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QUARTERLY TAX NEWSLETTER – MARCH 2025

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1. EU COMMISSION ADOPTED A DAC 9 PROPOSAL TO EASE FILING OBLIGATIONS UNDER THE PILLAR TWO DIRECTIVE

On 28 October 2024, the European Commission introduced a new proposal to amend Directive 2011/16/EU, known as “DAC 9”, which aims to simplify tax reporting obligations for large multinational companies. This directive is part of the implementation of OECD Pillar 2, which introduces rules to ensure minimum taxation worldwide.

<u>Background</u>

Directive 2022/2523, adopted on December 14, 2022, ensures a global minimum tax for multinational and large-scale domestic groups in the EU. Member States had to transpose it by December 31, 2023. Article 44 of Pillar Two Directive outlines reporting obligations, allowing MNE groups to file a single Top-up Tax return if an information exchange agreement exists between jurisdictions. The OECD's GloBE Information Return (GIR) was released in July 2023, with an updated version in January 2025. Luxembourg transposed the directive through its December 20, 2023 law, which was updated in December 2024 to align with OECD guidance and adopt the GIR format.

<u>Update to the DAC</u>

The European Commission Proposal updates the DAC to facilitate the exchange of Top-up Tax information within the EU, in line with Article 44 of the Pillar Two Directive. Information exchange with non-EU countries will depend on agreements, which the OECD is developing. The Top-up Tax return will use the GloBE Information Return (GIR) format and be part of the DAC. The European Commission may adjust the format, if necessary, based on updates from the Inclusive Framework. Filing deadlines stay as defined in the Pillar Two Directive. The receiving Member State (Ultimate Parent Entity or

designated entity) will exchange information with other EU countries within 3 months (6 months for the first year) after the filing deadline. The exchange follows the OECD's "dissemination approach," where specific sections of the return are shared with different Member States based on their tax rights.

Transposal

Once approved at EU level, the European Commission proposal should be implemented by EU Member States by 31 December 2025. The first declarations will have to be submitted in 2026, giving companies some time to prepare.

Conclusion

In short, this reform aims to ease reporting obligations for large companies, while ensuring that essential tax information is shared efficiently between EU countries. Ultimately, it should make the European tax system more transparent.

2. LUXEMBOURG VAT AUTHORITIES CLARIFY POSITION ON DIRECTOR FEES FOLLOWING DISTRICT COURT RULING OF NOVEMBER 22, 2024

On December 11, 2024, the Luxembourg tax authorities (Administration de l'enregistrement, des domaines et de la TVA) issued a new circular (No. 781-2) regarding VAT treatment on director's fees. This circular follows a ruling by the European Court of Justice (case C-288/22, TP v. Administration de l'enregistrement, des domaines et de la TVA) and a judgment from the Luxembourg Civil Court on November 22, 2024 (case No. 2024TALCH03/00180).
In short, it introduces new VAT rules for director's fees following an important legal decision.

VAT treatment of directors' fees
On November 22, 2024, the Luxembourg civil tribunal ruled on the VAT treatment of directors' fees, following the Court of Justice of the European Union's decision. The civil tribunal determined that a director of a Luxembourg limited company (*société anonyme*) carries out an economic activity under the VAT Law of February 12, 1979, as their role is both remunerated and ongoing.

However, the tribunal found that this activity is **not** performed independently under the VAT Law. Despite the director having the freedom to organize their work, receiving remuneration, acting in their own name, and not being in an employer-employee relationship, they do **not** operate on their own behalf or under their own responsibility, nor do they bear the economic risks associated with their role.

As a result, a board member who does not act independently and does not assume economic risk is **not** considered a VAT taxpayer. Therefore, directors' fees are **not subject to Luxembourg VAT**.

Scope

According to their newly published Circular No. 781-2, the Luxembourg Indirect Tax Authorities have confirmed that this ruling will apply to directors of all company types under Luxembourg law, provided they meet the criteria outlined in the decision.
The criteria to be considered include (i) the notion of economic activity, which requires that the service be performed for remuneration, have a permanent nature, and involve payment that is foreseeable and determined in advance. Additionally, (ii) the notion of independent practice means that the director must not act on their own behalf or under their own responsibility and should not bear the economic risk associated with their activities.

As a result, all directors meeting the above criteria may **request a refund** of VAT previously collected during their directorship. Reimbursement claims can be made for all years that are not time-barred.

Additionally, the tax authorities have announced an exception for the years 2018 and 2019, waiving the statute of limitations if the request is submitted before July 1, 2025.

To obtain a refund, directors must submit an online request via myguichet.lu, available until June 30, 2025.

From a practical standpoint, directors established in Luxembourg can benefit from a simplified regularization process, allowing them to submit a single application covering all relevant years, including non-prescribed years such as 2018 and 2019. Regarding input VAT deduction, minor expenses incurred will not be subject to challenge, while significant amounts, particularly capital expenditures, will undergo a systematic review to determine their deductibility. Additionally, directors are responsible for reimbursing the adjusted VAT to their clients, who must then adjust their own VAT deduction accordingly.

Finally, directors who meet the above criteria but are **not established in Luxembourg** are not eligible to request a VAT refund. This is because the VAT on director fees was collected by the Luxembourg company that received the service, based on the “reverse charge mechanism”. Instead, those companies can adjust their VAT position for the relevant years in their next annual return.

3. VOTE OF TWO LAWS AMENDING LUXEMBOURG INCOME TAX LEGISLATION – LUXEMBOURG TAX INCENTIVES FOR CORPORATIONS AND INDIVIDUALS

On 11 December 2024, the Luxembourg Parliament passed draft law 8414, introducing tax cuts for businesses and individuals to enhance competitiveness, boost the economy, and strengthen purchasing power. Key measures include a 1% CIT rate reduction, the amendment of the minimum net wealth tax, a new subscription tax exemption for actively managed UCITS ETFs, and changes to the SPF regime. The draft law concerns as well individual tax measures, including on employee profit-sharing and cross-border worker tax credits. Clarifications are also given regarding the classes of shares regime and the tax regime applicable to dissolution without liquidation. Please note that these topics, previously in draft form, have been fully detailed and explained in our October newsletter.

4. NEW RCS REGISTRATION REQUIREMENTS FOR NATURAL PERSONS IN LUXEMBOURG

As of **November 12, 2024**, the Luxembourg Trade and Companies Register (**RCS**) will introduce new filing obligations for natural persons associated with registered entities. Under these requirements, all such individuals must provide their **Luxembourg National Identification Number**, which is also referred to as the "CNS number" or "matricula." The objective of this measure is to improve the precision and reliability of the RCS records.

Persons concerned
The new obligation will apply to **all natural persons** associated with an entity registered in the RCS, including (i) business owners and shareholders (ii) partners, directors, managers (iii) authorized representatives (iv) agent or statutory auditors.

However, certain individuals should be exempt, including judicial representatives involved in legal procedures registered with the RCS and representatives of foreign companies with branches in Luxembourg.

How Will the Process Work?

- **For those who already possess an Luxembourg National Identification Number:**

Individuals who already have an Luxembourg National Identification Number will need to provide this number when filing with the RCS, along with their personal details (name, date, and place of birth). No additional documentation will be required.

- **For those without an Luxembourg National Identification Number:**

Individuals who do not have an Luxembourg National Identification Number must apply for one to be created. The information required for this application includes: (i) Last name and first name(s) of the individual; (ii) Date, place, and country of birth ;(iii) Gender ;(iv) Nationality; (v) residential address.

These details must be submitted on the RCS filing form, along with supporting documents, such as an identity card and proof of address. The information related to gender, nationality, and residential address will not be published in the RCS, but will be sent to the National Register of Natural Persons, which is not publicly accessible.

Transitional Period and Enforcement

A **transitional period** will begin on **November 12, 2024**, during which providing the Luxembourg National Identification Number will be strongly encouraged but not yet enforced. After this period, which will end on a date to be determined by the RCS, **submitting** the Luxembourg National Identification Number **will become mandatory for all filings**, even those unrelated to natural persons. Any filing without the Luxembourg National Identification Number will be blocked. It is necessary to comply to avoid delays or disruptions in their registration or amendments.

5. LUXEMBOURG'S NEW SINGLE COMPANY WORLDWIDE GROUP (“SCWG”) CONCEPT: KEY CHANGES TO INTEREST DEDUCTION RULES FOR STRUCTURED FINANCE

On **11 December 2024**, Luxembourg's Parliament passed a new **tax incentive package** for corporations and individuals. This package, part of the draft law **8414**, includes several measures designed to make Luxembourg more attractive for businesses and investors.

One key change is the introduction of the **"Single Company Worldwide Group" (SCWG)** under the **interest limitation rules** in **Article 168bis** of the **Luxembourg Income Tax Law (LITL)**. This change applies starting from **financial years beginning 1 January 2024**.

What is the "Single Company Worldwide Group" (SCWG)?

A **SCWG** is essentially a business entity that can meet two important conditions:

- **Not Part of a Consolidated Group**: The company isn't part of a larger group for **financial reporting purposes** (i.e., it doesn’t belong to a group where financial results are consolidated).
- **Has Associated Enterprises or Permanent Establishments**: The company has one or more affiliated businesses or permanent establishments that are covered by the definition of **Article 168bis** of the LITL. This “associated enterprises” concept is to be interpreted in line with ani-hybrid concept (25% ownership threshold).

How Does the "Equity Escape Rule" Apply to SCWGs?

The **equity escape rule** is a part of the interest limitation rules. If a taxpayer qualifies as a SCWG, they may be able to benefit from this rule, meaning they could **deduct all borrowing costs without limitation for tax purposes**.

Here’s how it works:

- If the company's **equity-to-total-assets ratio** is equal to or greater than the **group's equity ratio** (which is a benchmark set by the group), the taxpayer can **deduct all interest expenses** without any tax restrictions.
- Specifically, if this ratio is **below 2%**, the company can fully deduct its **borrowing costs**.

Impact of the SCWG Concept

This new rule could be particularly relevant for **securitization vehicles (**with debt issued to third party noteholders) and other **structured finance entities** that don't have consolidated groups. For these entities, the SCWG concept can offer some **tax benefits** if they meet the requirements.

However, companies must be careful: the law introduces an **anti-abuse rule**. This means that the company's **arrangements must be legitimate** and not just set up solely to take advantage of this tax benefit. The authorities will scrutinize any **artificial setups** aimed at just reducing tax liability.

Conclusion

The introduction of the **SCWG concept** in Luxembourg is a **positive move** for the country's **capital markets** and **structured finance industry**, particularly for **securitization vehicles**. By extending the scope of the **equity escape rule**, this change further strengthens Luxembourg's position as a leading hub for **structured finance** and **securitization**.

In short, this reform should benefit certain **standalone businesses** and **financial structures**, but it's important to ensure the **economic substance** of the arrangements to avoid falling foul of the **anti-abuse rules**.

6. A STEP TOWARDS A MODERN AND DIGITAL TAX ADMINISTRATION IN LUXEMBOURG

Luxembourg is finally taking a step toward modernizing its direct tax administration with the adoption of **Law No. 8186A** on **December 11, 2024**. This law introduces a series of practical updates aimed at making tax procedures **simpler and more efficient**. However, there's still **more to come**—a second draft law, **No. 8186B**, is still under discussion and is expected to further reinforce **taxpayer rights** once it is finalized.

More Flexibility for Tax Payments

Taxpayers who are struggling to pay their taxes in full can now **request an installment plan** from the tax authorities. If immediate payment would cause **significant financial difficulties**, they can spread the payments over a **maximum of six months**—as long as this deferral doesn't put tax recovery at risk.

Stronger Administrative Cooperation

The law also introduces **better collaboration between Luxembourg's key regulatory authorities**:

- The **Direct Tax Administration (ACD)**
- The **Commission de Surveillance du Secteur Financier (CSSF)** (which supervises financial institutions)
- The **Commissariat aux Assurances (CAA)** (which regulates the insurance sector)

These institutions can now **share necessary information** with each other under strict **data protection rules**. This helps ensure proper tax enforcement, financial supervision, and the prevention of money laundering and tax evasion.

Outsourcing of IT Services with Strict Confidentiality

To improve efficiency, the government can now **outsource IT work** related to tax administration to:

- The **state IT center (CTIE)**
- **Private contractors and subcontractors**

However, strict **tax secrecy rules** remain in place. If any **private contractor** or government employee breaches tax confidentiality, they could face **imprisonment (8 days to 6 months) and fines (€500 to €5,000).** Importantly, private contractors **cannot** be involved in **tax assessments or collection.**

Easier Tax Disputes and Payment Deferrals

Previously, if a taxpayer wanted to delay payment or challenge a tax assessment, they often had to **provide a security deposit** (a financial guarantee). This requirement has now been **removed**, making it easier to request:

- **Payment extensions**
- **Suspension of tax enforcement**
- **Delays in tax execution**

Stronger Powers for the Tax Authorities to Recover Unpaid Taxes

Luxembourg has reinforced its **tax recovery system**, giving the tax administration more power to **collect unpaid taxes more efficiently**. The key change is that a **tax assessment notice now acts as an immediately enforceable order**, meaning the tax authorities **no longer need to go to court to collect unpaid taxes**.

This **privilege** also applies to the collection of:

- **Social security contributions**
- **Chamber of Commerce membership fees**
- **Other official payments**

Furthermore, this privilege is now extended to **any claim that falls under the direct tax administration's collection responsibilities.**

What's Next?

While **Law No. 8186A** is an important first step, many are still waiting for the adoption of **Law No. 8186B**, which is expected to **strengthen taxpayer rights and further simplify tax procedures**. A broader discussion on Luxembourg's tax system is still ahead, but for now, these initial changes should bring **more flexibility, efficiency, and administrative cooperation** to the country's tax framework.

Final Thoughts

This reform is a clear signal that Luxembourg is moving toward a **more digital, streamlined, and modern tax system**. While businesses and individuals will benefit from greater payment flexibility and fewer administrative burdens, tax authorities are also reinforcing their ability to **collect taxes and ensure compliance efficiently**.

7. NEW LUXEMBOURG CIRCULAR ON INTEREST RATES ON SHAREHOLDERS' CURRENT ACCOUNTS

On 29 January 2025, the Luxembourg Tax Authorities (LTA) issued Circular L.I.R. No. 164/1 (the "New Circular"), replacing Circular L.I.R. No. 164/1 dated 23 March 1998 (the "Old Circular"). This revision updates on the application of the arm's length principle for the determination of interest rates applicable to current accounts of associates or shareholders in Luxembourg-based companies subject to corporate income tax (CIT).

Interest Rates for Individual Shareholders

Previously, the Old Circular established a fixed annual interest rate of 5% on current accounts held by individual associates or shareholders. The New Circular eliminates this fixed rate and mandates that interest rates be aligned with market conditions based on the arm's length principle. This means that the applicable interest rate should reflect what would be agreed upon in comparable transactions between independent parties.

As a simplification measure, the New Circular permits companies to use an interest rate corresponding to the annual consumer credit rate, provided that supporting documentation justifies this approach. Companies may reference the monthly average interest rates published by the Central Bank of Luxembourg for consumer loans in euros to determine an appropriate rate.

Interest Rates for Corporate Shareholders

For loans involving corporate shareholders or related entities, the New Circular upholds the requirement that interest rates be determined case by case in accordance with the arm's length principle. Relevant factors in determining the appropriate rate include the currency of the loan, foreign exchange risk, refinancing interest rates, and credit risk. The methodology for calculating interest and categorizing shareholder current accounts remains consistent with prior guidance.

Alignment with Recent Court Decisions

The LTA's updated stance aligns with recent rulings by the Luxembourg Court of Appeal. In its 21 September 2023 decision (Case No. 48127C), the Court confirmed that the 5% interest rate set by the Old Circular was not legally binding and could not be automatically imposed on taxpayers. It further acknowledged that using consumer credit rates as a benchmark for determining an arm's length interest rate was an acceptable approach. This position was reaffirmed in a 14 November 2023 ruling (Case No. 47754C), which rejected the automatic application of the 5% rate.

Conclusion

The New Circular marks a shift from a fixed 5% interest rate to a more flexible, market-driven approach based on the arm's length principle. The option to reference consumer credit rates provides a clear and simplified methodology for taxpayers. Companies and shareholders should ensure they maintain appropriate documentation to substantiate their interest rate determinations in compliance with the revised regulations.

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