2019 Annual Tax Seminar

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Agenda

Introduction: "Changing landscape in Luxembourg"
Jan Neugebauer, Partner

Anti-tax avoidance directive (ATAD) II: Be prepared for January 2020
Vincent Mahler, Partner

DAC 6: Which impact for your business?
Alexandra Clouté, Senior Associate

New tax treaty between Luxembourg and France and the Multilateral Instrument (MLI)
Vincent Mahler, Partner

Recent VAT developments Bruno Gasparotto, Principal

Taxes in 2020 and beyond
Jan Neugebauer, Partner

Q&A session

Introduction

Changing landscape in Luxembourg

CASE LAW

STATE AID

Relibi / CRS / FATCA

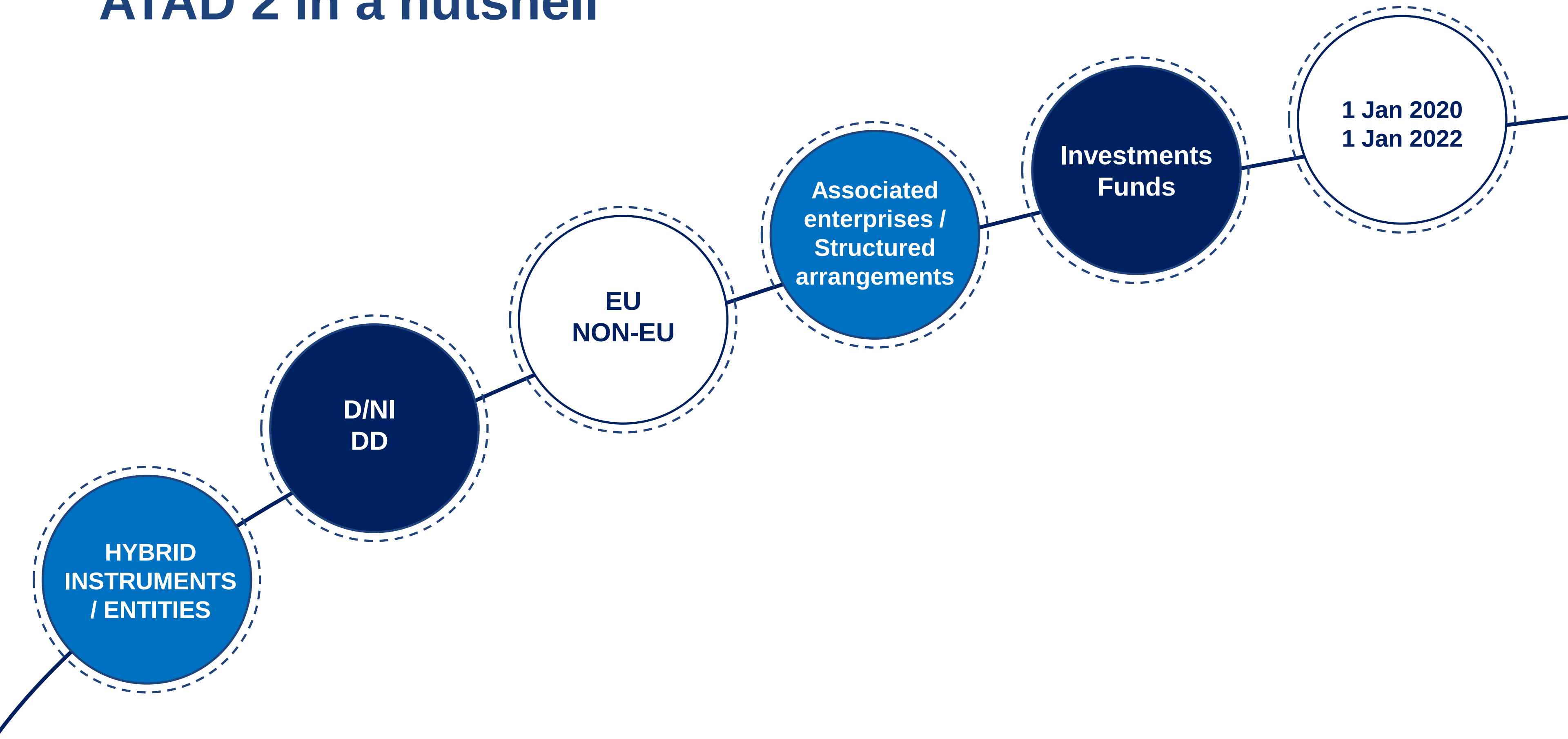
RULINGS PRE-2015

TRANSPARENCY 2.0

Transposition of ATAD 2 in Luxembourg

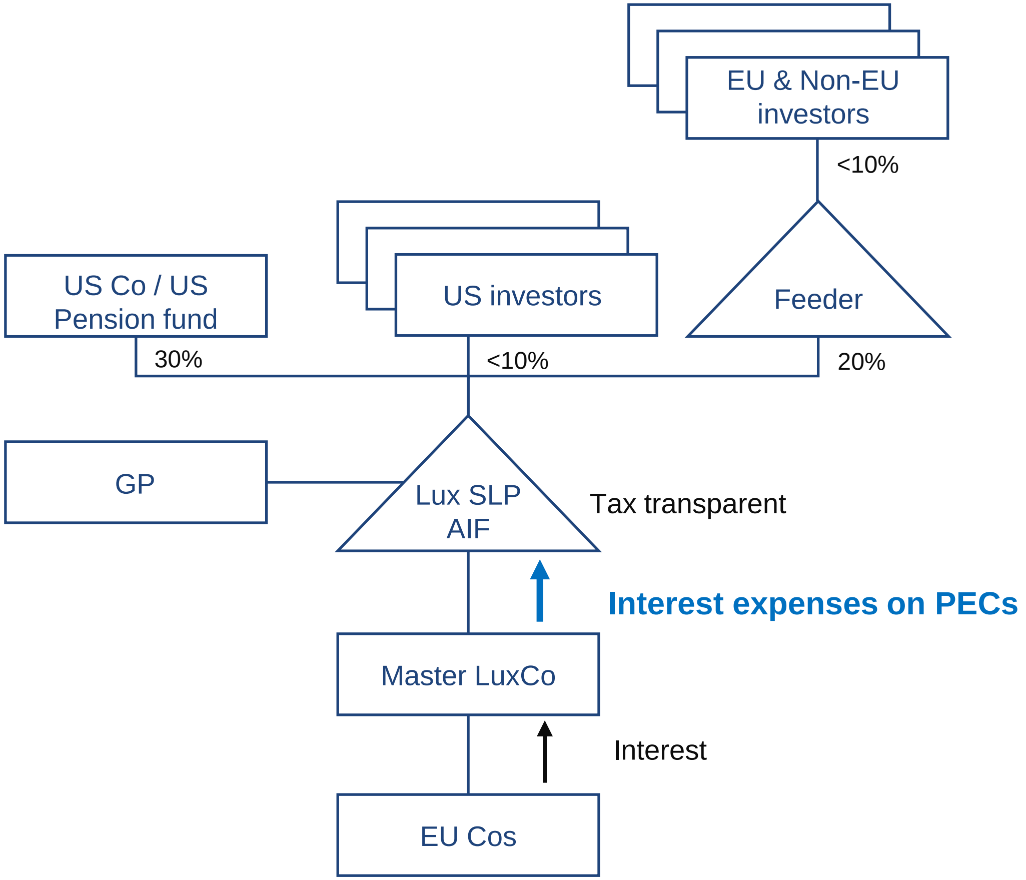
Be prepared for January 2020

ATAD 2 in a nutshell



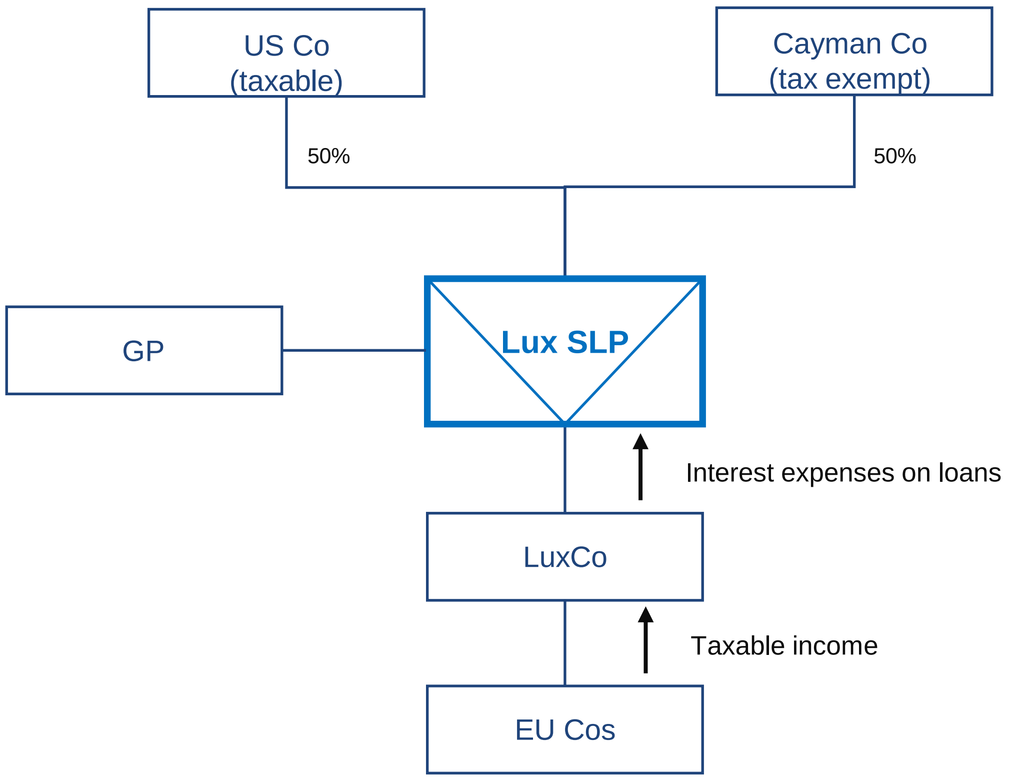
Impact as from 1/1/2020

Example 1 – Hybrid financial instrument



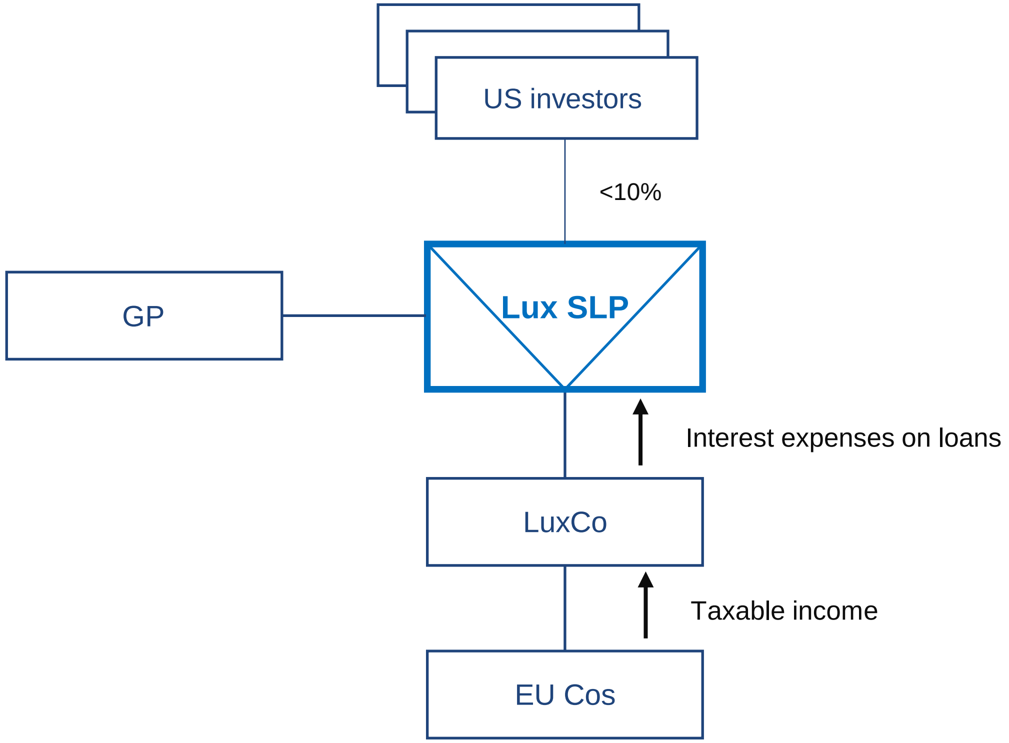
Impact as from 1/1/2020

Example 2 – Payment to a Reverse Hybrid



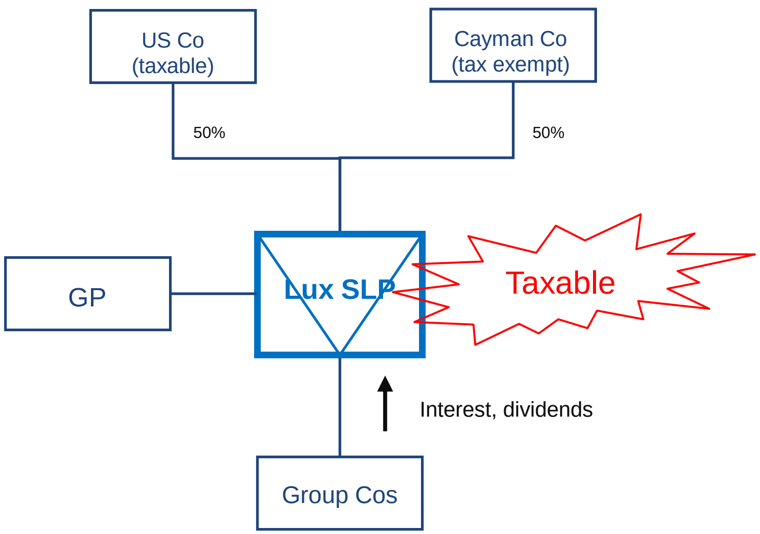
Impact as from 1/1/2020

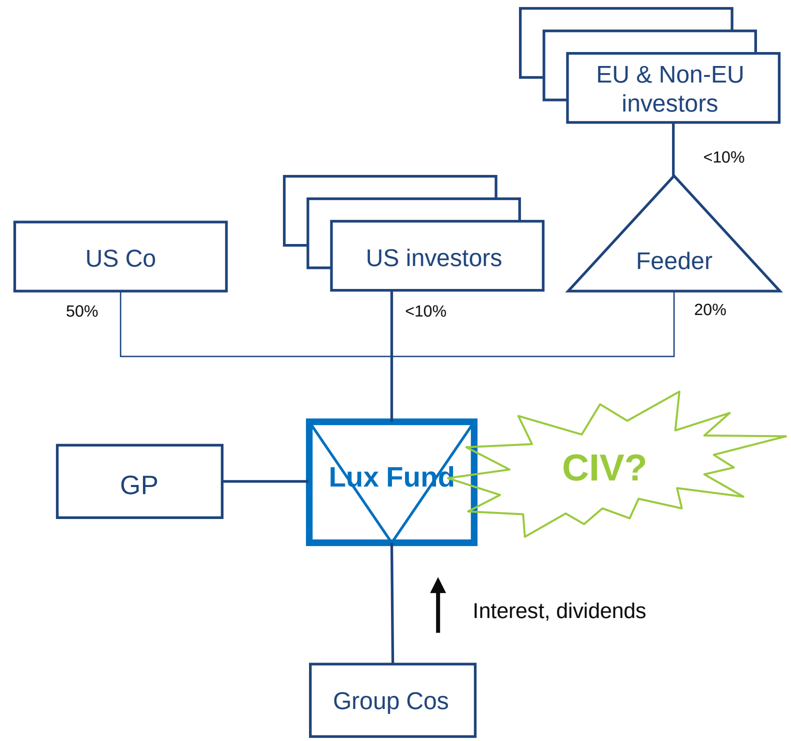
Example 3 – Payment to a Reverse Hybrid



Impact as from 1/1/2022

Example 4 – Reverse Hybrid





Practical consequences

LEGAL DOCUMENTATION

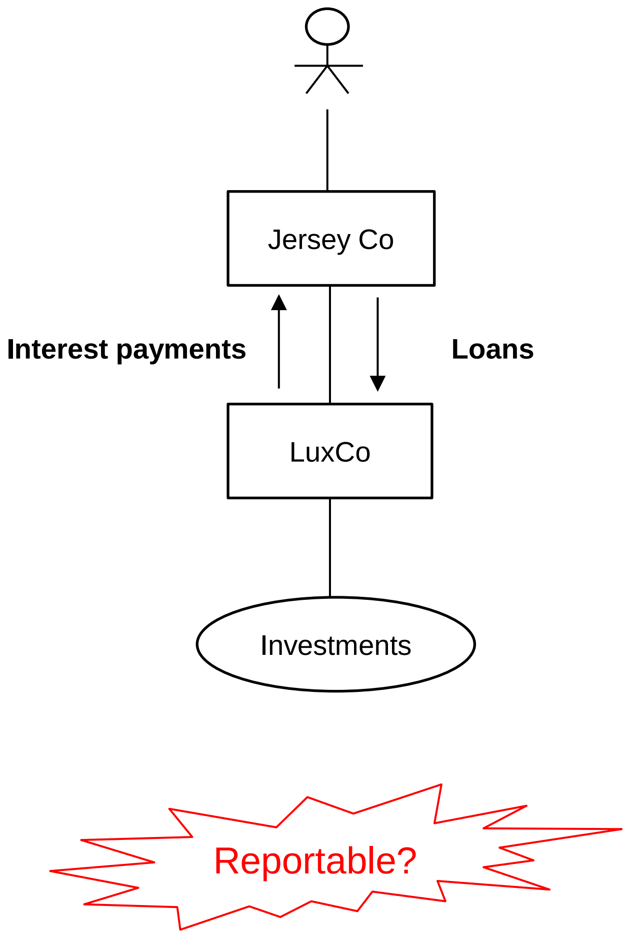
NEW BUSINESS SET UP?

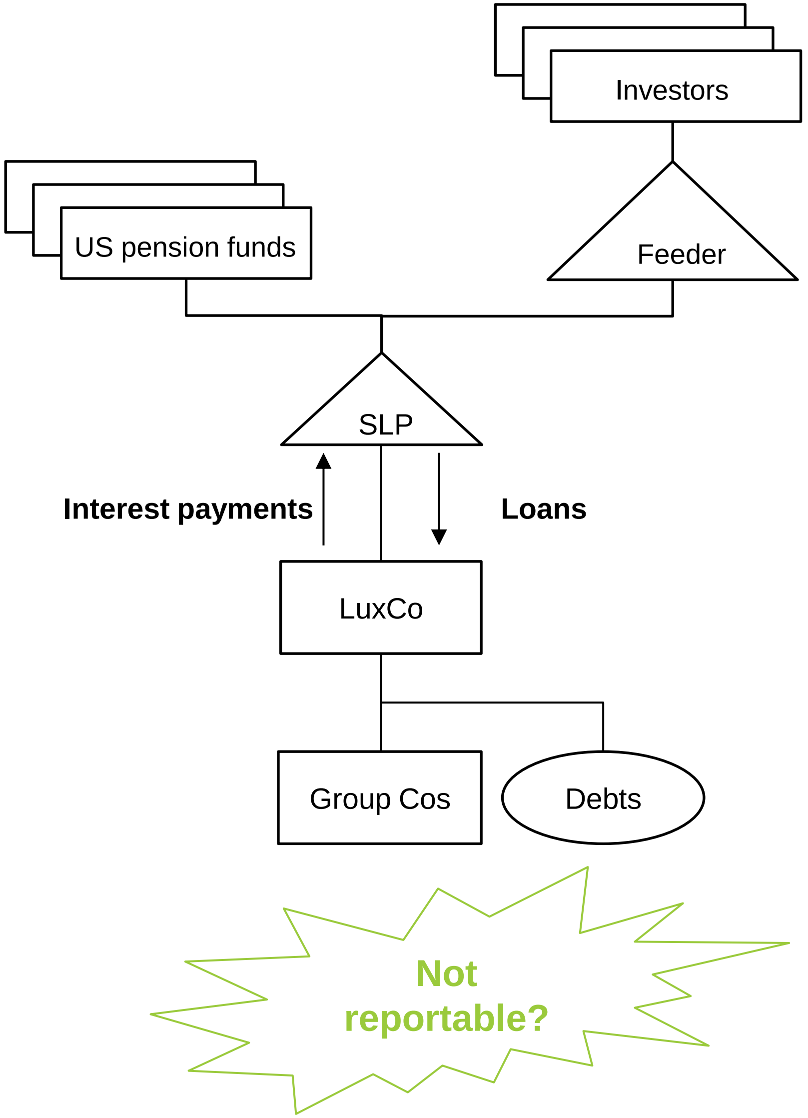
DAC 6: which impact for your business?

Bill 7465 in a nutshell

Background	▪ Amendement to the EU Directive 2011/16/EU (DAC 6) to include mandatory automatic exchange of information in relation to reportable **cross-border** arrangements
Purpose	▪ **Disclosure** of "potentially aggressive tax planning arrangements" to the authorities of a Member State ▪ **Automatic exchange** of information between authorities of Member States
Reportable cross-border arrangements	▪ One of the "**hallmarks**" is met ▪ Potentially together with a **main benefit test**
Who should disclose?	▪ EU intermediary ▪ Taxpayer
Disclosure to Luxembourg tax authorities	▪ As from 1 July 2020: **30 days** to report ▪ Arrangements with first step implemented **between 25 June 2018 and 1 July 2020** : reporting by 31 August 2020

Scope - examples





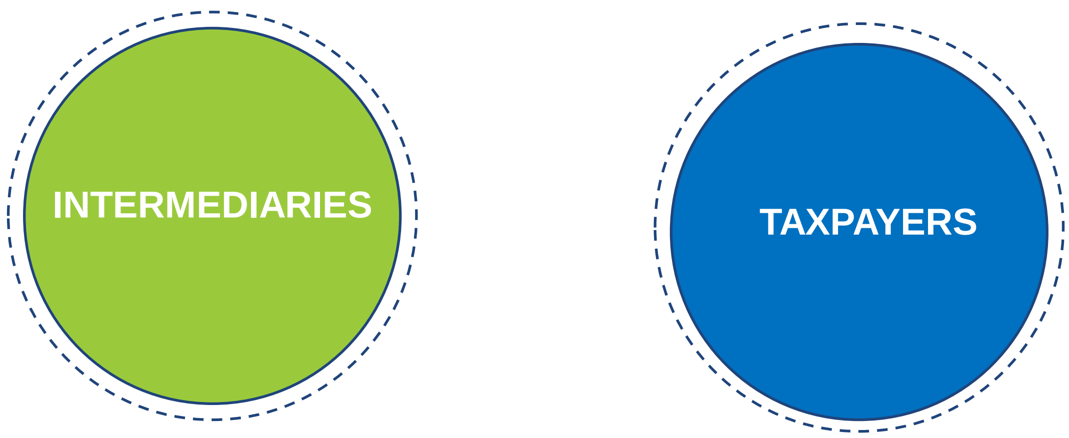
Information to be disclosed

1. Identification of intermediaries and taxpayers
2. Applicable hallmarks
3. Summary of the reportable arrangements
4. Date of implementation
5. Applicable domestic tax provisions
6. Value of transaction
7. Identification of the EU MS concerned
8. Identification of the persons in other EU MS likely to be affected

⇒ Information that is within knowledge, possession, or control

⇒ Penalties of up to €250,000 for information on arrangements not disclosed / late disclosure / incomplete or inaccurate disclosure

Practical consequences



Tax treaty update

Application of the multilateral instrument (MLI) to Luxembourg covered tax agreements (CTAs) (1)

1. **Andorra**
2. **Armenia**
3. **Austria** *
4. Azerbaijan
5. Bahrain
6. **Barbados**
7. **Belgium** *
8. Brazil
9. Brunei
10. **Bulgaria**
11. **Canada** *
12. **China**
13. **Croatia**
14. Cyprus
15. **Czech Republic**
16. **Denmark** *
17. **Estonia**
18. **Finland** *
19. **France** *
20. **Georgia** *
21. **Germany**
22. **Greece**
23. **Guernsey** *
24. **Hong Kong**
25. **Hungary**
26. **Iceland** *
27. **India** *
28. **Indonesia**
29. **Ireland** *
30. **Isle of Man** *
31. **Israel** *
32. **Italy**
33. **Japan** *
34. **Jersey** *
35. **Kazakhstan**
36. Kosovo
37. Laos
38. **Latvia**
39. **Liechtenstein**
40. **Lithuania** *
41. Macedonia
42. **Malaysia**
43. **Malta** *
44. **Mauritius**
45. **Mexico**
46. Moldova
47. **Monaco** *
48. *Mongolia (terminated)*
49. **Morocco**
50. **Netherlands** *
51. **Norway** *
52. **Panama**
53. **Poland** *
54. **Portugal**
55. **Qatar**
56. **Romania**
57. **Russia** *
58. **San Marino**
59. **Saudi Arabia**
60. **Senegal**
61. **Serbia** *
62. **Seychelles**
63. **Singapore** *
64. **Slovakia** *
65. **Slovenia** *
66. **Spain**
67. **South Afrika**
68. **South Korea**
69. Sri Lanka
70. **Sweden** *
71. **Switzerland** *
72. Taiwan
73. Tajikistan
74. Thailand
75. Trinidad & tobago
76. **Tunisia**
77. **Turkey**
78. **Ukraine** *
79. **UAE** *
80. **UK** *
81. USA
82. **Uruguay**
83. Uzbekistan
84. Vietnam

- **Bold:** 66 CTAs out of a list of 84 tax treaties
- **(*) Provisions on withholding taxes: entry into effect as from 01/01/2020 (31 CTAs)**
- Provisions on other taxes: case by case analysis - might apply as from 01/02/2020

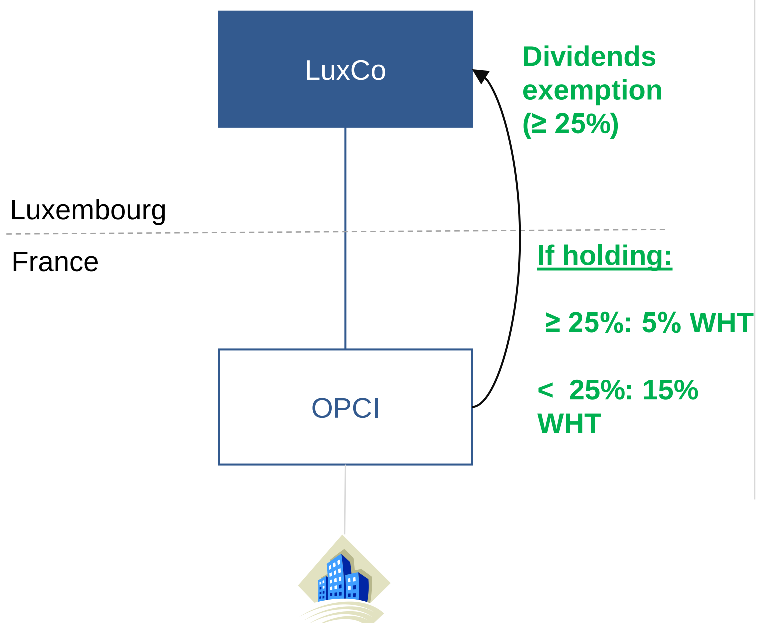
(1) Numbers as at 31/10/2019

New tax treaty France-Luxembourg

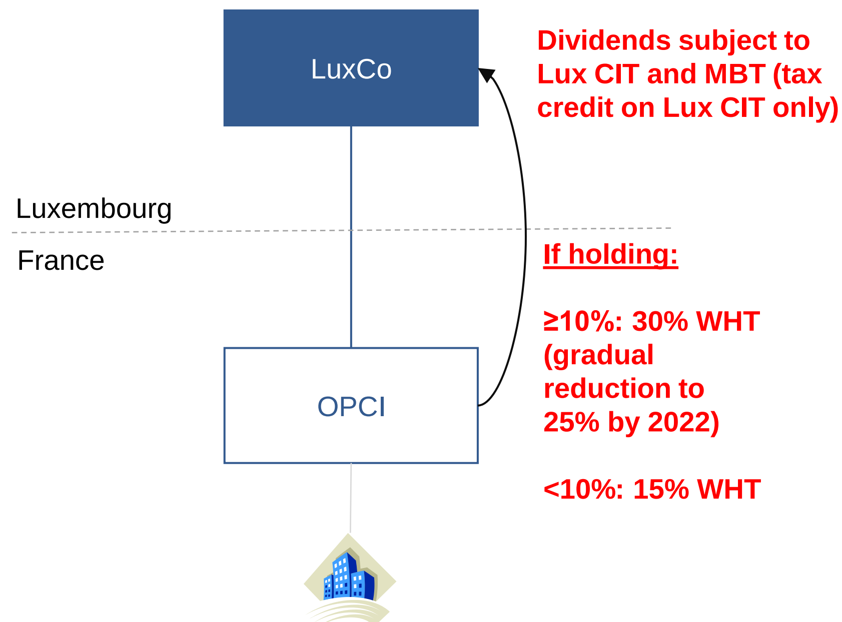
- New tax treaty signed in March 2018 which replaces the current tax treaty of 1958
- Provisions in line with new OECD / BEPS standards - to apply **as from 1 January 2020**
- **Main provisions:**
    - **New scope -** Tax treaty applicable to residents that are **subject to tax**
    - New **WHT exemption** on dividends for shareholdings >5% over 365 days
    - **UCIs** established in Luxembourg or in France may benefit from the provisions on dividends and interest, if certain conditions are met (protocol 2)
    - New provisions on WHT on **dividends paid by real estate investment vehicles** (e.g., French OPCIs)
    - Luxembourg **participation exemption** on shareholdings > 25% in French companies **no longer applicable**
    - Adaptation of the **land-rich provisions** in line with MLI recommendations
    - New provisions on the **permanent establishment definition** (in line with BEPS 7)
    - New anti-abuse rules and **principal purpose test** (in line with BEPS 6)
    - Method to avoid double taxation - specific provisions for **French tax residents** working in Luxembourg (new protocol of 10 October 2019)

Specific considerations for French OPCI

Current situation

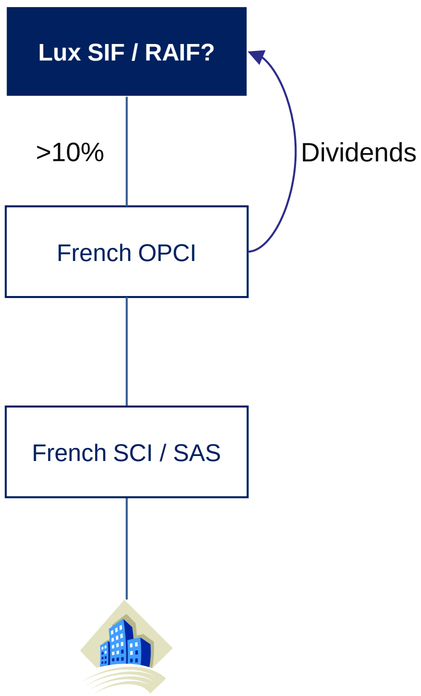


As from 01/01/2020



→ Dividends

Specific considerations for French OPCI (cont'd)



Dividends to Lux vehicle subject to **15% French WHT (domestic law)** under conditions:

- Lux vehicle beneficiaries must be resident in an EU MS / a State with which France has concluded a treaty on administrative assistance for the purpose of preventing tax evasion and avoidance; and
- Lux vehicle must be assimilated to a French CIV

Recent VAT developments

arendt

New VAT obligations on payment service providers

Draft Council Directive and EU Regulation

1st January 2024

Context of the implementation of such VAT obligations

- VAT constitutes a major source of tax revenue for Member States (“MS”)
- VAT Gap (i.e. difference between expected VAT revenue and VAT actually collected) within the EU estimated at **EUR 137.5 billion** for the year 2017* constituting a loss for MS
- With the growth of cross-border e-commerce transactions, EU ‘traditional’ VAT rules appear outdated and leave the door open to VAT fraudulent e-businesses
- 2 proposals :

1. A Directive modifying Directive 2006/112/EC regarding the introduction of certain requirements for payment service providers (“PSP”)
2. A Regulation amending Regulation 904/2010 regarding measures that strengthen administrative cooperation to combat VAT fraud

=> On 8 November 2019, the EU Council reached a provisional agreement on these 2 proposals

** VAT GAP Report issued by the EU Commission (TAXUD/2015/CC/131) on 4 September 2019* arendt

Challenge of the EU VAT regulation in e-commerce environment

Modernize the VAT system to facilitate e-commerce

Tackle the VAT fraud in cross-border e-commerce transactions

- Reducing administrative burden for e-businesses and small businesses
- Simplification of VAT rules for e-commerce transactions

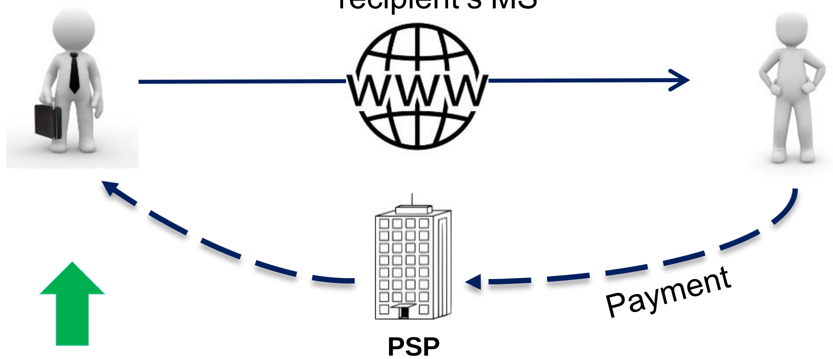
- Control of e-commerce transactions through third parties (e.g. electronic interfaces/marketplaces and PSP)

Risk of fraud arising from cross-border e-commerce transactions

E-commerce “B2C” transactions: place of taxation <u>where the consumer is located</u>

Supply subject to VAT in recipient’s MS

In another MS or outside the EU



No VAT liability or reporting obligation for private individuals: end consumers

Liable for the collection of <u>foreign</u> VAT on its supplies

PSP concerned*
- credit institutions
- electronic money institutions
- post office giro institutions
- payment institutions

Difficult for VAT authorities of MS of consumption to secure the liabilities of VAT payments: need for reliable external data to control transactions

**Bodies listed in points (a) to (d) of Article 1 (1) of Directive (EU) 2015/2366 dated 25 November 2015 on payment services in the internal market*

New VAT obligations for PSP

1) Identification of relevant transactions

- Only cross-border payments are concerned: when the payer is located in one MS and the payee (vendor) in another MS or outside EU;
- Localization of the parties is determined based on their IBAN or any other identifier which unambiguously identifies them and their location
- Obligations only applies above a threshold of 25 cross-border payments to the same payee in the course of a calendar quarter;
- No obligation in case of payment services provided to the payer where at least one of the PSP of the payee is located in a Member State

2) Information to be collected

- BIC or any other business identifier code that unambiguously identifies the PSP
- Name and address of the payee
- Any VAT identification number or other national tax number of the payee (if available)
- IBAN or any other identifier which unambiguously identifies the payee and his location
- Any executed payment transaction

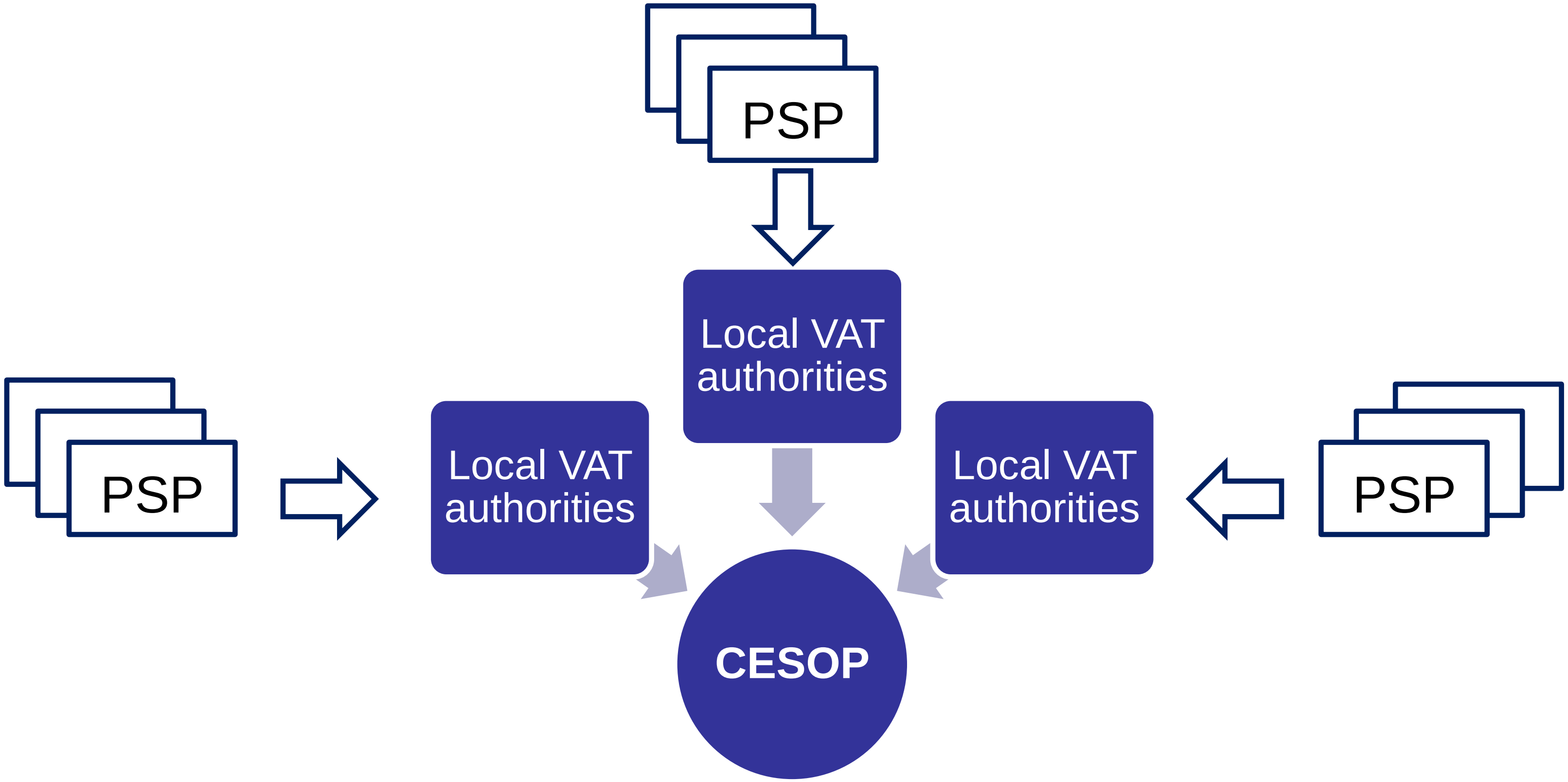
GDPR compliant?

3) Data archiving

- PSP are required to keep sufficiently detailed records of payees and of payments for a period of 3 years from the end of the calendar year of the date of the payment and under electronic format.

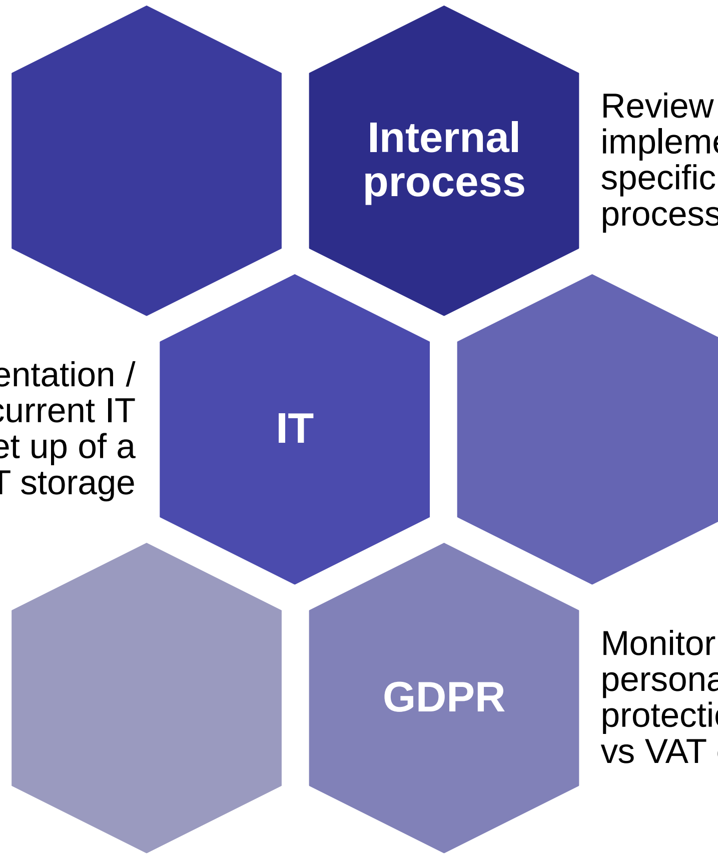
Implementation of the CESOP

Gathering and exchange of the information by national VAT authorities



Central electronic system of payment information

What next for PSP?



Review and implementation of specific internal processes

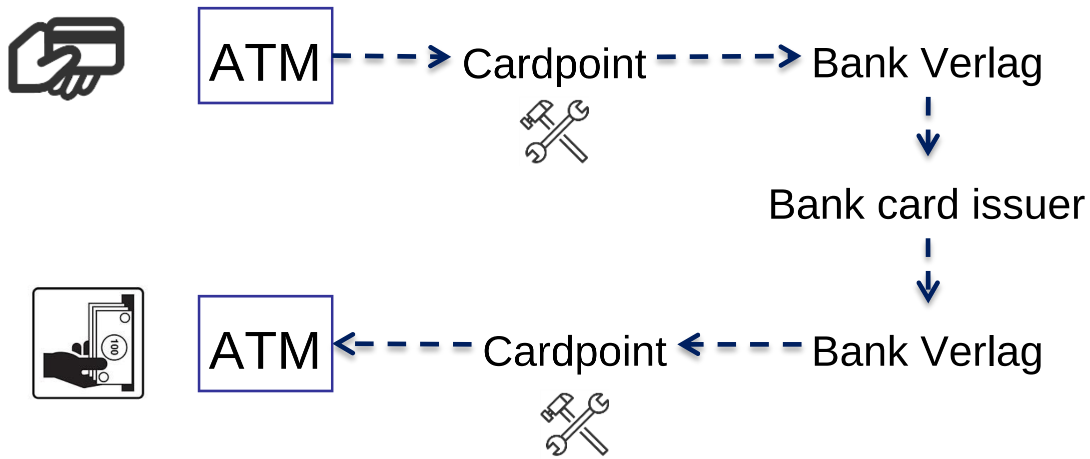
Implementation / change of current IT tools and set up of a dedicated IT storage

Monitoring of personal data protection obligations vs VAT obligations

ECJ, C-42/18, 3 October 2019, Cardpoint

ECJ, C-42/18, 3 October 2019, Cardpoint

Facts



ECJ's judgment

- ATM related services consisting in handling and registering data request and approval / refusal from the card issuer bank and in providing physically the cash requested do not constitute a payment service benefiting from the related VAT exemption but a mere technical service since:
  - ➢ Cardpoint did not itself directly debit the card holder's bank account
  - ➢ Cardpoint has no decision control on the payment transaction but only handle technical operations related to the cash withdrawal request and response of the bank
- Therefore such services cannot be regarded as performing specific and essential functions of a payment or transfer service having the effect of transferring funds and entailing changes in the legal and financial situation of parties

Taxes in 2020 and beyond

Application of ATAD1 (exit taxation), ATAD2, MLI, DAC 6 provisions

ATAD 2 reverse hybrid rules (2022), digital taxation

New rules to improve Luxembourg tax competitiveness?

Q & A

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