



ATOZ INSIGHTS

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Greetings,

After many years of reforms encouraged by the OECD's BEPS Action plan, it seems as if Luxembourg is now on the home stretch of the BEPS reform marathon.

In December, the Luxembourg parliament passed the last of the BEPS-inspired reforms in the pipeline: ATAD 2 and tax dispute resolution mechanisms. The adoption of the DAC 6 law, which has not been passed at the time of writing of the present Insights, should follow very soon. In these Insights, we describe the implications of the new Luxembourg rules implementing the EU Anti-Tax Avoidance Directive regarding hybrid mismatches with third countries (ATAD 2). We then provide an overview of the new Luxembourg procedure to resolve situations of double taxation between Luxembourg and one or more EU Member States based on the EU Directive on tax dispute resolution mechanisms. We also present the future new obligations of Luxembourg intermediaries in relation to the rules on mandatory automatic exchange of information in the field of taxation with reference to reportable cross-border arrangements (DAC 6).

In the run-up to the year-end events, the Luxembourg legislator also passed the 2020 budget law which introduces a handful of tax measures. The most significant tax measure of the 2020 budget states that tax rulings granted prior to 1 January 2015 will no longer be valid as from the end of tax year 2019. We present the implications of this measure.

At the international level, the OECD made proposals that aim at addressing the specific tax challenges created by the digitalisation of the economy. The proposals seek to answer how taxing rights on income generated from cross-border activities in the digital age should be allocated among jurisdictions and how to address ongoing risks from structures that allow MNEs to shift profit to jurisdictions where they are subject to no or very low taxation. Should they be adopted, these proposals may lead to changes far beyond the digital economy and may impact all kinds of industries and businesses. We describe the main features of the OECD proposals.

From a VAT point of view, Luxembourg implemented the EU Quick Fixes on harmonisation and simplification of VAT for cross-border trade. We describe the aim of these Quick Fixes. We also take the opportunity in this issue of Insights to describe the rules applicable for the VAT deduction on overhead costs through the analysis of the recent decision of the CJEU in the Cambridge University case.

Lastly, in our final article, we provide you with a summary of the Luxembourg key corporate implementation developments in 2019 and 2020.

We hope you enjoy reading our insights.

The ATOZ Editorial Team

Tax News

Luxembourg implements ATAD 2

- On 19 December 2019, the Luxembourg legislator passed the law implementing ATAD 2, the directive which provides for a comprehensive framework to tackle hybrid mismatches.
- These new rules will replace the existing hybrid mismatch rules which have been introduced as part of the 2019 tax reform implementing ATAD and extend their scope to transactions involving non-EU countries.
- Luxembourg has made the right choices, adopting all available implementation options which limit the scope of the new rules for the benefit of Luxembourg taxpayers and avoid unintended collateral damage for the Luxembourg fund industry.
- The hybrid mismatch rules are characterised by an extreme complexity which requires a good understanding of the overall investment structure and the foreign tax treatment of payments, entities, financial instruments, etc.
- Given that the burden of proof regarding the non-application of the hybrid mismatch rules is on the taxpayer, a hybrid mismatch analysis will become an integral and necessary part of each and every tax analysis.

To read the full article, please [click here](#).

Luxembourg implements DAC 6 – How to interpret the Main Benefit Test?

- The draft law implementing the EU Directive on mandatory exchange of information in the field of taxation in relation to reportable cross-border arrangements ("DAC 6") was presented to Parliament on 8 August 2019.
- As expected, the wording of the law largely resembles the wording of DAC 6 and the commentaries to the draft law provide only few explanations on how it will be interpreted and applied in practice. Therefore, some of the rather vague terms and concepts used in DAC 6 will continue to give rise to uncertainty and require interpretation.
- This article analyses the main benefit test which is a threshold requirement that operates in conjunction with many of the hallmarks that, when present, may create reporting obligations under the new mandatory disclosure regime.
- The analysis of potential reporting obligations under the new mandatory disclosure regime will become an integral and necessary part of each and every tax analysis. This on its own will have the desired deterrence effect as both tax intermediaries and taxpayers will need to carefully consider potential reporting obligations.
- Ultimately, the mandatory disclosure regime may also be viewed as an opportunity to consider and emphasise the commercial reasons and business rationale driving international investments and business activities.

To read the full article, please [click here](#).

Luxembourg implements EU Directive on tax dispute resolution mechanisms in the EU

- On 11 December 2019, the law on double taxation dispute resolution mechanisms was passed by the Luxembourg parliament. This law implements in Luxembourg the Directive on tax dispute resolution mechanisms in the European Union, according to which EU Member States have to efficiently resolve double taxations.
- Double taxation disputes are related to impositions by two (or more) Member States of taxes in respect to the same taxable income or capital when this gives rise to either an additional tax charge, increase in tax liabilities or cancellation or reduction of losses, all of which could be used to offset taxable profits.
- The law puts in place a 3-step double taxation dispute resolution mechanism, which forces the competent authorities of Luxembourg to resolve all disputes affecting the tax position of businesses and citizens which originate from tax treaties.
- The law applies to any complaint with respect to questions related to the tax year starting on or after 1 January 2018. If the relevant competent authorities agree, the law will also be applicable to any complaint that was submitted prior to 1 January 2018.

To read the full article, please [click here](#).

Tax rulings granted prior to 2015 no longer valid

- On 19 December 2019, the 2020 budget law was passed by the Luxembourg parliament. One of the tax measures of the 2020 budget law is that the tax rulings/advanced tax agreements ("ATA") which were granted before the new tax ruling procedure was introduced (i.e. prior to 1 January 2015) will no longer be valid as from the end of tax year 2019.
- If a taxpayer would like to get a new ATA for taxation years subsequent to 2019, the taxpayer will have to file a new request, in accordance with the procedure in force.
- Since the result of the new measure introduced is that ATAs granted prior to 1 January 2015 will only be valid until the end of tax year 2019, taxpayers should start assessing the potential impact of these changes on existing investment structures as soon as possible and closely monitor whether the introduction of a new tax ruling request is required.

To read the full article, please [click here](#).

New rules for the digital economy (and other economies too...)

- The OECD has published a proposal to tax Multinational Enterprises wherever they have significant B2C relations creating a new taxation right and new profit allocation rules.
- The OECD has also published a proposal referred to as the "Global Anti-Base Erosion" or "GloBE" proposal to develop rules that would provide jurisdictions with a right to "tax back" income and payments that are not subject to a minimum taxation in other jurisdictions.
- Why should you care about the OECD work addressing the tax challenges of the digital economy?
- It is a high-profile topic from both a political and social perspective;
- The administrative action may lead to changes far beyond digital economy and may impact all kinds of industries and businesses. The original proposals started off dealing with digital tax targeting big tech companies, but then bled into broader areas, and therefore could capture non-digital and non-business activities such as sovereign wealth or pension funds.

To read the full article, please [click here](#).

Quick fixes

- On 6 December 2019, the Luxembourg law implementing the quick fixes (EU Directive 2018/1910 on harmonisation and simplification of VAT for cross-border trade) was published. The quick fixes will be applicable to exchanges of goods within the European Union as of 1 January 2020.
- The quick fixes aim to simplify the call-off stock regime applicable to the transfer of goods by a supplier; strengthen the requirement to verify and to document the customer's VAT number in order to exempt intra-EU supplies of goods; to formalise the proof to be kept in order to benefit from the VAT exempt intra-EU supplies of goods and finally to simplify the treatment applicable to chain transactions.

To read the full article, please [click here](#).

VAT deduction right and overhead costs

- Recently, in the Cambridge University case, the Court of Justice of the European Union ("CJEU") ruled on questions related to the VAT deduction methodology applicable to overhead costs.
- The VAT deduction was challenged by the UK VAT Authorities and the case was referred to the CJEU in order to determine whether VAT on costs linked to the management of a fund, in which were placed endowments and donations to the University, were deductible or not.
- In the absence of a direct and immediate link either between the costs and a particular output transaction or between the costs and the activities of the University of Cambridge as a whole, the CJEU concluded that the input VAT relating to those costs is not deductible.
- This case is of interest as it restates that the input VAT deduction right is not only recognised under the direct allocation method.

To read the full article, please [click here](#).

Main Corporate Implementation Trends for 2019 and 2020

- Luxembourg key corporate implementation developments today and tomorrow – a summary of major developments in 2019 and 2020.
- This article provides an overview of the new key areas of which you need to be aware that may affect corporate law aspects of your business in order to help you navigate the legal landscape and plan ahead.

To read the full article, please [click here](#).

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