation made by the AIF or its AIFM. Furthermore, it should be noted that marketing is to be defined within the meaning of the AIFM Law as taking place when the AIF, the AIFM or an intermediary acting on their behalf seeks to raise capital by actively making units or shares of an AIF available for definite purchase by a potential investor. Read more…

European Long-term Investment Funds: Regulation 2015/760 (dated 29 Avril 2015) on EU Long-term Investment Funds (ELTIF Regulation) has been adopted in order to boost long-term investment in the EU economy through the introduction of a new type of collective investment vehicle designed to provide private capital for the financing of long-term projects such as infrastructure, private equity or real estate projects.

The ELTIF Regulation, which complements the European Venture Capital Funds (EuVECA) and the European Social Entrepreneurship Funds (EuSEF) Regulations, enters into force on 9 December 2015. Read more...
On 21 December 2015, the CSSF released an application form for an authorisation as ELTIF and an authorisation to manage the ELTIF.

Securities

European Market Infrastructure Regulation (EMIR): In May 2015, the EU Commission published a consultation paper enabling it to judge market participants' experience in implementing EMIR (Regulation (EU) 648/2012). Based on the feedback received the EU Commission prepared and submitted a report on EMIR to the EU Parliament and the Council of the EU in August 2015. The European Securities and Markets Authority (ESMA), one of the respondents, has published four reports on how the EMIR framework has been functioning and thus providing input for the EU Commission's EMIR review. The first three reports submitted by ESMA are required under EMIR and relate to (i) non-financial counterparties, (ii) limiting pro-cyclicality, and (iii) segregation and portability. The fourth report by ESMA included recommendations to amend EMIR in a number of areas, including clearing obligations, recognition of third-country CCPs and trade repositories.

Implementation of EMIR: In August 2015, bill of law 6846 assuring the implementation of part of EMIR was tabled before the Luxembourg Parliament (the Bill of Law). The Bill of Law proposes that the *Commission de Surveillance du Secteur Financier* (CSSF), without prejudice to the competences of the *Banque centrale du Luxembourg* and the *Commissariat aux Assurances*, will be the competent national authority for the various tasks set out by EMIR and as such will receive the necessary powers to accomplish such task and to determine the sanctions in case of infringement of the Regulation.

Furthermore, the Bill of Law also aims at implementing Directive 2013/14/EU in respect of over-reliance on credit rating and will introduce new requirements regarding the process and the system of managing risks for institutions for occupational retirement and for UCITS and AIF management companies by way of amendments to the respective Luxembourg laws.

At the date of this publication, the Bill of Law is still pending.

Tax Law

2015 budget law and the law introducing measures for the future (*paquet d'avenir*): The 2015 budget law contained various tax-related provisions which entered into force on 1 January 2015, *i.e.* a new procedure for advance tax confirmations, a new transfer pricing provision, the abolition of the possible refund of withholding tax on income from movable property for Luxembourg residents, the creation of a Luxembourg sovereign fund, amendments to the minimum advance corporate income tax, the introduction of a temporary equalisation tax of 0.5% on the income of individuals, an increase in VAT rates and a new reimbursement procedure for VAT receivables. Read more...

Annual establishment of net worth tax: As from 1 January 2015 net worth will be established annually. Under the former regime, net worth was established as a general rule only every three years. Luxembourg levies net worth tax on companies at a rate of 0.5% per year on the basis of the net worth determined every 1 January. Read more…

Taxation of a common limited partnership (SCS) and a special limited partnership (SCSp) qualifying as alternative investment funds (AIFs): On 9 January 2015, the Luxembourg tax authorities issued Circular Letter L.I.R. 14/4 (Circular Letter) with respect to the taxation of income realised by a Luxembourg

common limited partnership (*société en commandite simple* - SCS) or a special limited partnership (*société en commandite spéciale* - SCSp). The main purpose of the Circular Letter is to confirm that a SCS/SCSp which qualifies as an AIF within the meaning of the Luxembourg law on alternative investment fund managers dated 12 July 2013 is deemed not to be conducting a business activity and therefore not subject to municipal business tax in Luxembourg, unless its general partner holds 5% or more of the interests in the SCS/SCSp. Read more…

Adoption of the Luxembourg FATCA Law: On 24 July 2015, Luxembourg adopted the intergovernmental agreement (IGA) on the implementation of the Foreign Account Tax Compliance Act (FATCA). The IGA aims to facilitate the exchange of information on specified US Persons as defined by FATCA, between Luxembourg and the United States, while at the same time easing the compliance obligations for, amongst others, Luxembourg financial institutions by specifying local exemptions and deemed compliant classifications with no reporting duties. Read more…

Amendment to the Parent-Subsidiary directive introducing a general anti-abuse rule: On 27 January 2015, the Council of the EU adopted Directive 2015/121 amending the Parent-Subsidiary directive (directive 2011/96/EU). The aim of this amendment was to ensure that the Parent-Subsidiary directive, which provides shareholders under certain conditions with the benefits of the participation exemption, is not abused by taxpayers who fall within the scope of its application. In that respect, an anti-hybrid principle and a general anti-abuse clause have been included in the Parent-Subsidiary directive according to which EU Member States should not grant the benefits thereof to any arrangement or series of arrangements which, having been put in place for the main purpose or one of the main purposes of obtaining a tax advantage that defeats the object or purpose of the Parent-Subsidiary directive, are not genuine having regard to all relevant facts and circumstances. The amended Parent-Subsidiary directive was adopted in Luxembourg on 17 December 2015 and has entered into force on 1 January 2016. Read more…

Amendments to the double tax treaty between Luxembourg and France: On 7 December 2015, the law implementing a 4th amendment to the double tax treaty between France and Luxembourg was published in the *Mémorial*, the Luxembourg official journal. The amendments provide that capital gains derived from the alienation of shares, units or other rights in a company, fiduciary or any other institution or entity whose assets are comprised in respect of more than 50% of their value – directly or indirectly through one or more companies, fiduciaries, institutions or other entities – of real estate situated in the other contracting state are taxable only in that other state. Since France did not ratify the Protocol before 30 November 2015, the new provision will enter into force as of 1 January 2017. Read more…

VAT exemption for a property investment company under certain conditions: On 9 December 2015, the Court of Justice of the European Union (CJEU) delivered a new landmark ruling for the real estate fund industry. In its judgement in the case "Fiscale Eenheid X NV cs" C-595/13, the CJEU ruled that the management of property funds that are subject to specific state supervision will benefit from the VAT exemption for fund management services. However, the CJEU clarifies that the VAT exempt management does not encompass the actual management of the real estate property itself. Read more…

Luxembourg confirmed as compliant by the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes: On 30 October 2015, the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes confirmed that Luxembourg is compliant with the international standard on the exchange of information upon request for tax purposes. Read more …

Implementation of the Common Reporting Standard and repeal of the Savings directive: The Luxembourg law implementing Directive 2014/107/EU introducing the Common Reporting Standard (CRS) and amending directive 2011/16/EU (the Law) entered into force on 1 January 2016. The Law provides for the automatic exchange of financial information, as opposed to an exchange of information upon request, as the new standard applicable as from 1 January 2016. As a consequence and in accordance with relevant EU law, the law of 21 June 2005, amended by the law of 25 November 2014, implementing the Savings directive (directive 2003/48/EC) was repealed as per 31 December 2015.

2016 budget law: The 2016 budget law contained various tax-related provisions, which entered into force on 1 January 2016. These new provisions include the abolishment of the IP regime with a five-year grandfathering period, the replacement of the minimum corporate income tax by the minimum net wealth tax, a tax amnesty for Luxembourg residents, a step-up for immigrating individuals and an excess wage tax claim.

Employment Law

Reform of social dialogue: On 23 July 2015, a new law concerning the reform of social dialogue (Law) was enacted which profoundly modifies staff representation within companies and which has been in force since 1 January 2016. The main features of the Law are the abolishment of works councils and the transfer of their competencies to staff delegations, changes in respect of the appointment of the staff delegation, increased means granted to staff delegates to fulfil their duties and important amendments to their protection against dismissal. Read more …

Insurance Law

Solvency 2 - Implementation in Luxembourg law: The Luxembourg law of 7 December 2015 implements Directive 2009/138/EC (Solvency 2 Directive) and replaces the amended Luxembourg law of 6 December 1991 on the insurance sector with a new law offering a single, coherent codification of legislation governing insurance and reinsurance activity (2015 Law on the Insurance Sector). Numerous existing provisions not affected by Solvency 2 Directive are taken up in the 2015 Law on the Insurance Sector, often without change in respect of content, with the exception of textual amendments and updated references. Other provisions are entirely new and directly derive from Solvency 2 Directive, in particular the solvency regime applicable to insurance and reinsurance undertakings, the corporate governance requirements, and the supervision of insurance and reinsurance groups.

The Luxembourg law of 7 December 2015 also modifies (i) the amended law of 27 July 1997 in implementing the provisions of Solvency 2 Directive relating to the content of the insurance contract, and (ii) the amended law of 8 December 1994 in implementing the specific provisions relating to the provisions for claim fluctuation.

The modifications introduced by the Luxembourg law of 7 December 2015 enter into force on 1 January 2016.

During 2015, the European Insurance and Occupational Pensions Authority (EIOPA) revised the Solvency 2 reporting and disclosure package and published several guidelines regarding this matter.

Insurance Distribution Directive (IDD): The IDD was adopted by the EU legislator in December 2015. The IDD is designed to improve EU regulation in the insurance market in an efficient way. It aims to ensure a level playing field among all participants involved in the sale of insurance products, to make it easier for firms to carry out cross-border activities and to strengthen policyholder protection. Although the IDD is a minimum harmonising Directive, the EU Commission considers that it will significantly raise the minimum standards of the IMD. In addition, to ensure cross-sectoral consistency, some parts of the IDD are being aligned with equivalent provisions of the MiFID II Directive. The IDD aims in particular at:

- extending the scope of application to all distribution channels, including proportionate requirements for those who sell insurance products on an ancillary basis;
- identifying, managing and mitigating conflicts of interest;

- strengthening administrative sanctions, as well as measures to be applied in the event of a breach of key provisions;
- enhancing the suitability and objectiveness of insurance advice;
- ensuring that sellers' professional qualifications match the complexity of the products they sell;
- clarifying the procedure for cross-border market entry.

At the time of this publication, the publication of the IDD in the Official Journal of the EU is still pending. The IDD will come into force 20 days after publication, and EU Member States will have two years from the date it comes into force to transpose it into national laws and regulations.

Deposit agreement: Circular letter 15/4 of the Commissariat aux Assurances repealed Circular letter 09/07 and entered into force on 1 May 2015. It increases possibilities for depositing assets in particular with branches or agencies of credit undertakings of an EU Member State.

Life insurance products linked to investment funds: Circular letter 15/3 of the Commissariat aux Assurances repealed Circular letter 08/01 and entered into force on 1 May 2015. It provides for amendments to the conditions of access to dedicated funds and allows for the creation of a specialised insurance fund in respect of underlying assets of a life insurance contract linked to investment funds.

Litigation

Characterisation of the (sub-)registrar of an investment fund: In a decision handed down on 6 May 2015 (docket number 38512), the Luxembourg Court of Appeal characterised the (sub-)registrar of an investment fund (governed by the laws of the Cayman Islands) as an agent (*mandataire*) of the redeeming shareholder. As a result, the (sub-)registrar may be directly liable in contract towards the redeeming shareholder for the non-performance of its mandate.

The Court of Appeal stated that the redemption-sales agreement was entered into between the investment fund and the shareholder. However, the (sub-)registrar was responsible for receiving and carrying out the redemption orders and also acted in the capacity of an agent of the shareholder. In this respect, the Court of Appeal ruled that a dual-mandate (*double mandat*) may exist in principle. According to the Court of Appeal, in the event of a redemption, it is incumbent on the agent maintaining the register to receive the sales order (or the redemption orders) and to carry out such order on behalf of the shareholder, the mandate having been conferred on it by the investment fund being the same, although such mandate is the counter-reflection (*contre-reflet*) of the mandate granted by the shareholder. The cassation proceedings are currently pending.

Lack of standing of shareholders of the SICAV: In actions brought by a SICAV's investors against, among others, the SICAV's custodian bank, the Luxembourg courts ruled that shareholders lacked standing to initiate proceedings against contracting parties of the SICAV for non-fulfilment of their contractual obligations to the company and that such an action could be brought by the company alone. The courts held that a loss in capital reflects the losses suffered by all shareholders excluding individualised loss. The courts therefore dismissed the actions brought by the investors (Luxembourg District Court, 4 March 2010, number 309/10, 312/10, 318/10, confirmed by Luxembourg Court of Appeal, 15 July 2014, docket number 36516). On 2 July 2015, the Luxembourg Supreme Court (*Cour de cassation*, decision N° 67/15, docket number 3509) confirmed this decision.

Foreign arbitral exequatur: It had been settled case law in Luxembourg since a court ruling of 28 January 1999 that annulled foreign arbitral awards could be enforced in Luxembourg by virtue of the principle of "favor arbitrandum". The courts held that given that under the Convention of New York a Luxembourg judge may only set aside an exequatur on grounds provided for under his domestic law and that Article 1251 of the

New Code of Civil Procedure (NCCP) does not include, amongst these grounds, the case where the award is subject to an appeal in a foreign country (or has already been annulled), it did not seem appropriate under these conditions to suspend ruling.

This case law has now been undermined.

According to the new ruling, Article 1251 of the NCCP must be interpreted as meaning that in the event of the application of the Convention of New York the domestic provisions will not apply and the judge will only take into account the provisions of the Convention. Article V.1 of the Convention prevents the enforcement of a decision which has been annulled in its country of origin. According to Article VI of the Convention, a suspension of the ruling may be imposed if the judge responsible for the exequatur deems it appropriate.

Criminal settlement introduced into Luxembourg law: Luxembourg has enacted a new law on a criminal settlement procedure known as a judgment upon consent. Read more…

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