

Scanning

CACEIS European Regulatory Watch Newsletter

No.8 February 2015

8

EUROPE

AIFMD - EU Commission adopts Delegated Regulation on NCA reporting obligations under Article 67(3) of the AIFMD

AIFMD - ESMA publishes updates to Q&A on the AIFMD

EMIR - ESMA to cooperate with Hong Kong SFC on CCPs

EMIR - EU Commission endorses ESMA's draft RTS for central clearing of IRS under EMIR

MMF - EU Council and Parliament publish second round proposals for MMF Regulation

UCITS - ESMA's discussion paper on different share classes of UCITS

UCITS - ESMA publishes updates to Q&A on the guidelines on ETFs and other UCITS issues

Publication of Commission Delegated Regulation (EU) 2015/3 in the OJEU

LUXEMBOURG

AIFMD - CSSF updates Q&A on Law of 12 July 2013 implementing AIFMD

AIFMD - ALFI responds to ESMA's call for evidence on the AIFMD passport and third-country AIFMs

AIFMD - CSSF urgent reminder on AIFM reporting obligations

TAX - Budget law 2015: New tax measures for corporations and individuals

TAX - Circular on income taxation of limited partnership

TAX - ABBL publishes self-certification form for entities in the context of FATCA

TAX - Luxembourg Tax Authorities issue draft FATCA circular

CSSF publishes FAQ regarding the law on the immobilisation of bearer shares

BELGIUM

TAX - Increase of Tax on Stock Market Transactions

TAX - Update on change of VAT regime applicable to legal entities (directors, managers and liquidators)

FRANCE

AMF launches a public consultation on modifications of its General Regulations

NETHERLANDS

Update of the Dutch Act on Financial Supervision

IRELAND

Recent amendment by the Central Bank of Ireland of the Alternative Investment Fund Rulebook

SWITZERLAND

New Rules of Conduct set out by the SFAMA

caceis
INVESTOR SERVICES

Background

What's in there

What's next



EUROPE

AIFMD - EU Commission adopts Delegated Regulation on NCA reporting obligations under Article 67(3) of the AIFMD

Background

Directive 2011/61/EU (the "AIFMD" or "the Directive") established a common regulatory and supervisory framework applicable to all alternative investment fund managers (AIFMs) pursuing activities in the EU. This framework covers AIFMs established in a Member State ("EU AIFMs"), as well as AIFMs established in a third country ("non-EU AIFMs") which manage or market in the Union alternative investment funds (AIFs) established in the EU or in a third country (EU AIFs or non-EU AIFs, respectively).

Article 67 (1) of the Directive mandates ESMA – upon request of the Commission - to provide an opinion on the functioning of the EU passport under Article 36 AIFMD and the national private placement provisions under Article 42, as well as an advice on the extended application of the passport to the marketing of non-EU AIFs. The information reported quarterly to ESMA by national competent authorities ("NCAs") under Article 63(3) should be instructive in the formulation of ESMA's opinion and advice.

In December 2013, the European Commission (the "Commission") issued its request for an opinion and advice to ESMA on the possible content of a delegated act concerning the information to be provided under Article 67(3). ESMA submitted its final report to the Commission on 26 March 2014.

What's in there?

The Commission has adopted a draft delegated act on 18 December 2014 based on the opinion and advice delivered by ESMA.

The draft delegated act defines the scope of reporting and subsequently establishes a three-tier reporting obligation:

★ **Information concerning the EU passport for EU AIFMs managing EU AIFs:** reporting of this type of information facilitates assessment of the use made of the "European passport", of the effectiveness of cooperation among competent authorities, of the effective functioning of the notification system, of investor protection issues related to AIFs marketed or managed from another Member State and of the effectiveness of the collection and sharing of information in relation to the monitoring of systemic risks.

★ **Information on the applicable national regime concerning the marketing of non-EU AIFs by EU AIFMs:** The type of information to be provided by the NCAs to ESMA includes information on the marketing of EU and non-EU AIFs in accordance with Articles 36 and 42 of the AIFMD, on the management of EU AIFs by non-EU AIFMs, on the existence and effectiveness of cooperation arrangements with third countries on issues of investor protection in relation to marketing and management under the national regimes and on problematic features of the third country regulatory and supervisory framework.

★ **Information regarding the impact of the functioning of a dual system:** This information should support the assessment of how both systems function (EU passport and third country passport), the potential market disruptions and distortions in competition or any general or specific difficulties encountered by European managers when establishing themselves or marketing funds in third countries.

[THE COMMISSION DRAFT DELEGATED REGULATION CAN BE FOUND HERE.](#)

What's next?

The draft delegated regulation will be submitted to the EU Council and Parliament for official adoption.

AIFMD - ESMA publishes updates to Q&A on the AIFMD

Background

The Alternative Investment Fund Managers Directive ("AIFMD") sets up a coherent framework for the regulation of alternative investment fund managers within Europe.

The main aim of the AIFMD is to ensure that the managers are able to manage AIFs on a cross-border basis and that those AIFs can be sold on a cross-border basis.

The European Securities and Market Authority ("ESMA") Q&A document aims at promoting common supervisory approaches and practices in the application of the AIFMD and its implementing measures. It does so by providing responses to questions posed by the general public and competent authorities in relation to the practical application of the AIFMD.

What's in there?

On 9 January 2015, ESMA published updates to Q&As on the AIFMD. In this version, four new questions have been added which concern the on-going reporting required under AIFMD:

★ **Question 50** relates to the way AIFMs should report information on subscriptions and redemptions over the reporting period. For this purpose, AIFMs should report the value of subscription and redemption orders and not the number of subscription and redemption orders. Furthermore, information should be reported for the month of the cash-flows and not for the month of the subscription and redemption orders unless it is the same month.

★ Question 51 relates to the way the information concerning the change in NAV per month should be reported. According to ESMA, AIFMs should report information on the change in NAV for each month of the reporting period. If no official NAV is available for the calculation, AIFMs should use estimates of the NAV. In some cases (e.g. for AIFs investing in illiquid assets), the best estimate may be the previous NAV.

★ Question 52 relates to the information report on the percentage of gross and net investment returns per month. Concerning this requirement, the Q&A document clarifies that AIFMs should report the information for each month of the reporting period. If no official NAV is available for the calculation, AIFMs should use estimates of the NAV. In some cases (e.g. for AIFs investing in illiquid assets), the best estimate may be the previous NAV.

★ Question 53 of the Q&A document addresses the case in which an AIFM manages both funds and funds of funds. In this case, the AIFM should report aggregated information at the level of the AIFM and should report on funds of funds no later than 45 days after the end of the reporting period. Information on AIFs that are not funds of funds should be reported 1 month after the end of the reporting period as required by Article 110 of the implementing Regulation.

[THE Q&A DOCUMENT IS AVAILABLE HERE.](#)

What's next?

The Q&A document is intended to be continually edited and updated as and when new questions are received.



EMIR - ESMA to cooperate with Hong Kong SFC on CCPs

Background

On 4 July 2012, the Regulation on OTC Derivatives, Central Counterparties and Trade Repositories (known as "EMIR" - European Market Infrastructure Regulation) was adopted and entered into force on 16 August 2012 (Regulation (EU) No 648/2012). Article 25(2)(c) of EMIR ("European Market Infrastructure Regulation") requires the establishment of cooperation agreements as a precondition for the European Securities and Markets Authority ("ESMA") to recognise Central Counterparties ("CCPs") established in third countries to provide clearing services to clearing members or trading venues established in the European Union.

The European Commission has adopted, under Article 25(6) of EMIR, Commission Decision 2014/755/EU, recognising that Australian legal and supervisory arrangements ensure that Covered CCPs comply with legally binding requirements equivalent to those of EMIR, that Covered CCPs are subject to effective supervision and enforcement in Australia on an on-going basis and that Australian legal framework provides for an effective equivalent system for the recognition of third-country CCPs.

What's in there?

ESMA and the Hong Kong Securities and Futures Commission ("SFC") concluded a Memorandum of Understanding ("MoU") on 15 December 2014, establishing cooperation arrangements regarding CCPs that are established in Hong Kong and have applied to ESMA for recognition under EMIR. The said MoU also gives ESMA the power to monitor the on-going compliance by the Covered CCPs with the recognition conditions. The MoU is effective as of 19 December 2014.

The scope of cooperation between the signatories includes:

- ★ general issues, including with respect to regulatory, supervisory or other developments concerning the Covered CCPs;
- ★ issues relevant to the operations, activities and the services of the Covered CCPs; and
- ★ any other areas of mutual interest.

Furthermore, the MoU asserts that close cooperation is particularly important in the hypothesis

where a Covered CCP (in particular of systemic importance) experiences or is threatened by a potential financial crisis or other emergency situation.

Finally, the MoU clearly states that ESMA does not have, pursuant to the regime under EMIR for recognition of third-country CCPs, direct supervision or enforcement powers over the Covered CCPs and that it will rely on the supervision and enforcement capacity of the local authorities in Hong Kong.

[THE MoU IS AVAILABLE HERE.](#)

What's next?

Following the establishment of cooperation arrangements between ESMA and the SFC under EMIR, ESMA will be able to recognise CCPs established in Hong Kong that have applied for recognition in order to provide clearing services in the European Union.

ESMA is working closely with other third-country authorities on similar cooperation arrangements.

EMIR - EU Commission endorses ESMA's draft RTS for central clearing of IRS under EMIR

Background

Article 5(2) of EMIR ("Clearing obligation procedure") requires ESMA to develop and submit to the Commission for endorsement draft regulatory technical standards (RTS), after consultation with stakeholders.

On 1 October 2014, ESMA issued its final draft regulatory technical standards (RTS) on the clearing obligation for Interest Rate Swaps (IRS) pursuant to Article 5.

What's in there?

On 18 December 2014, the EU Commission endorsed the draft RTS in its letter to ESMA. The letter, however, also points out certain issues which have raised concern and proposed certain related amendments.

The amendments proposed by the Commission can be summarised as follows:

★ The starting date of the frontloading requirement should be postponed. ESMA initially suggested this requirement should apply as from the official publication date in the Official Journal, however the Commission considers a deferral to be highly beneficial, as it would give counterparties (Category I and II) ample time to put in place all practical arrangements necessary. The Commission therefore proposes that the starting date be postponed for two (2) months after the entry into force of the RTS for Category 1 counterparties and for five (5) months for Category 2 counterparties;

★ Clarification should be provided on the calculation of the threshold for counterparties falling in category 2, investment funds in particular. In that context, the threshold should be calculated per single fund, as they constitute separate legal entities;

★ Non-EU intragroup transactions should be excluded from the clearing obligation. Exemption from the clearing obligation for transactions entered into between EU and non-EU counterparties belonging to the same group should be excluded for a sufficient period of time in order to allow any exemption resulting from the equivalence decision mechanism pursuant to Article 13 of EMIR to be adopted.

[THE LETTER FROM THE COMMISSION AND THE ANNEXED DRAFT RTS CAN BE FOUND HERE.](#)

What's next?

ESMA has six (6) weeks to submit an amended draft RTS to the Commission as a formal opinion. The Commission may then further amend or adopt the RTS.



MMF - EU Council and Parliament publish second round proposals for Regulation on Money Market Funds (MMF)

Background

On 4 September 2013, the European Commission published a proposal for a regulation of the European Parliament and of the Council on Money Market Funds (the "Regulation").

The Regulation was established on the back of various reports and recommendations issued since 2011 by institutions such as the Financial Stability Board ("FSB"), the European Systemic Risk Board ("ESRB"), the International Organisation of Securities Commissions ("IOSCO") and ESMA on money market funds ("MMF"), specifically in the context of shadow banking. In November 2012, the European Parliament adopted a resolution inviting the Commission to submit a proposal on Shadow Banking, but with a particular focus on the issue of MMF.

On 10 November 2014, the Presidency of the Council of the European Union published a compromise text on the proposal relating to the Regulation. In addition, the proposal of the EU Parliament was published on 26 November 2014.

What's in there?

On 18 December 2014, the Presidency of the Council of the European Union published a second compromise text on the proposal relating to the Regulation.

The second proposal of the EU Parliament was published on 12 January 2014.

[THE COUNCIL'S PROPOSAL IS AVAILABLE HERE.](#)

[THE AMENDMENTS OF THE ECON DRAFT REPORT OF THE PARLIAMENT ARE AVAILABLE HERE.](#)

What's next?

The EU Parliament is due to consider the new proposals and suggested amendments to the draft Regulation in April 2015.

UCITS – ESMA's discussion paper on different share classes of UCITS

Background

The UCITS Directive allows different share classes to be offered to investors, but does not prescribe whether, and to what extent, share classes of a given undertaking for collective investment in transferable securities (UCITS) can differ from each other. As a result, the European Securities and Markets Authority ("ESMA") has identified several national practices as to the types of share classes that are allowed, ranging from very simple share classes to much more sophisticated ones.

ESMA therefore believes that it would benefit the market if a common understanding of what constitutes a share class of a UCITS were developed.

What's in there?

On 23 December 2014, ESMA published a discussion paper on UCITS share classes in which it has provided its views on what constitutes a UCITS share class, how to distinguish UCITS share classes from sub-funds of UCITS, and possible approaches to share class differentiation.

The main point of the discussion paper is that share classes of the same UCITS should have the same investment strategy, while UCITS seeking to offer different investment strategies should create separate UCITS / UCITS sub-funds for each strategy.

ESMA outlines further principles that it believes should be used in assessing the legality of different share classes, such as that the feature of one share class should not have a potential (or actual) adverse impact on other share classes of the same UCITS and that differences between share classes of the same UCITS should be disclosed to investors when they have a choice between two or more classes.

ESMA continues by setting up a non-exhaustive list of types of share classes that would be compatible with the above-outlined principles, as well as a non-exhaustive list of types of shares that do not seem compatible with those same principles.

[THE ESMA CONSULTATION PAPER IS AVAILABLE HERE.](#)

What's next?

In conjunction with the above material, the discussion paper also sets out fourteen questions for stakeholders' consideration.

ESMA will take into account feedback received from stakeholders and invites comments on all matters outlined in the paper.

The closing date for responses to the paper is 27 March 2015.

UCITS - ESMA publishes updates to Q&A on the guidelines on ETFs and other UCITS issues

Background

On 18 December 2012, the European Securities and Market Authority ("ESMA") published guidelines on ETFs and other UCITS issues ([THE "GUIDELINES" - AVAILABLE HERE](#)). The main goal of such a document is to promote common supervisory approaches and practices in the application of the UCITS Directive and its implementing measures.

The Guidelines apply to UCITS management companies and self-managed SICAV, with effect as from 18 February 2013.

What's in there?

On 9 January 2015, ESMA published updates to the Q&A on ETFs and other UCITS issues. In this version, two principal updates have been made:

★ Concerning Question 5 relating to financial derivative instruments, a new Question 5f has been added. According to Q&A 5f, ESMA considers that for the purpose of paragraph 39 of the guidelines, the counterparty to a financial derivative instrument will not be considered as having any discretion over the composition of the underlying assets of the financial derivative instrument in the case where the role of the counterparty only involves implementing a set of rules which are agreed in advance with the UCITS management company and do not allow the exercise of any discretion by the counterparty.



★ Concerning Question 6 relating to collateral management, a new question 6n has been added. According to Q&A 6n, ESMA considers that in the case in which a UCITS reinvests cash collateral in short-term money market funds according to paragraph 43 (j) of the guidelines, the short-term money market funds must comply with the requirements of Article 50(e)(iv) of the UCITS Directive.

[THE Q&A DOCUMENT IS AVAILABLE HERE.](#)

What's next?

The Q&A document is intended to be continually edited and updated as and when new questions are received.

Publication of Commission Delegated Regulation (EU) 2015/3 in the OJEU

Background

On 30 September 2014, the Commission adopted a Commission Delegated Regulation relating to regulatory technical standards on disclosure requirements for structured finance instruments (hereinafter: the "Regulation"). The legal basis for the Regulation is Article 8b of Regulation (EC) No 1060/2009 on credit rating agencies ("CRA 3 Regulation"), requiring the provision of sufficient

information to investors on the quality and performance of their underlying assets.

The Regulation is based on draft regulatory technical standards submitted by ESMA to the Commission ([AVAILABLE HERE](#)), following an open public consultation.

What's in there?

On 6 January 2015, Commission Delegated Regulation 2015/3 was published in the Official Journal of the European Union.

The Regulation applies to structured finance instruments or which the issuer, the originator or the sponsor is established in the EU and which are issued after the date of entry into force of the Regulation (26 January 2015). According to the preambles at the Regulation, the latter should apply to all financial instruments or other assets resulting from a securitisation transaction or scheme referred to in Article 4(1)(61) of Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms. Moreover, the structured finance instruments do not necessarily have to qualify as securities, but may also include other financial instruments and assets resulting from a securitisation transaction or scheme such as money-market instruments (e.g. asset-backed commercial paper programmes).

The Regulation lays down a reporting obligation for the issuer, originator or sponsor of structured finance instruments falling within its scope of application. This reporting obligation only applies to structured finance instruments backed by underlying assets which are included in the list of underlying asset class categories in Article 4 of

the Regulation and which are not of private or bilateral nature. Article 3 of the Regulation lists the information to be reported, while Article 5 fixes the required frequency of the reporting per category of information.

The reporting shall take place in accordance with the reporting system of the SFIs website and the technical instructions that will be published by ESMA by 1 July 2016 at the latest.

Article 2 of the Regulation allows the reporting to be designated to one or multiple reporting entities that will publish the required information on the SFIs website. According to preamble (6) to the Regulation, outsourcing to a service provider should also be possible. Such designation and outsourcing shall, however, not affect the responsibility of the issuer, originator or sponsor of the structured finance instruments.

[THE TEXT OF THE REGULATION IS AVAILABLE HERE.](#)

What's next?

The Regulation entered into force on 26 January 2015 and will apply as from 1 January 2017.

LUXEMBOURG



AIFMD - CSSF updates Q&A on Law of 12 July 2013 implementing AIFMD

Background

On 18 June 2013, the CSSF published a Frequently Asked Questions ("FAQ") document concerning the Law of 12 July 2013 ("the Law") implementing the Alternative Investment Fund Managers Directive ("AIFMD"). Its main goal is to provide guidance on some of the key aspects of the AIFMD regulation from a Luxembourg point of view.

The said document should be read in combination with ESMA's Q&A concerning the AIFMD regulation, as well as the Q&A of the European Commission.

What's in there?

On 29 December 2014, an updated version of the FAQ was published by the CSSF (Version 8). Compared to the previous versions of the FAQs, version 8 implements the following changes:

- ★ AIFMs which have been authorised between 1st and 22nd July 2014 are required to submit the first reporting for 31 January at the latest, whatever its reporting frequency is. According to version 8 of the FAQ, this requirement is now also applicable for AIFMs established before 22 July 2014 and having been granted their authorisation between 1st October 2014 and 31 December 2014;

- ★ Clarifications concerning the marketing of non-EU AIFs to professional investors in Luxembourg without passport by EU AIFMs on the basis of article 37 of the Law have been introduced and include information on the depositary requirements, the type of information to be submitted to the CSSF and what rules are applicable where the Luxembourg private placement regime existing prior to 22 July 2013 have been relied upon until now;

- ★ Detailed information has been inserted concerning the notification to the CSSF of the acquisition of major holdings and control of non-listed companies on the basis of article 25 of the Law, including inter alia what type of entities are affected, the different type of scenarios under which a notification would be required, as well as the type of information and time frame for such a notification.

[THE FAQ DOCUMENT IS AVAILABLE HERE.](#)

What's next?

The document in question will be updated from time to time and the CSSF reserves the right to alter its approach to any matter covered by the FAQs at any time.

AIFMD - ALFI responds to ESMA's call for evidence on the AIFMD passport and third-country AIFMs

Background

The Alternative Investment Fund Managers Directive ([AIFMD; AVAILABLE HERE](#)) entered into force on 21 July 2011 and its transposition period ended on 22 July 2013.

In accordance with Articles 36 and 42 of the AIFMD, non-EU AIFMs and non-EU AIFs managed by EU AIFMs are subject to the national private placement regime of each of the Member States where the AIFs are marketed or managed.

However, the AIFMD leaves open the possibility for the AIFMD passport to be potentially extended to non-EU AIFMs and non-EU AIFs managed by EU AIFMs.

ESMA is required to provide its opinion and advice to the European Commission on these matters and in particular on: (a) the functioning of the EU passport under the AIFMD; (b) the functioning of the marketing of non-EU AIFs by EU AIFMs in the EU and the management and/or marketing of AIFs by non-EU AIFMs in the EU; and (c) whether the passporting regime should be extended to the management and/or marketing of AIFs by non-EU AIFMs and to the marketing of non-EU AIFs by EU AIFMs.

On 7 November 2014, ESMA published a call for evidence ([available here](#)) as regards the AIFMD passport and third-country AIFMs in order to collect input from all interested stakeholders.

What's in there?

On 9 January 2015, ALFI submitted its reply form to ESMA's call for evidence.

First of all, ALFI states its opinion that autumn 2015 is not a realistic date for the extension of

the AIFMD passport to third countries. In ALFI's view, a decision to extend the passport should be deferred by at least three years, namely until 2018, when national private placement regimes are meant to disappear. Moreover, an extension decision should be followed by a 1-year transitional period for the abolishment of national private placement regimes and the familiarisation of fund managers with the AIFMD.

ALFI considers the passport application process in Luxembourg to be satisfactory in many respects. It does, however, list the problems encountered in the passporting process across the EU, such as: (1) fees levied by national regulators for the marketing of AIFs in their jurisdiction; (2) additional requirements imposed by national regulators (e.g. appointment of a centralising agent in France); (3) incomplete transposition or non-transposition of the AIFMD in certain national laws; (4) absence of template notification letters for certain Member States; (5) uncertainty regarding the notion of material changes that may cause modifications to fund documentation.

Still, ALFI finds the overall regulator-to-regulator passporting experience to be positive and encourages the creation of guidelines and circulars (at home and host country level) that would result in a more harmonised passporting framework.

As regards national private placement regimes, ALFI notes that the current picture is fragmented, as certain national private placement regimes (e.g. Germany, Austria) are more burdensome than others (e.g. Luxembourg, UK, Ireland). Furthermore, it remarks that there is no common understanding of the notion of "reverse solicitation", which may cause market distortion. At least in the context of the passport and towards EU regulators, ALFI is of the view that it would be preferable to consider that marketing starts once final fund documents are available.

ALFI goes on to stress that the extension of the AIFMD passport to non-EU AIFMs should be preceded by the abolition of national private placement regimes, as a parallel system would cause market distortion by putting EU AIFMs at a clear disadvantage.

[ALFI'S REPLY FORM IS AVAILABLE HERE.](#)

What's next?

ESMA will consider the feedback received to the call for evidence in Q1 2015 and is expected to deliver its opinion and advice to the European Commission by 22 July 2015.

AIFMD - CSSF urgent reminder on AIFM reporting obligations

Background

The Alternative Investment Fund Managers Directive ([AIFMD; AVAILABLE HERE](#)) entered into force on 21 July 2011 and its transposition period ended on 22 July 2013. The AIFMD was transposed into Luxembourg legislation with the law of 12 July 2013 on alternative investment fund managers ([AIFM LAW; AVAILABLE HERE](#)).

Articles 3(3)(d) and 24(1), (2) and (4) of the AIFMD lay down regular reporting obligations for EU AIFMs as well as for non-EU AIFMs marketing alternative investment funds (AIFs) in the EU.

Under the above provisions, AIFMs have at least an annual obligation to submit their AIFMD reporting to their competent authorities.

What's in there?

On 13 January 2015, the CSSF published a press release making an urgent reminder to all Luxembourg AIFMs and non-EU AIFMs marketing AIFs in Luxembourg to assess and fulfil their reporting obligations towards the CSSF.

To assist AIFMs in meeting their reporting obligations, the CSSF lists the regulatory documents that will have to be consulted: (1) the AIFMD; (2) the AIFM Law; (3) the Delegated Regulation 231/2013 (Level 2 Regulation); (4) ESMA's Guidelines on reporting obligations under the AIFMD; (5) ESMA's Q&A on the Application of the AIFMD; (6) the CSSF's AIFM FAQ.

AIFMs are required to submit their reporting on the basis of Circular CSSF 14/581 (available here), which deals with the technical aspects of the AIFMD reporting.

The reporting is due for 31 January 2015 at the latest. However, reporting regarding AIFs considered as funds of funds is accepted with a 15 extra-days delay.

[THE CSSF PRESS RELEASE IS AVAILABLE HERE.](#)

As stressed out in the CSSF's press release, all Luxembourg-domiciled AIFMs and all non-EU AIFMs marketing AIFs in Luxembourg will have to submit their AIFMD reporting by 31 January 2015 (with the exception of funds of funds).

TAX - Budget Law 2015: New tax measures for corporations and individuals

Background

On 24 December 2014, the budget law for 2015 and the law "Zukunftspak" (Measures for the future of Luxembourg) were published in the Official Gazette. The laws introduce, amongst other measures, several changes in the field of corporate taxation.

What's in there?

★ The framework of the transfer pricing legislation has been finalised and a general transfer pricing documentation requirement introduced (which is now also applicable to all associated enterprises transactions). The new legislation restates the arm's length principle, which becomes more aligned with the OECD Tax Model Convention. The new provisions will provide for both upward and downward adjustments of profits where transfer prices do not reflect the arm's length principle.

★ The law introduces a tax ruling commission and provides details concerning the procedures surrounding the filing and granting of an advance tax confirmation.

★ The minimum corporate income tax rules have been amended. The changes introduced will, in practice, reduce the tax payable by small or dormant entities.

★ The budget law includes modifications on the tax treatment applicable to resident and non-residents receiving dividends subject to withholding taxes.

[THE 2015 BUDGET LAW IS AVAILABLE HERE AND ADDITIONAL INFORMATION AVAILABLE HERE.](#)



What's next?

These measures entered in force on 1 January 2015. However, some of the practical aspects of the measures will be finalised over a longer period, together with various implementing Grand-Ducal Decrees that will have to be issued.

TAX - Circular on income taxation of limited partnership

Background

On 9 January 2015, the Luxembourg tax authorities published a circular clarifying the taxation of the Luxembourg limited partnership (*Société en Commandite Simple* – SCS) and of the Luxembourg special limited partnership (*Société en Commandite Spéciale* – SCSp) further to the law of 12 July 2013 transposing the AIFMD Directive.

What's in there?

This circular provides guidance as to the tax treatment of these types of investment vehicles, specifying the criteria under which the business of limited partnerships or special limited partnerships may be deemed not to carry out any commercial activity. It also defines the parameters of commercial activity in relation to the management of a private property in the event of acquisitions and the disposals of securities.

[THE CIRCULAR IS AVAILABLE HERE.](#)

[ADDITIONAL INFORMATION IS AVAILABLE HERE.](#)

What's next?

Although no new concepts are included in the circular, it is very helpful in clarifying how the exposure to Luxembourg taxes for Luxembourg limited partnerships is bounded and restricted.



TAX - ABBL publishes self-certification form for entities in the context of FATCA

Background

In the context of the Foreign Account Tax Compliance Act ("FATCA"), Form W-8BEN-E (or W-8IMY) has been used to certify the FATCA status of account holders. This form is generally used by non-US entities to indicate their entity type (Chapter 3 Status) and their FATCA Status (Chapter 4 Status). In many cases, a self-certification may replace Forms W-8.

What's in there?

ABBL has produced a self-certification template which might be used in order to determine the status of entity account holders in the context of the application of FATCA by Luxembourg Financial Institutions. It should be noted that this form only contains the absolute minimum information to be provided for the purpose of self-certification. However, account holders investing in US securities might still be asked to use form W-8BEN-E to comply with Chapter 3 obligations.

[THE SELF-CERTIFICATION FORM IS AVAILABLE HERE.](#)

What's next?

The current template may form the basis for a future template that could be used for simultaneous compliance with due diligence requirements under FATCA and the Common Reporting Standard ("CRS").

TAX - Luxembourg Tax Authorities issue draft FATCA circular

Background

On 6 January 2015, the Luxembourg tax authorities issued a draft of the first administrative circular implementing the FATCA regime in Luxembourg. The Model 1 Intergovernmental Agreement ("IGA") between Luxembourg and the United States was signed on 28 March 2014, which provides for the exchange of information on as-

sets held by US citizens or residents in Luxembourg Financial Institutions to the Luxembourg tax authorities. This information is then transmitted to the US tax authorities ("IRS").

What's in there?

The draft circular provides for the legal requirements imposed under the Luxembourg IGA. This circular provides guidance with respect to reporting, the accounts subject to reporting obligations, the currency translation rule as well as some key definitions.

[THE CIRCULAR IS AVAILABLE HERE.](#)

What's next?

While the Luxembourg Model 1 IGA is yet to be transposed into local law, an additional (final) circular defining the technical aspects of the exchange of information should be provided in the future. Moreover, as this is only a draft circular, some amendments and corrections might be expected.

CSSF publishes FAQ regarding the law on the immobilisation of bearer shares

Background

The law of 28 July 2014 on the immobilisation of bearer shares and units ("[THE LAW](#)"; [AVAILABLE HERE](#)) was published in the Mémorial on 14 August 2014 and entered into force on 18 August 2014.

Following FATF's recommendations, it imposes two main obligations: (1) the obligation for issuers impacted by the Law to appoint a depository; and (2) the obligation for each holder of bearer shares or units to deposit those with such depository. The Law therefore gives an end to the free transfer of bearer shares or units by physical delivery of the certificate in order to ensure the proper identification of the holders of bearer shares or units.

What's in there?

On 30 December 2014, the CSSF published a first Frequently Asked Questions (FAQ) document on the Law, which focuses on investment funds established in Luxembourg as issuers of bearer shares or units. The FAQ aims to clarify and pro-

vide official guidance on several important points of the Law, such as:

1) Scope: The FAQ makes clear that the Law applies to UCITS, UCIs, SIFs and SICARs incorporated under the form of an S.A., S.C.A. or FCP and having issued bearer shares or units which are still in issue.

2) Eligible depositaries: The FAQ specifies that any service provider of an impacted investment fund (e.g. registrar and transfer agent, depositary bank) may be appointed as depositary, as long as such entity is among the eligible depositaries listed in the Law and is established in Luxembourg.

3) Nominees: For the very first time it is officially confirmed that the appointed depositary may enter in its register entities acting as nominees. However, such entities must be subject to professional obligations concerning the fight against money laundering and terrorist financing under Directive 2005/60/EC or equivalent legislation.

4) Newly issued bearer shares or units: The FAQ clarifies that bearer shares or units issued after 18 August 2014 have to be deposited with the appointed depositary immediately upon their issuance.

5) Transitory provisions: As regards bearer shares or units issued before 18 August 2014, the FAQ provides precise deadlines for the appointment of a depositary, the deposition of bearer shares or units, the suspension of shareholder/unit holder rights and the cancellation of non-deposited bearer shares or units.

6) Information to be provided to shareholders/unit holders: The CSSF requires that each regulated investment fund with bearer shares or units in circulation informs its shareholders/unit holders on the implications and deadlines of the Law as well as on the identity of the appointed depositary in an adequate manner. In addition, the prospectus has to be amended in order to reflect the above information.

7) Means of publication: The above information may be transmitted to the shareholders/unit holders by all means, including: (a) the usual information sources used by the investment fund and described in its prospectus; (b) the website of the investment fund or its management company; (c) a notice to shareholders/unit holders published in at least two newspapers with adequate circulation, one of which at least shall be a Luxembourg newspaper; and (d) through

the distribution chain. The FAQ specifies that a global notice to shareholders/unit holders may be published by the management company or the AIFM for all UCITS, UCIs and/or SIFs managed, provided that the investment funds concerned are clearly identified.

[THE FAQ IS AVAILABLE HERE.](#)

What's next?

As this is the first version of the CSSF's FAQ on the Law ("Version 1"), it can be expected that the FAQ will be subject to subsequent updates.

BELGIUM



TAX - Increase of the Tax on Stock Market Transactions

Background

The Law of 19 December 2014 was published in the Belgian Gazette on 29 December 2014, increasing the Tax on Stock Market Transactions ("Taxe sur les Opérations Boursières" - TOB), applicable with regards to SICAVs. Entry into force was as of 01 January 2015.

What's in there?

Concerning redemptions of capitalisation shares, the tax has risen from 1% with a limit of €1.500,00 to 1,32% with a limit of €2.000,00. This same increase is applicable if an investor has subscribed to capitalization shares and changes sub-funds.

What's next?

Fund Documentation (prospectuses) will be adapted on a case-by-case basis.

TAX - Update on change of VAT regime applicable to legal entities (directors, managers & liquidators)

Background

On 20 November 2014, the Belgian tax authorities decided to withdraw the possibility for legal entities (directors, managers & liquidators) to choose whether or not their fees were to be subjected to VAT (Decision TVA n°E.T.125.180 dd. 20.11.2014).

This change should have been implemented on the 1st January 2015. From this date onwards, legal entities would be obligatory subjected to VAT.

What's in there?

Due to practical difficulties regarding interpretation of this new measure, Belgian tax authorities decided to postpone its effects to the 1st January of 2016 (Decision TVA n° E.T. 125.180/2 dd. 12.12.2014).

What's next?

This change will enter into force as of the 1st of January 2016.

FRANCE

AMF launches a public consultation on modifications of its General Regulations

Background

On December 24th 2014, the French Financial Markets Authority (AMF) launched a public consultation on modifications of its General Regulations concerning positions in financial instruments for which the underlying asset includes an agricultural commodity, as part of the implementation of the Law of 26 July 2013 on the separation and regulation of banking activities.

What's in there?

This public consultation concerns the inclusion in Book III of its General Regulations of new provisions to strengthen the regulation of markets in financial instrument for which the underlying asset includes an agricultural commodity. The public consultation also concerns implementing instruction as provided by the new articles.

[AMF - NEWS RELEASES 2014 - AMF](#)

What's next?

Responses to the consultation must be submitted to the AMF no later than 27 February 2015.

NETHERLANDS

Update of the Dutch Act on Financial Supervision

Background

On 12 December 2014 the amendment of the Dutch Act on Financial Supervision was official published in the Staatscourant (Dutch Law Gazette).

What's in there?

Many amendments to the Dutch Act on Financial Supervision are to be noted, such as:

- ★ Widening of the range of persons in scope for the banker's oath, the test by the Dutch supervisory authority on suitability and reliability.
- ★ New rules for offering rights of participation from abroad to Dutch retail investors.

Investment managers with seat in another member state no longer need to obtain a license in the Netherlands if they want to offer rights of participation (shares in an investment fund to AIF retail investors) to non-professional investors.

This is subject to certain requirements:

- Notification to the Dutch Financial Authority ("the AFM") that rights of participation are offered to non-professional investors;
- Demonstrate that a license was obtained in the home member state of the investment manager and that that license is obtained via the prescriptions of the AIFM Directive;
- Fulfill specific requirements valid in the Netherlands for offering the rights of participation to non-professional investors.

The act amending the Dutch Act on Financial Supervision (amendment in Dutch named: Wijzigingswet financiële markten 2015) is applicable as per 1 January 2015 for most items.

IRELAND

Recent amendment by the Central Bank of Ireland of the Alternative Investment Fund Rulebook

Background

The Central Bank of Ireland ("Central Bank") had previously launched a consultation paper to indicate its intention to allow the establishment of loan originating qualifying investor alternative investment funds ("QIAIFs"). In light of these submissions, the Central Bank has published a revised Alternative Investment Fund Rulebook ("Rulebook") to incorporate the new rules governing same.

What's in there?

Loan originating funds will not be able to avail of the registered QIAIF option and will instead be required to have an authorised Alternative Investment Fund Manager ("AIFM"). The QIAIF may be the authorised AIFM itself (as an internally managed vehicle) or may appoint an external AIFM. The QIAIF's operations are restricted to the following; *"business of issuing loans, participating in loans, participations in lending and to operations directly arising therefrom, including handling assets which are realised security, to the exclusion of all other commercial business"*.

From a Central Bank's supervisory perspective, QIAIFs cannot invest in other funds. In addition, they cannot invest in asset classes such as equities and debt securities. In terms of diversification, QIAIFs' exposure to any one issuer or group cannot exceed 25% of their net assets.

The QIAIFs must be closed-ended and have a finite period of time. These loan originating QIAIFs will be subject to the Central Bank's Code of Conduct for Business Lending to Small and Medium Enterprises ("SME") when lending to SMEs.

What's next?

The Central Bank will be accepting applications for authorisation of Irish domiciled QIAIFs who will now be in a position to engage in loan origination directly.

SWITZERLAND

New Rules of Conduct set out by the SFAMA

Background

In 14 November, 2014, the Swiss Financial Market Supervisory Authority ("FINMA") recognized the new Rules of Conduct set out by the Swiss Funds & Asset Management Association ("SFAMA") on 7 October, 2014 as minimal standard by way of Circ.-FINMA 2008/10. They came into effect on 1 January, 2015 as a replacement of the former Rules of Conduct for the industry of funds of 30 March, 2009 and those of 31 March, 2009 for the Asset Managers of collective investment schemes.

What's in there?

These Rules of Conduct were set out with the aim of protecting and promoting the quality and the reputation of the Swiss industry of funds in Switzerland and abroad, guarantee a high quality standard as well as the transparency and the smooth running of the market of the collective investments schemes.

The revision of the Federal Act on Collective Investment Schemes "CISA", which came into effect on 1 March, 2013, has made it necessary to reshape the SFAMA's Rules of Conduct. The SFAMA seized this opportunity to simplify and gather in a single text the Rules of Conduct for the Asset Managers of collective investment schemes and those for the industry of funds.

The Rules of Conduct SFAMA strengthen the implementation of the duties of loyalty, diligence and disclosure being incumbent to people subject to CISA. The objectives of this new version of Rules have not changed but the scope of the concerned actors has been widened.

Transitional provisions specify a deadline until 31 December, 2015 for implementing the new Rules of Conduct and adapt existing contracts.



Scanning

This publication is produced by Legal and Compliance teams of CACEIS with the kind support of Communication teams and Group Business Development Support teams.

Editors

Gaëlle Kerboeuf, *Group General Counsel* @
Marie-Andrée Bonnet,
Compliance and Regulatory Watch Manager (France) @

Permanent Editorial Committee

Gaëlle Kerboeuf, Group General Counsel
Marie-Andrée Bonnet, Compliance and Regulatory Watch Manager (France)
Chantal Slim, Head of Legal (CACEIS Bank France)
Eliane Meziani-Landez, Head of Fund Structuring (France)
Emilie Zaracki (Legal Officer)
Ana Vazquez, Head of Fund Structuring and Domicile (Luxembourg)
Véronique Bastin, Head of Compliance (Luxembourg)
Stefan Ullrich, Head of Legal (Germany)
Costanza Bucci, Legal and Compliance Manager (Italy)
Mireille Mol, Legal and Compliance Manager (Netherlands)
Laura Guzzi, Legal Manager (Belgium)
Helen Martin, Head of Legal (Ireland)
Sarah Perrier, Head of Legal and Compliance (Switzerland)
Philippe Naudé, Marketing and Communication Specialist (France)
Arianna Arzeni, Head of Group Business Development Support

Design

Sylvie Revest-Debeuré, CACEIS, Communications

Photos credit

Yves Maisonneuve, Yves Collinet, CACEIS, Fotolia

CACEIS

1-3, place Valhubert
75 206 Paris CEDEX 13
www.caceis.com

This publication is provided by CACEIS from sources believed to be reliable. The present publication is not intended as an offer to sell or a commercial solicitation and may be amended at any time by CACEIS. Information contained in the present newsletter are not a substitute to legal, taxation or investment consultation or advice from an appropriately qualified professional. CACEIS does not warrant the accuracy and completeness of this newsletter, nor endorse or make any interpretation about its content. In no event will CACEIS be liable for any damages whatsoever arising out of the use of, or reliance on the content of this newsletter. Unauthorized used or distribution without the prior written permission of CACEIS is prohibited.