Scanning

CACEIS European Regulatory Watch Newsletter

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INVESTOR SERVICES

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EUROPE

UCITS V

ESMA Securities and Markets Stakeholder Group issues advice on proportionality for UCITS Remuneration Guidelines

Background

The Directive 2014/91/EU ("UCITS V") entered into force on 25 September 2014. It will apply from 18 March 2016 onwards.

ESMA is empowered pursuant article 14a (4) of UCITS V to issue guidelines addressed to competent authorities or financial market participants concerning the application of the remuneration principle.

ESMA is also empowered pursuant to article 13(2) of Directive 2011/61/EU ("AIFMD"), to establish a set of rules, with which AIFM have to comply when establishing and applying the remuneration policies of certain categories of their identified staff.

On 4 March 2015, EBA published a consultation paper EBA/CP/2015/03 on draft guidelines on sound remuneration policies under CRD IV (THE "EBA'S CP" AVAILABLE HERE). In the consultation paper, EBA clearly indicates that if CRD IV allows for some flexibility to adapt to the complexity of institutions activities, the principle of proportionality cannot lead to the non-application of certain rules.

On 23 July 2015, ESMA issued a consultation paper 2015/ESMA/1172 (THE "CP" AVAILABLE HERE) on sound remuneration policies under the UCITS Directive and AIFMD. In developing the CP, ESMA also considered the provisions of the EBA consultation paper. However, in the interest of ensuing consistency between the UCITS remuneration guidelines and the AIFMD remuneration guidelines, ESMA considered it appropriate to allow for the disapplication in the draft guidelines.

On 11 August 2015, ESMA requested ESMA securities and market stakeholder group ("SMSG") to issue an advice on its CP.

What's in there?

On 30 October 2015, the SMSG issues advice to ESMA (ESMA/2015/SMSG/031, the "Advice") taking the opportunity to express its strong support for the approach taken by ESMA on the matter of proportionality.

- SMSG first recalls that the notion of proportionality allows the disapplication and thus neutralization on an exceptional basis and subject to a case-by-case assessment, of certain requirements of the guidelines. Moreover, when a piece of regulation encompasses many different subsets of funds and managers with quite different business models, risk profiles and negociated structures like those regulated under the UCITS and/or the AIFMD Directives, the ability to disapply to specific part of the guidelines requirements shall be allowed.
- SMSG acknowledges that the EBA approach does not foresee the possibility to disapply any of the remuneration principles under the CRD IV but, stresses that the context of CRD relates to a different sector of the financial services industry. The SMSG hence believes that the diverse nature of the UCITS sector could justify a different approach to proportionality.
- SMSG is of the opinion that where the intended effect of the legislation is already achieved via established and proven models it is not appropriate to impose "one size fit all" type of arrangements which could lead to significant additional costs and would introduce inconsistency and instability in the European area with regards to the regulation implemented over the last five years.
- Finally, according to the SMSG, proportionality is a concept inherent in all EU law and as such should be of a outmost importance for the global competitiveness of heterogeneous industries like the UCITS and the AIFMD.

THE ADVICE IS AVAILABLE HERE.

What's next?

ESMA shall take the appropriate actions with regard to the Advice with a view to finalising the UCITS remuneration guidelines and publishing a final report by early Q1 2016.

EMIR/MiFIR

ESMA consults on indirect clearing arrangements under EMIR and MiFIR

Background

Further to the entry into force of EMIR and MiFIR, ESMA has been empowered to develop regulatory technical standards "RTS" on indirect clearing for OTC derivatives and exchange-traded derivatives ("ETD") specifically under article 4.

In respect of indirect clearing for OTC derivatives, EMIR RTS have been set by commission delegated regulation No 149/2013 of 19 December 2012 (AVAILABLE HERE). In the meantime, ESMA conducted multiple consultations on draft MiFIR RTS (FINAL REPORT AVAILABLE HERE) whereby stakeholders outlined the need for alternative requirements for both OTC and exchange-traded derivatives.

Pursuant to Commission Delegated Regulation (EU) N0 149/2013, indirect clearing arrangement means the set of contractual relationships between the central counterparty ("CCP"), the clearing member, the client of a clearing member and indirect client that allows the client of a clearing member to provide clearing services to an indirect client. In its letter to the EU Commission dated 2 October 2015, ESMA's Chair declared its intention to conduct a consultation on the possible amendments to the EMIR RTS, to make it consistent with the future draft MiFIR RTS.

ESMA's draft RTS on indirect clearing cover rules for ETDs that are developed under MiFIR, and rules for OTC derivatives to amend existing RTS under EMIR.

What's in there?

On 5 November 2015, ESMA has opened a public consultation on draft requirements regarding indirect clearing arrangements (ESMA/2015/1628) (the "Consultation Paper").

The objective of this consultation is as follows:

- consulting on the draft requirements that could address both the problems affecting the developments of indirect clearing arrangements for OTC derivatives and ETD;
- addressing issues raised by stakeholders in prior consultations and ensure consistency in the application of MiFIR and EMIR;
- considering certain amendments to the EMIR RTS in order to address specific issues raised in the context of the prior consultation for the draft MiFIR RTS on indirect clearing for ETD;
- considering a new version of the draft RTS that takes into account the feedback from the MiFIR consultation and the consistency requirement of the MiFIR mandate.

The input from stakeholders will help ESMA develop a revised draft of the EMIR RTS and finalise a draft MiFIR RTS in relation to indirect clearing arrangements to be submitted together to the EU Commission for endorsement in the form of commission delegated regulations. One essential element in the development of draft technical standards is the analysis of the costs and benefits that those legal provisions will imply.

THE CONSULTATION PAPER IS AVAILABLE HERE.

What's next?

ESMA is seeking stakeholder's comments to its draft RTS by 17 December 2015. The final RTS are expected to be delivered early next year. Following the analysis of the responses to the public consultation, the finalised draft amendments to the EMIR RTS and the finalised draft MiFIR RTS will be submitted to the EU Commission for endorsement.

EMIR

ESMA updates EMIR standards on data reporting

Background

According to Article 9 of EMIR, ESMA is required to draft regulatory technical standards and implementing technical standards on a consistent application of the reporting obligation for counterparties and Central Counterparties ("CCPs").

The main goal of the said regulation is to reduce the systemic risk by the introduction of a greater transparency to the OTC derivatives markets.

What's in there?

On 13 November 2015, ESMA published a final report ESMA/2015/1645 (the "Final Report") updating existing technical standards concerning data reporting requirements under EMIR. The updates, clarifying certain data fields, have been transposed from the numerous Q&As issued by ESMA since the entry into force of EMIR.

The updated technical standards would consist of the following:

- clarification of data fields, including their description, format or both;
- adaptation of existing fields to the reporting logic foreseen in the existing Q&As, but also the reflection of specific ways to populate them;
- introduction of new fields and values in order to reflect the market practice or other useful regulatory requirements;
- necessary alignments with the upcoming MiFIR reporting.

THE FINAL REPORT IS AVAILABLE HERE.

What's next?

ESMA's final draft technical standards have been sent for approval to the EU Commission. The EU Commission has three months to endorse the latters.

IMD2

EU Parliament adopts Insurance Mediation Directive 2

Background

On 9 December 2002, Directive 2002/92/EC on insurance mediation ("IMD 1") was adopted by the EU Parliament and the Council to address substantial differences between national provisions which create barriers to the taking-up and pursuit of the activities of insurance and reinsurance intermediaries in the internal market.

The application of Directive 2002/92/EC has shown that a number of provisions require further specification with a view to facilitating the exercise of insurance distribution and that the protection of consumers requires an extension of the scope of that Directive to all sales of insurance products.

On 3 July 2012, the EU Commission published a legislative proposal to recast IMD1 ("IMD2") in order to improve the rights of consumer, enhance policy-

holder protection, ensure cross-sectoral consistency and a level playing field between all participants involved in the selling products.

IMD2 will apply to any natural or legal person who is established in a member state or who wishes to be established there in order to take-up and pursue the distribution of insurance and reinsurance products.

However, IMD2 will not apply to all insurance distribution as an exemption is foreseen (1) when the insurance is complementary to the supply of goods or services and covers the risk of damage or theft or (2) the amount of the premium paid for the insurance product does not exceed € 600 calculated on an annual basis.

What's in there?

On 24 November 2015, the EU Parliament adopted IMD2 at first reading.

IMD2 will bring the following changes to the current framework:

- expend the scope of application of IMD1 to all distribution channels (car rentals…). The IMD2 brings within its scope certain ancillary sellers and after-sales businesses such as loss adjusters and claim handlers;
- identify, manage and mitigate the conflicts of interests between the seller of the insurance product and the potential client; rules will be introduced to more effectively address the risk of conflicts of interest, including disclosure of remuneration by intermediaries;
- raise the level of harmonisation of administrative sanctions;
- enhance suitability and objectiveness of advice to consumers by introducing improved and harmonised advice standards; this will further ensure suitable, cost-efficient products and intermediary services for consumers. Consumers will be able to compare offers across different distribution channels and shop around for products and deals better suited to their needs.
- ensure sellers' professional qualifications match the complexity of product sold and thus sales persons will have to clearly demonstrate the role in which their acting (agent, broker, direct writer, etc.);
- the seller will need to disclose the nature (based on a fee, commission or salary) and the structure (financed directly by the client or an undertaking) of his/her remuneration and what premium encompasses the terms and conditions of services (claim handlings, advice, administration…);
- simplify and approximate the procedure for cross-border entry to insurance markets across the EU.

THE ADOPTED POSITION OF THE EU PARLIAMENT IS AVAILABLE HERE.

What's next?

The Council shall endorse IMD2 as adopted by the EU Parliament. Once published in the Official Journal of the EU, IMD2 will need to ne implemented by member states within a 24 months delay.

MiFID II/ MIFIR

ESMA requests delays for some parts of MiFID II/ MiFIR

Background

On 10 November 2015 ESMA announced that it pleaded with the EU Commission to delay certain parts of MiFID II/MiFIR. The entire MiFID II/MiFIR framework was supposed to be applicable as of 3 January 2017. However, all the final Level 2 texts are still not ready. The EU Commission hasn't yet endorsed the final technical advice and the final drafts of regulatory and implementing technical standards ("RTS/ITS"), submitted by ESMA in 2014 and 2015 respectively. ESMA has yet to prepare many others RTS/ITS in 2016.

What's in there?

Steven Maijoor, the ESMA Chair delivered a statement to ECON at the EU Parliament on 10 November 2015. He provided the Eurodeputies with an update on the ESMA work on MiFID II/MiFIR II and the consequences on the implementation timeline. The ESMA Chair insisted on the fact that the delay to build the necessary MiFID II/MiFIR compliant-IT systems is hardly compatible, and in some aspects even incompatible, with the initial regulatory timeline. Moreover, there are still some uncertainties related to what will be in some of the final texts.

ESMA has thus suggested to the EU Commission to postpone the implementation timeline for some aspects of the MiFID II/MiFIR:

1. Transparency;
2. Transaction reporting and
3. Position reporting.

THE LINK TO THE STATEMENT IS AVAILABLE HERE.

What's next?

The EU institutions will have to decide whether to postpone these aspects of the MiFID II/MiFIR framework.

Based on the latest ECON discussions, held on 11 November 2015, the EU Commission appears to agree with ESMA "that a delay is needed" and that "the simplest and most legally sound approach would be a one-year delay". The EU Parliament, however, appears to strongly oppose the delay. Its rapporteur, Markus Feber, mentions that "postponement of implementation of the cornerstone legislation of financial markets in the EU is not in line with G20 commitments".

PRIIPs

ESAs consult on PRIIPs Key Information Documents

Background

On 17 November 2014, the three European Supervisory Authorities ("ESAs") – EBA (European Banking Authority), EIOPA and ESMA, published a first discussion paper (AVAILABLE HERE) which was a preliminary step in the preparation of the RTS, setting out early thinking on the part of the ESAs and gathering feedback and reactions from stakeholders relating to the regulation (EU) No 1286/2014 of the EU Parliament and of the Council on key information documents ("KID") for packaged retail and insurance-based investment products (the "PRIIPs Regulation").

On 26 November 2014, the PRIIPs Regulation was

adopted by the EU Parliament and the Council and was published in the official journal of the EU on 9 December 2014.

On 29 December 2014, the PRIIPs Regulation came into force and empowers the ESAs to prepare draft regulatory technical standards ("RTS") in specific fields.

On 23 June 2015, the ESAs published a technical discussion paper concerning risk, performance scenarios and cost disclosures in KID for PRIIPs, taking into account some feedback of the first discussion paper on risks and rewards and on costs.

What's in there?

On 11 November 2015, the ESAs joint committee launched a final consultation paper (JC/2015/073) (the "Consultation Paper") establishing the draft RTS under Article 8, with the aim of gathering stakeholders' views on proposed rules on the content and presentation of the KID.

The Consultation Paper sets out clear proposals on the contents of the KID and benefits from the input of the two previous discussions papers, from an extensive consumer testing across a sample of EU Member States and from a consultative expert group.

The Consultation Paper further sets out details on the proposed requirements to be included in the preparation of the KID, amongst which:

- a common mandatory template for each KID;
- a summary risk indicator of seven classes for the risk and reward section of the KID;
- a methodology to assign each PRIIP to one of the seven classes contained in the summary risk indicator, and for the inclusion of additional warnings and narrative explanations for certain PRIIPs;
- details on performance scenarios and a format for their presentation, including possible performance for different time periods and at least three scenarios;
- costs presentation, including the figures that must be calculated and the format to be used for these;
- specific layouts and contents for the KID for products offering multiple options that cannot be covered in a concise way;
- the revision and republication of the KID, to be done at least annually (Article 10); and
- the requirement to provide the KID sufficiently early for a retail investor (Article 13).

THE CONSULTATION PAPER IS AVAILABLE HERE.

What's next?

The ESAs will hold a public hearing on KID for PRIIPs on 9 December 2015 in support of the present consultation. The closing date of the consultation will be 29 January 2016.

The draft RTS on Article 8 will be finalised and submitted to the EU Commission by 31 March 2016.

PRIIP manufacturers are required to produce KIDs for each of their PRIIPs they manufacture from 1 January 2017.

PSD II

The Council of the EU adopts PSD II

Background

In 2007, the Payment Services Directive ("PSD") was adopted in order to make the cross-border payments within the EU as easy and safe as "national ones".

On 24 July 2013, the EU Commission issued a legislative proposal on the amendment of the PSD.

On 5 May 2015, the EU Parliament and the Council reached an agreement on PSD II proposal in trialogue.

On 8 October 2015, the draft PSD II proposed by the EU Commission was approved by 578 votes to 29 by the EU Parliament.

What's in there?

On 16 November 2015, the Council of the EU has adopted, without discussion, the PSD II previously approved by the EU Parliament. The press release, related to this adoption is AVAILABLE HERE.

The PSD II text as adopted by the Council of the EU is AVAILABLE HERE.

What's next?

The PSD II shall be published in the Official Journal of the EU. As from this publication, EU Member States will have two years to implement the directive into national laws and regulations in order to comply with the new rules.

SFTR

EU Parliament and the Council of the EU adopt SFTR

Background

On 29 January 2014, the EU Commission published a proposal for a regulation on reporting and transparency of securities financing transactions ("SFTR" AVAILABLE HERE).

SFTR aims at enhancing financial stability by setting out reporting obligations and by preventing banks and other financial intermediaries from circumventing the regulation, which occurs notably by shifting parts of their activities to the less-regulated shadow banking sector. It requires, inter alia, detailed reporting on securities lending transactions, repurchase transactions, reverse repurchase transactions, total return swaps in UCITS and AIF's annual reports and prospectuses.

On 17 June 2015, the Council Presidency and the EU Parliament reached an agreement on the proposed regulation.

What's in there?

On 29 October 2015, the EU Parliament adopted its position at first reading.

On 16 November 2015, the Council of the EU also adopted the proposed regulation. The text adopted does not feature significant changes compared to the compromise version of June 2015 (for further information, please refer to our news titled "EU - The Council Presidency and the EU Parliament reach an agreement on new rules for more transparency on SFT's Regulation").

THE TEXT AS ADOPTED BY THE COUNCIL OF THE EU IS AVAILABLE HERE.

What's next?

The regulation will enter into force the twentieth day following its publication in the Official Journal.

Disclosure in annual report will apply 12 months later.

Existing AIF's and UCITS will benefit from a 18 months transition period in order to update their prospectuses/ offering documents.

SOLVENCY II

Updated methodology for the calculation of risk-free interest rates term structures and new ITS released

Background

On 25 November 2009, the EU Parliament and the Council adopted Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance ("Solvency II"). Solvency II entered into force on 8 January 2010

The aim of the solvency regime established by Solvency II is to ensure the financial soundness of insurance undertakings, and in particular to ensure that, they can survive difficult periods.

The European Insurance and Occupational Pensions Authority ("EIOPA") was established with the task of coordinating the supervisory activities of the national insurance regulators in the EU member states.

What's in there?

1/ On 27 October 2015, EIOPA published an updated technical documentation ("Technical Documentation") of the methodology to derive EIOPA's risk-free interest rate term structures pointing out the following modifications:

- the selection of financial instruments used to derive the basis-free interest rate term structures is aligned to recent markets developments;
- the treatment of government bonds issued by non-EU member states in the calculation of the volatility of adjustment and fundamental spread is also aligned with the treatment of government bonds issued by member states.

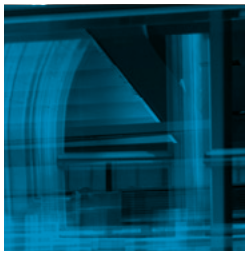
THE TECHNICAL DOCUMENTATION IS AVAILABLE HERE.

2/ On 12 November 2015, the following 7 implementing technical standards ("ITS") have been published in the Official Journal of the EU.

- Commission implementing regulation (EU) 2015/2011 laying down ITS with regard to the lists of regional governments and local authorities, exposures to whom are to be treated as exposures to the central government (TEXT AVAILABLE HERE);
- Commission implementing regulation (EU) 2015/2012 laying down ITS with regards to the procedures for decisions to set, calculate and remove capital add-ons (TEXT AVAILABLE HERE);
- Commission implementing regulation (EU) 2015/2013 laying down ITS with regards to the standard deviations in relation to health risk equalisation systems (TEXT AVAILABLE HERE);
- Commission implementing regulation (EU) 2015/2014 laying down ITS with regards to the procedures and templates for the submission of information to the group supervisor and for the exchange of information between supervisory authorities (TEXT AVAILABLE HERE);
- Commission implementing regulation (EU) 2015/2015 laying down ITS on the procedures for assessing external credit assessments (TEXT AVAILABLE HERE);
- Commission implementing regulation (EU) 2015/2016 laying down ITS with regards to the equity index for the symmetric adjustment of the standard equity capital charge (TEXT AVAILABLE HERE);
- Commission implementing regulation (EU) 2015/2017 laying down ITS with regards to the adjusted factors to calculate the capital requirement for currency risk for currencies pegged to the euro (TEXT AVAILABLE HERE);

What's next?

The ITS shall enter into force on the twentieth day following of its publication in the Official Journal of the EU.



WORLD

SHADOW BANKING

FSB reports on market-based finance

Background

Following the 2010 G20 Leaders' summit in Seoul and to address the financial stability risks inherent to the shadow banking activities, the Financial Stability Board ("FSB") has adopted a two-fold approach.

The first plan of action consists in the creation of a system-wide monitoring framework with the objective to track developments in the shadow banking system, to identify the build-up of systemic risks and to initiate corrective actions when necessary.

The second initiative is related to the FSB's coordination and contribution to the development of policies to encourage the supervision of shadow banking activities by promoting a more regulated shadow-banking sector (MMFs, SFTs, securitisation…).

The FSB defines shadow banking as "credit intermediation involving entities and activities (fully or partly) outside the regular banking system". The FSB position is that if such non-bank credit intermediation is involved in transforming maturity/liquidity and a build-up of leverage, it may pose a risk to the financial system and thus deserves policy responses by authorities that are proportionate to the financial stability risk posed.

What's in there?

On 12 November 2015, The FSB published a report on how to transform shadow banking into resilient market-based finance.

In accordance with the actions and deadlines set out in the roadmap endorsed by the G20 Leaders, the FSB's progress in its action plan can be summarised as follows:

- the FSB has introduced a new activity-based "economic function" approach in its annual monitoring in order to track developments in the shadow banking system. Such approach is expected to help authorities detect and assess the sources of financial stability risks from shadow

banking in the non-bank financial space, and apply appropriate policies to mitigate these risks;

- the regulatory framework regarding policies aiming to strengthen oversight and regulation of shadow banking is now completed with an extended scope to cover securities financing between non-banks, standards and processes for global securities financing data collection have been finalised;
- with regard to the second initiative, the FSB is still currently implementing previously agreed policies.

In the coming year, the FSB shall take forward some major tasks, such as the development of a guidance on the scope of consolidation for bank prudential regulation, the monitoring of the global trends and risks in the shadow banking system, the implementation monitoring for securitisation and the implementation monitoring for the policy framework for shadow banking entities.

THE FSB REPORT IS AVAILABLE HERE.

What's next?

The FSB and its members will take forward the transforming shadow banking into resilient market-based finance following the G20 Antalya Summit in November 2015. The FSB will then report on the progress made to the next G20 which will be held in September 2016.

LUXEMBOURG

RAIF

New investment vehicle for to well-informed investors: the RAIF

Background

Historically, all investments structures in Luxembourg ("UCIs") have been subject to product regulation and CSSF prior authorisation and supervision. Funds sponsors wishing to launch an "unregulated" investment structure were choosing a company structure rather than a fund structure.

AIFMD has introduced the concept of "unregulated" AIF's benefitting from a European marketing passport, through the passport of its authorised AIFM. This passport was available to either regulated AIF's (SIF, SICAR, Part 2) or unregulated structure (commercial company) managed by an authorised AIFM.

Certain sponsors have nevertheless expressed the wish for an unregulated fund structure offering the features of an investment fund without requiring prior authorisation from the CSSF (hence speeding the launch process).

What's new?

On 27 November 2015, the Council of the Luxembourg's government approved the bill relating to a new type of AIF, the reserve alternative investment fund ("RAIF").

Once adopted, the bill should amend the following set of laws:

- the law of 16 October 1934 on wealth tax;
- the law of 1 December 1936 on income tax law and municipal business tax;
- the law of 4 December 1967 on income tax, and
- the law of 17 December 2010 relating to undertakings for collective investment.

The RAIF regime is largely based on the SIF and the SICAR regime, the main difference being that the former will not subject the CSSF's authorisation and supervision.

More details will follow as soon as the bill will be available.

What's next?

The bill shall be deposited with the Luxembourg's Parliament and tabled for vote.

BELGIUM

FSMA

Circular FSMA_2015_16 of October 27th 2015 on the rules governing advertising when distributing financial products to retail clients

Background

This circular has been established by the FSMA following the publication of the Royal Decree dated April 25th 2014 imposing certain information obligations when marketing financial products to retail clients as modified by the Royal Decree dated June 2nd 2015.

What's in there?

The goal of this circular is to further explain the applicable regulation governing advertising and other documents and messages diffused with regards to the professional distribution of financial products to retail clients.

What's next?

The circular is available on the following website:

NL VERSION

FR VERSION

THE NETHERLANDS

AMENDMENT DUTCH ACT ON FINANCIAL SUPERVISION

Protection regulation for owners of derivative positions

Background

The act with amendments on regulation for the Dutch financial market parties (DUTCH: WIJZIGINGSWET FINANCIËLE MARKTEN 2016) , amongst others contain regulation to protect clients holding derivative positions against bankruptcy of intermediaries.

What's in there?

The proposed act is comprising a proposed rule whereby a bank or investment company has to separate the derivative positions that they enter into on behalf of their client, from the own assets of the bank/investment company.

What's next?

The act is published in the Dutch official newspaper as per 29 October 2015 and applicable as per 1 January 2016.

TAX

AEOI/TRANSPARENCY

Luxembourg off the black-list: recognized as "largely compliant" by the Global Forum on Transparency and Exchange of Information for Tax Purposes

Background

On 30 October 2015, the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes announced that it had reassessed Luxembourg's status and has given the country a "largely compliant" rating. Luxembourg is thus no longer black-listed in any way, and there are no longer any formal restrictions that any institutional investors have to consider.

What's in there?

On 30 October 2015, the Global Forum rated Luxembourg as "largely compliant" which is a positive step for Luxembourg in its international tax relations, and it reflects a clear commitment to comply with its EU and treaty obligations in this regard.

The OECD Global Forum on Transparency and Exchange of Information for Tax Purposes aims to promote, via a process of peer review, the rapid implementation of the OECD's internationally agreed standard for exchange of information.

THE LINK IS AVAILABLE HERE.

What's next?

Luxembourg's exchange of information framework has been significantly extended, for example Luxembourg is among the early adopters of the application of automatic exchange at OECD level, the so-called Common Reporting Standard ("CRS"). Reportable information from 2016 will be exchanged with nearly 60 jurisdictions from 2017 on.

LUXEMBOURG TAX LAW

Luxembourg proposes additional tax measures for corporations and individuals for 2015 and 2016

Background

On the occasion of the 2016 budget announcement, the Luxembourg Government has also released bill 6900 (the "Budget Bill") and bill 6891 (the "Tax Measures Bill"), both on 14 October 2015.

If approved by Parliament, these measures would significantly amend the existing Luxembourg net wealth tax ("NWT") regime and include a decreasing scale for this tax, would re-cast the Luxembourg IP regime, and would make other changes to the county's corporate and individual tax rules.

What's in there?

1.CORPORATIONS

Repeal of the minimum corporate income tax and modification of the NWT

The NWT rate would be amended. Luxembourg companies are currently subject to NWT, effectively on a base defined by net asset value after adjustments, exemptions and exclusions provided for by the net wealth tax law, at a uniform rate of 0.5%. The proposed measures would introduce a digressive scale of rates for NWT as from 1 January 2016.

The minimum corporate income tax would be abolished by the Tax Measures Bill. Instead, a minimum NWT charge would be implemented for all corporate entities having their statutory seat or central administration in Luxembourg.

Also, the net wealth tax law and the laws covering the tax regimes for securitisation vehicles, SICARs, SEPCAVs and ASSEPs would be amended by the Tax Measures Bill, so that the minimum net wealth tax charges outlined above would also be applicable to these entities.

As in the past, and under certain conditions, taxpayers are entitled to reduce, totally or partially, their NWT burden through the creation of a specific reserve to be maintained for 5 years. The

minimum NWT charge as determined above may however not be reduced in this way.

2.INDIVIDUALS

The Tax Measures Bill and the Tax Budget Bill would also introduce changes for individuals, including:

- introduction of the "step-up" principle;
- tax adjustments for individuals who are Luxembourg tax residents for part of the year;
- tax amnesty for residents.

For more detailed information regarding the changes foreseen in this context, the link is AVAILABLE HERE.

What's next?

If enacted, these measures would apply as follows:

- the new tax measures relating to individuals would take effect for the 2015 tax year;
- the regularisation programme would apply from 1 January 2016 through until 31 December 2017;
- all the other new tax measures would take effect from 1 January 2016.

CHANGES OF WITHHOLDING TAX TREATMENT/REFUND OF WITHOLDING IN DIFFERENT EU JURISDICTION

Netherlands - EU and non-EU pension funds may be entitled to a refund of Dutch dividend withholding tax

Background

On 28 October 2015, Dutch government decided that pension funds and other type of exempt entities such as charitable foundations and sovereign wealth funds established in EU and non-EU countries should be entitled to a full refund of Dutch withholding tax levied on their portfolio investments.

What's in there?

Dutch and foreign pension funds investing in Dutch equities are generally subject to Dutch dividend withholding tax at the statutory rate of 15%. Dutch pension funds have since long been provided with the possibility to request for a refund of the Dutch dividend tax withheld.

THE LINK IS AVAILABLE HERE.

What's next?

Under the Dutch statute of limitations, withholding tax refund requests can go back up to three years after the tax year in which the dividend tax was withheld has ended. A five year statute of limitations is discretionary for the Dutch tax authorities but could be included in a refund request.

Belgium - Introduction of a "speculation tax" and increase of the withholding tax

Background

On 10 October 2015, the Belgian Federal Government reached a new agreement on the so-called "tax shift". The tax shift is a shift from tax on earned income to other taxes.

What's in there?

The draft introducing a so-called 'speculation tax' which would imply a 33% tax charge on capital gains realised by individuals on shares of listed companies, options, warrants, certificate shares held for a period of less than six months. Stock options and units of Sicavs would not fall within the scope of the tax. Capital losses would not be deductible. Financial intermediaries would have to levy a discharging withholding tax.

It also increase in withholding tax on income from investment, such as interest and dividends, from 25% to 27%; except for interest derived from savings accounts, Leterme State notes and interest derived from cash contribution under the VVPR-bis treatment.

THE LINK IS AVAILABLE HERE.

What's next?

The tax would apply to capital gain and investment income realised on or after the 1st of January 2016.

Switzerland - Federal Supreme Court rules on refund of withholding taxes on dividend payments

Background

On May 5, 2015 the Swiss Federal Supreme Court ruled on a case relating to the refund of withholding taxes on dividends distributed by Swiss-based corporations to a Danish bank.

What's in there?

The Swiss Federal Supreme Court ruled on a case relating to the refund of withholding taxes on dividends distributed by Swiss-based corporations to a Danish bank.

According to this decision, the Federal Tax Administration (AFC) rightly refused the repayment of withholding tax which was levied on dividends from Swiss shares that the Danish banks had briefly detained.

Federal Supreme Court ruled that Banks cannot take advantage of the double taxation agreement passed between the Swiss Confederation and the Kingdom of Denmark because they were not the beneficial owners. The Federal Supreme Court held that article 10(1) of the treaty implicitly contains a beneficial ownership requirement.

THE LINK IS AVAILABLE HERE.

What's next?

As the concerned ruling is by the Swiss Federal Supreme Court, there is no other domestic appeal available that can overrule the decision. The end result of the ruling of the Court is that foreign parent companies of Swiss subsidiaries will need to make sure that they are the beneficial owners of the dividend, as under the relevant Double Tax Treaty (DTT) article 10(1), and by fulfilling the beneficial owner definition. The companies at hand did not fulfil the definition of beneficial owner as the dividends received were substantially passed on by the parent companies to their counter-parties as under derivatives

contracts, whereby the counter-parties (considered to be the 'real' beneficial owners) were all residents of third states which would not have obtained full refund of the withholding tax. However, it should be noted that the court maintains the right to make such decisions on a case-by-case basis.

A final possibility is an appeal to the European Court of Justice (ECJ), however, the likelihood of the ECJ ruling against the Swiss Federal Supreme Court's decision is small: the beneficial owner requirement is one of the anti-abuse rules combatting 'wholly artificial arrangements' that exist solely for (beneficial) tax reasons.

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