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Luxembourg

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Overview of corporate tax work

Luxembourg continues to be a global leader as a platform for international business, investment funds, and cross-border financing. At the outset of COVID-19, Luxembourg quickly reacted by enacting pragmatic emergency measures, allowing Luxembourg investment funds and companies to maintain operational efficiency despite the global lockdown and restrictions on working and travel. In terms of tax developments, Luxembourg continues to update its competitive tax laws in harmony with new European Union ("EU") and Organisation for Economic Co-operation and Development ("OECD") policies principally aimed at anti-abuse and aggressive tax planning.

Over the past year, Luxembourg transfer pricing has further increased in importance. Generally, the Luxembourg tax authorities have increased audits with respect to transfer pricing and this trend should continue into the future.

Luxembourg tax litigation has continued with a slight increase over the past 12 months and particular focuses of litigation included the Luxembourg intellectual property ("IP") box regime (prior to the OECD Base Erosion and Profit Shifting ("BEPS") reform) and director's liabilities for taxes. In early 2020, Luxembourg courts issued a new decision that addressed transfer-pricing challenges by the Luxembourg tax authorities.

The importance of robust economic substance in Luxembourg holding and financing structures continues to grow in the wake of the 2019 landmark 'Danish cases' of the European Court of Justice ("ECJ"). Already in 2020, EU Member State tax authorities have started rigorously applying the beneficial ownership and economic substance tests, as elaborated in these ECJ cases.

Significant deals and themes

With respect to alternative investment funds ("AIFs"), the Special Limited Partnership ("SCSp") continues to be the favoured investment vehicle, and the reserve alternative investment fund ("RAIF") continues as well to be the most-often chosen regulatory regime, while Luxembourg specialised investment funds ("SIFs") and Luxembourg investment companies in risk capital (commonly referred to as "SICARs") are less frequently chosen. Over the past year, AIFs focused in particular on private equity, non-performing loans, and real estate.

For multinational corporate groups, Luxembourg remains a favoured location for holding and intragroup financing activities, particularly for investments, operations, and financing into the EU.

However, over the past 12 months, there has been a noticeable trend in the unwinding of Luxembourg cross-border financing for US multinationals using hybrid instruments (i.e.,

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Convertible Preferred Equity Certificates, or "CPECs") in light of the anti-hybrid rules coming into force in both the USA and Luxembourg (i.e., EU Anti-Tax Avoidance Directive II, or "ATAD II").

Regarding the financing sector, Luxembourg tax resident companies ("*Soparfis*") in corporate form continue to be widely utilised as well as securitisation vehicles. Luxembourg has continued to be a top choice for cross-border financing for a variety of industries. To date, COVID-19 has not had a disruptive effect on Luxembourg financing structures, mainly due to the quick government responses, which urgently allowed more flexibility with respect to the management and reporting of these structures. Nonetheless, certain industries such as real estate and hospitality have witnessed a dramatic slowdown in activity since the COVID-19 lockdown began.

On the fund finance front, the volume of deals actually increased through March 2020 and then experienced a gradual slowdown. However, there continues to be increased financing activity for enlarging facilities, the expansion of new borrowers, and the renegotiations of extended terms and higher advance rates. We highlight that, at the time of writing, there has been no reported default on financing structures via Luxembourg towards institutional investors.

Key developments affecting corporate tax law and practice

Domestic cases and litigation

Exceptional corporate governance measures for Luxembourg companies

The Grand Ducal Decree of 20 March 2020 introduced exceptional temporary measures in order to maintain and facilitate the effective ongoing governance of Luxembourg companies as a rapid reaction to the challenges suddenly brought on by COVID-19.

These new emergency measures overrule the normal requirement for physical board and shareholder meetings. During COVID-19, the governing bodies of any Luxembourg company are allowed to hold board and shareholder meetings without requiring the physical presence of their members – even if the corporate governance documents expressly state the contrary. These meetings can be validly conducted by written circular resolutions, video conferences or other telecommunication means so long as the identification of the members of the corporate body participating in the meeting can be documented.

The emergency measures also authorise electronic signatures for validating corporate governance documents.

The new emergency measures also include an additional four months to file the annual accounts of a Luxembourg entity, thus deferring the filing deadline from 31 July 2020 (for 2019 accounts) up to 30 November 2020 before incurring a late fee.

Luxembourg tax administration emergency support measures

On 17 March 2020, the Luxembourg tax administration released a 'newsletter' that detailed support measures for Luxembourg taxpayers who may be impacted by COVID-19. These emergency relief measures include cancellations and delays for certain Luxembourg direct tax filing and payment obligations.

Tax and social security measures for Luxembourg cross-border workers

Many of Luxembourg's approximate 170,000 cross-border workers have benefitted from *force majeure* applying to the extended lockdown period in which they worked remotely in neighbouring Belgium, France and Germany. All three neighbouring jurisdictions

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have announced that days spent working remotely due to COVID-19 will not impact the percentage threshold tests for determining social security or personal tax regimes. Prior to COVID-19, Belgium, France and Germany had begun applying strict limits on workdays allowed for cross-border workers outside of Luxembourg before imposing local taxation on salaries. German residents who work in Luxembourg are allowed a maximum of 19 days, Belgium residents 24 days, and French residents 29 days per year outside of Luxembourg. Now, however, due to the application of *force majeure*, the maximum workdays outside of Luxembourg will not be exceeded during COVID-19.

Pre-2015 Luxembourg advance tax agreements no longer valid

On 14 October 2019, the Luxembourg government presented the 2020 draft budget law, which included as its principal measure that all advance tax agreements ("ATAs") issued prior to 1 January 2015 will no longer be valid as from 1 January 2020 onwards. The cancellations of these pre-2015 tax rulings are consistent with the updated Luxembourg tax ruling procedure, which limits the validity of ATAs for a maximum of five years. The new law allows taxpayers, who may be impacted, to obtain updated rulings under the new procedures.

New draft law on updating FATCA/CRS reporting rules

On 9 June 2020, the Luxembourg Parliament approved a new law aimed at updating Luxembourg rules on automatic exchange of information ("AEOI") with the guidelines set out in the Global Forum on Transparency and Exchange of Information for Tax Purposes. This new law also contributes to the harmonisation of AEOI for both the Foreign Account Tax Compliance Act ("FATCA") and the Common Reporting Standard ("CRS") rules under Luxembourg domestic laws. One of the highlights of the new law is that, in the absence of reportable accounts, it will now be mandatory to do a 'nil reporting' of such accounts for CRS from 2020 onwards (prior to this, such was only mandatory for FATCA). Additionally, fines for non-compliance have been included of up to EUR10,000 for incorrect or incomplete reporting, as well as up to EUR250,000 for the non-compliance of due diligence procedures. The law will enter into force by 1 January 2021. The effective date of the updated FATCA/CRS rules is anticipated to be postponed by up to three months following an announcement on 3 June 2020 by the Luxembourg Ministry of Finance on deferrals of multiple new reporting laws (including the sixth Directive on Administration Cooperation, 2018/822 ("DAC 6")).

Luxembourg enacts ATAD II's expanded anti-hybrid rules

On 19 December 2019, Luxembourg voted to transpose its law on ATAD II, which expands the scope of the anti-hybrid rules as found in the EU's Anti-Tax Avoidance Directive I ("ATAD I") and also extends their application to countries outside the EU ("ATAD II Law"). All of the provisions of the new law apply for tax years beginning on or after 1 January 2020 with the exception of the reverse hybrid rule, which will not apply until 1 January 2022. ATAD II was largely inspired by the OECD BEPS Action 2 Report, and this Report should also be used as guidance for interpreting the application of the ATAD II Law.

The ATAD II Law's anti-hybrid rules aim to curtail perceived 'aggressive tax planning' by shutting down 'hybrid mismatch' outcomes for related party transactions within multinational groups. Examples of hybrid mismatch include when an item of income is deductible for tax purposes in one jurisdiction but not included in income in any other jurisdiction ("deduction/no inclusion" or "D/NI"). Another example is when there is a double deduction ("D/D") for tax purposes in two or more jurisdictions arising from the same expense. A hybrid mismatch can result from differences of entity or instrument characterisation between two jurisdictions. A hybrid entity is generally considered tax transparent in one jurisdiction but tax opaque in another (e.g., Country A considers the entity a corporation, but Country B considers the

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same entity a transparent partnership). A hybrid instrument is generally considered equity in one jurisdiction but debt in another (e.g., Country A considers the instrument debt, thus giving rise to a taxable deduction, but Country B considers the same payment a dividend, and exempts the same item of income under its domestic laws).

The ATAD II Law significantly expands the scope of the prior ATAD I hybrid rules to include hybrid mismatches arising from the following cross-border scenarios involving at least one EU Member State:

- Hybrid instruments.
- Reverse hybrid entities.
- Structured arrangements.
- Dual residency or no residency situations.
- Hybrid permanent establishments.
- Imported hybrid mismatches.

A hybrid mismatch can only occur between associated enterprises, within the same enterprise (i.e., between the head office and/or one or more permanent establishments), or pursuant to a structured arrangement.

Associated enterprises (entities or individuals) are defined by a 50% common threshold with respect to voting rights, capital, and/or rights to profits. The threshold is reduced to 25% with respect to mismatches involving hybrid financial instruments. The concept also applies if the entities are part of the same consolidated group for financial accounting purposes. Associated enterprise also includes a taxpayer having a noticeable influence on the management of an enterprise and *vice versa*.

The ATAD II Law further expands 'associated enterprise' to apply to an individual or entity 'acting together' with another individual or entity in respect of the voting rights or capital ownership of an entity. In such case, the associated enterprise or individual should be considered as holding a participation in all of the aggregated voting rights or capital ownership that are held by the other individual or entity. However, the ATAD II Law has a rebuttable presumption that investors who hold less than 10% of the shares or interests in an investment fund, and are entitled to less than 10% of profits, are deemed not to be acting together.

Pursuant to ATAD II, Luxembourg will have an additional 'reverse hybrid rule' which comes into force as of 1 January 2022. Luxembourg's adaptation of this law provides that a Luxembourg transparent entity (such as an SCS or SCSp) can be recharacterised as being subject to Luxembourg corporate income tax if the following conditions are fulfilled:

- one or more associated entities hold in the aggregate a direct or indirect interest in 50% or more of the voting rights, capital interests, or rights to profits in the Luxembourg transparent entity;
- these associated entities are located in jurisdictions that regard the Luxembourg transparent entity as tax opaque; and
- to the extent that the profits of the Luxembourg transparent entity are not subject to tax in any other jurisdiction.

However, there is an exception to this reverse hybrid rule, which applies when the transparent entity is a 'collective investment vehicle', which is defined as an investment fund that is widely held, holds a diversified portfolio, and is subject to investor protection regulation in Luxembourg. The Luxembourg legislative notes suggest that Luxembourg regulated funds (UCITS, SIFs) and funds under regulated management (RAIFs), as well as alternative investment funds within the meaning of the EU Directive, should all qualify for this exemption.

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Luxembourg draft law disallowing tax deduction on royalties or interest paid to related entities in the EU's list of Non-cooperative Tax Jurisdictions

On 30 March 2020, a draft law was submitted to the Luxembourg Parliament that will disallow the tax deductibility of interest and royalties paid to related entities located in the EU's list of Non-cooperative Jurisdictions for Tax Purposes. The new law is proposed to enter into force as from 1 January 2021.

The draft law will specifically disallow the deduction of interest and royalties for tax purposes if the following conditions are fulfilled: the beneficial owner is a corporate entity; the entity is a related party; and the entity is established in a jurisdiction listed in the EU's List of Non-cooperative Jurisdictions for Tax Purposes.

Luxembourg publishes guidance on its controlled foreign companies ("CFC") regime

On 4 March 2020, the Luxembourg tax authorities issued a new Circular 164*ter*/1 (the "Circular") providing guidance on the CFC rules enacted in Luxembourg pursuant to ATAD I. The Circular in particular elaborates on how both the control and effective tax rate ("ETR") tests will be applied. With respect to the ETR test, the Circular provides guidance on how to determine whether the ETR of the CFC is comparable to at least a rate of 8.5% for 2020 and future years (9% for 2019). Factors to take into account include the local laws on the official tax rate, the calculation and methodology for determining the local tax base, as well as any special exemptions or rules that may apply when modifying the tax base.

Additionally, the Circular clarifies how the 'comparable tax' analysis should be conducted by a shadow tax calculation comparing how the CFC would be taxed as if it were subject to corporate tax in Luxembourg. This shadow calculation should then be compared to the actual tax accruing under the local corporate tax of the CFC in question.

The Circular elaborates that transfer pricing documentation should be prepared to support 'significant people functions' as a means of establishing genuine economic arrangements for CFCs otherwise at risk for falling under the anti-abuse regime when both the control and ETR tests are satisfied.

EC notifies Luxembourg to remove the exemption available to securitisation vehicles for the 30% EBITDA interest limitation rule

On 14 May 2020, the European Commission ("EC") sent formal notice letters to advise Luxembourg and Portugal to remove the exemptions from the 30% EBITDA interest limitation rules currently available to certain securitisation vehicles under their ATAD I domestic laws. Luxembourg securitisation vehicles in corporate form that earn income other than interest income could be impacted by this development. The removal of the exemption would result in a limitation of tax-deductible commitment payments to 30% of EBITDA for such entities.

Amended DAC 6 draft law voted

On 21 March 2020, Luxembourg voted to approve its latest amended version of DAC 6. The latest amendments include exemptions on mandatory disclosure for intermediaries who benefit from professional secrecy, such as attorneys and auditors. DAC 6 generally requires intermediaries and in some cases even taxpayers (if there is no intermediary or if the intermediary is bound by professional secrecy) to report certain cross-border arrangements, which are perceived by the EU as likely to be aggressive tax planning, to the Luxembourg tax authorities. Generally, Luxembourg's DAC 6 law transposes consistently all the DAC 6 concepts as found in the Directive itself (e.g., main purpose test, cross-border arrangements, intermediaries, associated enterprises, information to report, etc.).

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However, Luxembourg's version of the law does have some notable provisions not expressly stated in DAC 6. With respect to 'privilege', lawyers, accountants and auditors who are protected by professional secrecy will benefit from a reduced reporting obligation under Luxembourg's version. Additionally, taxpayers required to disclose under DAC 6 will also have to include a reference to the reportable arrangement in their corporate tax returns. Luxembourg's DAC 6 law also provides penalties of up to EUR250,000 for incomplete or late reports, or failure to disclose.

Currently, the first reporting must include all the reportable cross-border arrangements that occurred on or after 25 June 2018. All reportable arrangements from 25 June 2018 to 1 July 2020 were initially to be reported by 31 August 2020. After 1 July 2020, all reportable arrangements must be reported within 30 days as from when the transaction is available, ready, or implemented (whichever is sooner). However, these dates have been extended due to the COVID-19 lockdown.

DAC 6 reporting deferred for six months

On 8 May 2020, due to COVID-19, the EC proposed extending the DAC 6 mandatory disclosure deadlines by up to three months. However, by 3 June 2020, EU Member State representatives on the Permanent Representative Committee ("*Coreper*") reached a compromise agreement for an optional six-month deferral for both reporting and information exchange deadlines under DAC 6.

Accordingly, the Luxembourg Ministry of Finance should be introducing an amended draft law, which will include the six-month deferral of deadlines for DAC 6 and presumably should provide updated DAC 6 reporting deadlines, as follows (the text is not yet published):

- Reportable cross-border arrangements implemented between 25 June 2018 and 30 June 2020 should now be reported by 28 February 2021 (i.e., up to six months after the original deadline of 31 August 2020).
- Reportable cross-border arrangements occurring between 1 July 2020 and 31 December 2020 should now be disclosed within 30 days as from 1 January 2021.
- Reportable cross-border arrangements, occurring on or after 1 January 2021, should also be disclosed within a 30-day period.

Luxembourg tax authorities challenge structure with weak transfer pricing and no valid business purpose

In a case published on 28 January 2020, the Luxembourg Administrative Tribunal (Number 4) ruled in favour of the taxpayer in a recent decision addressing the use of hybrid debt instruments and lack of transfer pricing documentation (Case Number 41800). While the court ruled in favour of the taxpayer on the basis that, even if the structure was principally aimed at reducing taxes without economic justifications, the fact that the Luxembourg tax authorities, at that time, were accepting such structures (i.e., mandatory redeemable preferred shares as a form of 'hybrid instrument'), such prior acceptance impeded them in this particular instance of challenging the structure. A key takeaway from this case is to emphasise that the Luxembourg tax authorities focused heavily on the transfer pricing arguments. Notably, the Luxembourg tax authorities argued that the transfer pricing documentation did not include a sufficient functional analysis and lacked methodology consistent with OECD transfer pricing principles. The Luxembourg tax authorities also argued that the transaction should be disregarded as an 'abuse of law', citing that it lacked both economic substance and valid non-tax reasons.

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New protocol in force for the France–Luxembourg double tax treaty

On 6 April 2020, the Luxembourg Parliament approved the pending protocol to the tax treaty with France. The protocol to the 2018 income and capital tax treaty with France clarifies the apportioning of taxation rights between the two countries for cross-border professionals who work in Luxembourg but reside in France. France shall use the exemption with the progression method instead of the credit method to the income of French cross-border workers paid for their employment in Luxembourg. The protocol applies retroactively as from 1 January 2020.

New protocol in force for the Luxembourg–US double tax treaty protocol related to information exchange

On 9 September 2019, the new protocol on the Luxembourg–US tax treaty entered into force. The amendments mainly apply to the treaty's article 28 on information exchange. The protocol was negotiated in 2009 but was delayed for several years by the Senate's ratification process. The new protocol's amendment aligns the Luxembourg–US tax treaty with the US model tax treaty regarding information exchange. Notably, the updated provision allows for information held by Luxembourg financial institutions to be exchanged on requests between Luxembourg and the US, thus overriding the potential application of Luxembourg's bank secrecy laws. The new protocol reinforces the ability of the Luxembourg tax authorities to automatically collect information on US taxpayers with accounts in Luxembourg and provide that information to the US Internal Revenue Service. The protocol will be applicable to information requests made on or after 9 September 2019 (i.e., the entry into force) and covers tax years beginning on or after 1 January 2009.

Other tax treaty developments

As of 8 June 2020, Luxembourg's tax treaty network has expanded to 84 tax treaties in force with three pending ratification and 10 more tax treaties under negotiation. New double tax treaties entering into force since August 2019 include Argentina, Kosovo, and Uzbekistan. Treaties currently under negotiation include Colombia, Kyrgyzstan, and Lebanon. Tax treaties pending ratification include Botswana, as well as an updated protocol with Kazakhstan.

<u>OECD and EU developments</u>

OECD new report on transfer pricing to financial transactions

On 11 February 2020, the OECD released final guidance on transfer pricing guidelines ("TPG") related to financial transactions as part of the mandated follow-up work arising from the final reports on the OECD's BEPS Actions 8 to 10 related to transfer pricing. Luxembourg tax authorities generally respect and apply OECD transfer pricing guidelines, and thus the new OECD guidance should have an important impact on the financial services activities in Luxembourg. The new guidelines notably address intra-group financing, treasury activities, financial guarantees, and captive insurance functions.

EC recommends stepped-up action for aggressive tax planning on outbound payments from Luxembourg

On 20 May 2020, the EC issued recommendations to EU Member States for curbing aggressive tax planning. In particular, the EC communicated specific recommendations towards six Member States including Cyprus, Hungary, Ireland, Luxembourg, Malta, and the Netherlands. With respect to Luxembourg, the EC commended its steps to address aggressive tax planning by implementing OECD and EU-based initiatives (e.g., BEPS, ATAD I and II, etc.), but highlighted that dividend, interest, and royalty payments remained a relatively high percentage of its GDP, thus suggesting aggressive tax planning may still be

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occurring there. The EC further elaborated that Luxembourg has an absence of withholding tax on royalties and interest, which may lead to such payments escaping taxation altogether. The EC recommended that Luxembourg 'step-up action to address features of the tax system that facilitate aggressive tax planning, in particular by means of outbound payments'.

ECJ case on Luxembourg fiscal unity

On 14 May 2020, the ECJ ruled that Luxembourg's fiscal unity regime, which separates vertical from horizontal fiscal unity groups, violates the principle of freedom of establishment (C-749/18). In light of EU Law, the ECJ's decision should be enough for Luxembourg fiscal unities to be able to claim combined vertical and horizontal groups regardless of an actual change in Luxembourg's law.

EU cases and developments in the wake of the ECJ Danish holding company cases

In the wake of the ECJ landmark Danish cases (C-115/16, C-118/16, C-119/15) that addressed whether Luxembourg and other intermediate EU tax resident holding companies qualify for EU tax directive benefits on dividends and interest paid from Danish subsidiaries, EU Member States' tax authorities are now concentrating their efforts on challenging such structures. We highlight the following:

- On 8 October 2019, the Spanish Tax Court rejected the application of the withholding tax exemption for interest payments from a Spanish subsidiary up to its Dutch holding company parent. The Spanish court ruled that the Dutch holding company was not the beneficial owner of the interest payments by applying the same criteria found in the ECJ Danish cases.
- On 8 January 2020, the Dutch Supreme Court denied application of the EU Parent-Subsidiary Directive due to the existence of a 'wholly artificial arrangement' involving a Luxembourg tax resident parent company of a Dutch subsidiary. The Dutch Court duly noted that the Luxembourg company had very limited substance and no economic activities.

EU state aid investigations

On 5 March 2020, in the European General Court, Amazon challenged the EC's order to repay EUR250 million in Luxembourg taxes. In its filing, Amazon's legal team cited that the EU had multiple legal and factual errors and even accused the EU enforcers of discrimination by using 2017 OECD guidelines for a tax ruling dated 15 years earlier in 2003. Previously, the EC's investigation asserted that royalty payments covered by the tax ruling for its Luxembourg subsidiary were not respecting the arm's length standard and thus provided Amazon an unlawful selective advantage.

On 24 September 2019, the European General Court issued its judgments on the EU state aid cases for both Fiat and Starbucks. Both companies had challenged the EC's decision to repay taxes arising from illegal state aid advantages by application of transfer pricing methodologies. The EU General Court annulled the EC's decision for Starbucks, concluding that the EC failed to establish that Starbucks enjoyed a selective advantage by the transfer pricing method used. Conversely, the EU General Court affirmed the EC's decision against Fiat by citing that, in this case, the Luxembourg tax authorities did not properly apply the transfer pricing methodology to its Luxembourg subsidiary. Notably, these two cases affirm the EC's power to review the application of transfer pricing by EU Member States into the future for assessing whether an illegal selective advantage is granted.

The EU state case involving Huhtalux, a Luxembourg holding company which is part of the Finnish food and drink packaging company Huhtamäki, has remained silent since

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May 2019 when the non-confidential version of the decision to open the investigation was published. The Luxembourg company had obtained a tax ruling allowing deemed interest deductions on interest-free loans. The case is particularly interesting because Luxembourg is allowing a pro-taxpayer transfer pricing adjustment (i.e., decreasing the tax base because of adjustments on related party transactions).

OECD multilateral instrument update

The Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("MLI") entered into force for Luxembourg on 1 August 2019. The MLI contains several provisions, which are aimed at preventing treaty shopping and other perceived abuses. Among the MLI's provisions, the most notable is the 'principal purpose test' ("PPT") which can deny tax treaty benefits (such as reduced withholding taxes) if 'obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit'. Whether one of Luxembourg's double tax treaties is covered by the MLI will depend on the status of the treaty partner country's election to also have the treaty covered by the MLI and if it too has gone through the ratification and deposit process.

Eventually, the MLI could potentially apply to almost all of Luxembourg's 84 double tax treaties to the extent the treaty partner country also agrees and ratifies the MLI. Currently, over 50 of Luxembourg's 84 tax treaties are covered by the MLI as from 1 February 2020.

The year ahead

In the coming 12 months, we can certainly expect that EU Member States will increase tax audits for sources of additional tax revenues in light of both the COVID-19 economic downturn and the EU's focus on curbing aggressive tax planning. Accordingly, it is important that Luxembourg structures should be updated, if not already, by documenting the non-tax business reasons for their implementation, appropriate economic substance and supporting transfer pricing documentation (when applicable). Factors worth reviewing include assessing that the Luxembourg entity is the beneficial owner of items of income it receives from EU subsidiaries (i.e., mindful of any reliance on an EU Directive or tax treaty based on a reduced withholding tax position), the level of economic substance in Luxembourg is commensurate with its activities, and that the structure has solid business (non-tax) reasons for being implemented.

Additionally, transfer pricing documentation should be prepared with respect to related party transactions. We highlight that already during 2020, Luxembourg has new case law evidencing the Luxembourg tax authorities' focus on transfer pricing. Likewise, the European General Court has now confirmed in the Fiat and Amazon state aid cases that the EC may continue to utilise transfer pricing for state aid cases in the future.

DAC 6 reporting will become due in the coming months. It is worth mentioning that the Luxembourg Association of the Luxembourg Funds Industry ("ALFI") is expected to issue comprehensive DAC 6 guidelines in the summer of 2020 which should prove useful for the much-needed guidance currently lacking for this comprehensive, mandatory disclosure regime.

In light of recent EC policy recommendations to Luxembourg, we should expect Luxembourg to amend the 30% EBITDA limitation rule exemption from applying to securitisation vehicles. Such entities that are currently relying on this exemption should urgently contact their Luxembourg tax advisor on the impact and planning solutions.

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We should also expect Luxembourg to respond to the EU's recommendation for Luxembourg to address outbound payments of dividends, royalties, and interest to low tax jurisdictions outside the EU. At the time of writing, Luxembourg had not yet responded to this EU recommendation.

For the year ahead, the AIF space should continue to prosper with particular focus on alternative asset classes and the suitability of the SCSp/SCS and RAIF structures for these new investments.

We also expect to see a significant increase in cross-border financing via Luxembourg for infrastructure, e-business, and logistics projects. We estimate increased projects regarding distressed debt for real estate and the commercial office sector in particular. Conversely, financing for hospitality, aircraft, and retail sectors should continue with a sustained slowdown. We are seeing a much more conservative approach from lending banks, despite the support of EU regulatory authorities, resulting in deals taking longer (despite borrowers seeking to lock pricing), and increased due diligence and analysis of enforcement scenarios beforehand.

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