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CONTENTS

Preface Sandy Bhogal, *Gibson, Dunn & Crutcher UK LLP*

Jurisdiction chapters

Andorra	David Navarro, Marc Cantavella & Pablo Lloret, *Cases&Lacambra*	1
Australia	Andy Milidoni & Prashanth Kainthaje, *Johnson Winter & Slattery*	6
Brazil	Erika Tukiama & Luiza Gomes, *Chiarottino e Nicoletti Advogados*	25
Cyprus	Elena Christodoulou & Fabian Cabeza, *Elias Neocleous & Co LLC*	34
Ghana	Eric Mensah & Michelle Gyasi, *Sam Okudzeto & Associates*	46
India	Sujit Ghosh, *Chambers of Sujit Ghosh*	50
Ireland	Andrew Quinn, Lynn Cramer & Niamh Cross, *Maples Group*	61
Israel	Yoad Frenkel, *Ziv Sharon & Co. Law Office*	75
Japan	Akira Tanaka & Hiroki Tsue, *Anderson Mōri & Tomotsune*	81
Luxembourg	James O'Neal, Jean-Dominique Morelli & Inès Annioui-Schildknecht, *Maples Group*	87
Malta	Malcolm Ferrante & Franklin Cachia, *CSB Group*	99
Netherlands	IJsbrand Uljée & Peter van Dijk, *BUREN*	107
Norway	Synne Bjotveit, Oliver Smyth & Anine Karstensen, *RSM Advokatfirma AS*	114
Spain	Ernesto Lacambra & David Navarro, *Cases&Lacambra*	123
Switzerland	Susanne Schreiber & Kerim Tbaishat, *Bär & Karrer Ltd.*	135
Turkey	Orhan Yavuz Mavioglu, *ADMD Mavioglu & Alkan Law Office*	152
United Kingdom	Sandy Bhogal & Bridget English, *Gibson, Dunn & Crutcher UK LLP*	159
USA	Irina Pisareva & Douglas Stransky, *Sullivan & Worcester LLP*	176

Luxembourg

James O'Neal, Jean-Dominique Morelli & Inès Annioui-Schildknecht
Maples Group

Overview of corporate tax work

Luxembourg continues to be a global leader as a platform for international business, investment funds and cross-border financing. As the pandemic endured through 2020, Luxembourg continued to apply COVID-19 measures as well as OECD guidance with respect to pragmatic emergency measures to facilitate Luxembourg investment funds and companies to operate effectively. Luxembourg also continues to update its tax laws in harmony with ongoing changes to EU and OECD policies while maintaining its competitive tax regimes, including the enactment of the EU's DAC6 mandatory disclosure rules and issuing guidance on applying the complex anti-abuse rules found in the EU's Anti-Tax Avoidance Directives ("ATAD"). Luxembourg tax litigation has continued with a slight increase over the past 12 months with the majority relating to transfer pricing. The Luxembourg Court has also issued several decisions, which addressed challenges by the Luxembourg tax authorities of periods following the entry into force as of 1 January 2015 of the formal ruling procedure.

The importance of economic substance and business purpose for Luxembourg structures also continues to grow as seen in recent EU Member State Tax Court cases involving Luxembourg holding companies and the European Commission's ("EC") recent announcement on curtailing the use of "shell companies".

Luxembourg transfer pricing continues to expand its relevance and is now more than ever intertwined with Luxembourg tax planning to achieve robust and sustainable structures for multinationals, alternative investments and cross-border financing.

Significant deals and themes

With respect to alternative investment funds ("AIFs"), the Special Limited Partnership ("SCSp") continues to be the favoured investment vehicle, and the Reserve Alternative Investment Fund ("RAIF") also continues to be the most popular regulatory regime, while Luxembourg Specialised Investment Funds ("SIFs") and Luxembourg investment companies in risk capital (commonly referred to as "SICARs") are less frequently chosen. Over the past year, AIFs focused in particular on opportunistic/special situations investments and real estate.

Over the past 12 months, Luxembourg has experienced phenomenal double-digit growth in financing transactions. During this very busy period, a huge volume of new securitisation schemes and financing arrangements have been implemented. We can also confirm a sustained surge of refinancing for existing arrangements, accession of new borrowers, renegotiation of extended terms, higher advance rates and technical provisions, as well as the creation of new compartments.

We have also witnessed a significant recovery of the real estate finance market, after a significant slowdown at the start of COVID-19. In 2021 to date, the real estate financing boom has resulted in a substantial increase in cross-border acquisitions and renovation development projects being financed via Luxembourg structures. Notably, there is also a market trend to increasingly use the "securitisation fund" vehicle (tax transparent) in light of the impact of recent anti-abuse rules, such as the impact of ATAD II's interest limitation rules ("ILRs") on certain securitisation vehicles in corporate form.

For multinational corporate groups, the level of M&A activity has steadily risen over the past 12 months and the use of Luxembourg "special-purpose acquisition companies" ("SPACs") has manifested and are expected to grow in transaction volume.

As with 2020, COVID-19 has not had a direct disruptive effect on the organisation and management of structures set up and established in Luxembourg, mainly due to the government responses in 2020 that continue to apply as of the writing of this update.

Key developments affecting corporate tax law and practice

COVID-19 updates

COVID-19 crisis: Exceptional corporate governance measures for Luxembourg companies

The Grand Ducal Decree of 20 March 2020 introduced temporary exceptional measures to maintain and facilitate the effective ongoing governance of Luxembourg companies during the pandemic and adapt these rules to the restrictions on travel and social distancing. Notably, the exceptional measures overrule the normal requirement for physical board and shareholder meetings. The governing bodies of any Luxembourg company are still allowed, notwithstanding any provision to the contrary in the articles of association, to hold board and shareholder meetings without requiring the physical presence of their members. These emergency measures authorise such meetings to be validly conducted by way of written circular resolutions, video conference or other telecommunication means so long as the identification of the members of the corporate body participating in the meeting can be documented.

These emergency measures continue to override anything to the contrary in the Luxembourg Company Law Code (Law of 10 August 1915) as well. The emergency measures also authorise electronic signatures for validating corporate governance documents. As of the submission of this update, these measures are expected to continue into the foreseeable future.

Cross-border workers

The Luxembourg tax authorities have confirmed extensions of the existing tax agreements for cross-border workers working from their countries of residence without adverse tax implications. These COVID-19 waivers are extended for both French and Belgian resident cross-border workers until 30 June 2021, whereas Germany and Luxembourg agreed to automatically renew the COVID-19 waiver on a monthly basis as from 1 January 2021 until such time as one party may object to any further automatic renewals.

As of the writing of this update, Luxembourg's political leaders continue to meet and plan for continued emergency measures as the pandemic continues deep into 2021. We expect these measures also to remain in force for the foreseeable future.

VAT zero rate for COVID-19 vaccines and testing

Intra-community acquisitions and importations of approved COVID-19 vaccines, medical devices and related services should benefit from VAT at a 0% rate until 31 December 2022. This is based on an EU Directive of 2020 covering the VAT treatment of COVID-19 vaccinations and related products and services.

DAC6 updates

On 25 March 2020, Luxembourg enacted the law transcribing Council Directive (EU) 2018/822 related to Administrative Cooperation (commonly known as "DAC6"), which introduced disclosure obligations for intermediaries and taxpayers of certain reportable cross-border arrangements ("DAC6 Law"). Pursuant to the DAC6 Law, information on certain cross-border arrangements that meet defined hallmarks must be reported to the Luxembourg tax authorities.

The DAC6 Law requires intermediaries and, in some cases, even taxpayers (if there is no intermediary or if the intermediary is bound by professional secrecy) to report certain cross-border arrangements to the Luxembourg tax authorities. A reportable cross-border arrangement must involve at least one EU Member State (with or without a third country) and meet one or more hallmarks, which can be either "generic" or "specific" hallmarks.

All "reportable arrangements" must be reported within 30 days as from when the transaction is available, ready or implemented (whichever is sooner). Failure to comply with the scope of the reporting obligations, pursuant to Luxembourg's DAC6 Law, can result in penalties of up to EUR 250,000, varying according to the intentional nature of the fault.

Domestic laws and regulations

On 19 December 2020, Luxembourg's Parliament enacted the 2021 budget law, which included the following notable changes:

- Introduction of a 20% levy on income derived from Luxembourg real estate held by investment funds in corporate form including undertakings for collective investment ("UCIs"), SIFs and RAIFs (SIF tax regime). Generally, tax-transparent entities are outside the scope of the levy including limited partnerships (i.e., SCS and SCSp) and common placement funds ("FCPs"). It is worth mentioning that even if the 20% levy will apply for 2021, a reporting obligation is introduced for 2020 and 2021 for all UCIs, SIFs and RAIFs (SIF tax regime) even in the absence of Luxembourg real estate income. In the future, the filing obligation of the 20% levy return will not apply to vehicles that do not have any Luxembourg real estate income.
- Luxembourg private wealth management companies (*société de gestion de patrimoine familial*, or "SPFs") are no longer authorised to indirectly hold real estate assets through one or more partnerships (established in Luxembourg or abroad), FCPs, or foreign tax-transparent entities. However, SPFs indirectly holding real estate through joint-stock companies continue to be allowed.
- As from 2021, the stock option and warrant plan tax regime is repealed and replaced with a new bonus that allows employees to benefit from a premium of up to a 50% tax exemption on qualifying compensation. However, the new bonus scheme is subject to several conditions, including that premiums cannot exceed 5% of the company's profits from the prior year and the premium per employee cannot exceed 25% of the total compensation (excluding any bonus paid under the premium).
- Updates to the "impatriate tax regime" granting tax incentives to encourage high-value executives and workers to relocate to Luxembourg.
- Expanding Luxembourg's fiscal unity regime allowing a vertically integrated fiscal unity group to expand into a horizontally integrated group without triggering the dissolution of the prior fiscal unity group. The new law comes in the wake of a recent European Court of Justice ("ECJ") case, which ruled in favour of such a transition of a Luxembourg fiscal unity group.

- A reduced rate of subscription tax for qualifying UCIs investing primarily in sustainable investments. The rate of the reduced subscription tax ranges from 0.01% to 0.04% depending on the percentage of net assets invested in the qualifying sustainable economic activities.

New law disallowing interest and royalty deduction for EU non-cooperative tax jurisdictions entered into force

A new anti-abuse rule entered into force on 1 March 2021 that disallows the tax deductibility of interest and royalties payable to related corporate entities located in the EU's list of non-cooperative jurisdictions for tax purposes. The new anti-abuse rules should generally not impact transparent entities, such as limited partnerships, and in such case would require a look through to the limited partners of such entities for their application. These new rules come as part of the European Council's guidelines encouraging all EU Member States to implement legislative defensive measures with respect to jurisdictions on the Annex I list (currently comprising American Samoa, Anguilla, Dominica, Fiji, Guam, Palau, Panama, Samoa, Seychelles, Trinidad and Tobago, US Virgin Islands and Vanuatu).

New circular confirming Gibraltar does not benefit from the EU Parent Subsidiary Directive

On 1 December 2020, Luxembourg tax authorities confirmed, via a tax circular, the exclusion of Gibraltar companies from benefitting from the EU Parent Subsidiary Directive ("PSD") under Luxembourg domestic law as from 1 January 2021. The position is in line with a recent decision by the ECJ, which ruled that the PSD concepts of "*companies incorporated in accordance with the law of the UK*" and of "*corporation tax in the UK*" do not apply to companies incorporated in Gibraltar and which are subject to Gibraltar corporation tax. It is worth noting that Gibraltar companies may still be eligible under Luxembourg tax law for certain domestic exemptions for dividends received, capital gains, and net worth tax (conditions apply including being subject to a "comparable" corporate income tax to Luxembourg's).

New circular providing guidance on ATAD I's ILRs

On 8 January 2021, the Luxembourg tax authorities issued a circular providing guidance on ATAD I's ILRs. In particular, the circular provides detailed clarifications on how to interpret certain definitions and apply the rules with several examples.

Pursuant to ATAD I, Luxembourg implemented the ILRs with effect as of 1 January 2019. The ILRs provide that the deduction of exceeding borrowing costs of a taxpayer is limited to 30% of taxable EBITDA or EUR 3,000,000, whichever is higher. The exceeding borrowing costs correspond to the amount by which the deductible borrowing costs of a taxpayer exceeds taxable interest revenues and other economically equivalent taxable revenues.

The circular includes a detailed expansion and clarification of the examples of borrowing costs. It also specifies in particular that only foreign exchange gains or losses relating to the interest of a debt are included in the definition of borrowing costs, whereas foreign exchange gains and losses arising from the principal amount are not taken into account. The circular also elaborates that deductions related to the impairment of receivables does not trigger any borrowing costs for the creditor.

While ILRs do not define the notion of taxable interest income and other economically equivalent taxable revenues, the circular now confirms that this concept should be interpreted consistently and symmetrically with the notion of borrowing costs. From this perspective, at least in a pure domestic context, amounts that are not considered borrowing

costs at the level of the borrower are, in principle, not to be considered interest income and other economically equivalent taxable revenues.

The circular notably includes the following guidance as well:

- The grandfathering clause, which states that exceeding borrowing costs related to loans contracted before 17 June 2016 are excluded from the ILRs. However, this exclusion does not extend to any subsequent changes in these loans. The circular provides guidance on what would constitute a disqualifying subsequent modification. For example, it clarifies that subsequent modifications of the debt instruments terms and conditions would constitute a disqualifying amendment, whereas simply calling for additional drawdowns of an existing facility loan would not.
- Other provisions of the law denying the tax deductibility of expenses (e.g., interest expense in relation to exempt dividends or expenses no longer deductible under anti-hybrid rules) have to apply before the ILRs to identify deductible borrowing costs. Similarly, tax adjustment of profits (up and down) under transfer pricing rules also has to first be taken into account before applying the ILRs.
- Confirmation that the EUR 3,000,000 limitation cap is available per each 12 month accounting year, though for short accounting years the entire EUR 3,000,000 is still available (i.e., no *pro rata* reduction in the limit).

Luxembourg ATAD II reverse anti-hybrid rules enter into force for tax years ending in 2022

Pursuant to ATAD II, Luxembourg's ATAD II "reverse hybrid rule" becomes applicable to Luxembourg entities for tax years ending in 2022. Luxembourg's adaptation of this law provides that a Luxembourg transparent entity (such as an SCS or SCSp) can be recharacterised as being subject to Luxembourg corporate income tax if the following conditions are fulfilled:

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

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

New circular on mutual agreement procedures

A tax circular providing guidance on the process for initiating the mutual agreement procedures ("MAP") under double tax treaties was issued by the Luxembourg tax authorities on 11 March 2021. The MAP aims to provide a mechanism to resolve, by means of a non-judicial procedure, cross-border tax disputes arising from the interpretation or application of a double tax treaty provision. The MAP is based on specific provisions of double tax treaties, which are generally aligned with Article 25 of the latest OECD Model Tax Convention.

Domestic cases and litigation

Luxembourg case on the treatment of revaluation reserves

On 10 December 2020, the Luxembourg Administrative Court overturned a decision by the Administrative Tribunal, which had previously ruled in favour of a Luxembourg default tax assessment, which included revaluation reserves in the company's taxable profits. The Administrative Court ruled that only actually realised capital gains should be included in the taxable income and thus disallowed the revaluation reserve amount to be included in taxable income.

Luxembourg Court rules in favour of information exchange by Belgian tax authorities (Transfer Pricing Audit)

On 16 December 2020, a Luxembourg Court agreed with the Luxembourg tax authorities to dismiss a challenge by a Luxembourg company related to requests of tax information and exchange. According to the request made by the Belgian tax authorities, there were several inconsistencies in the transfer pricing documentation and remuneration of the Luxembourg company in question. Accordingly, the Luxembourg tax authorities sent information requests to the Luxembourg entity in question. The Luxembourg company argued that the Belgian tax authorities' request lacked sufficient motivations and reasons for the request. Ultimately, the Luxembourg Court dismissed the objection raised by the Luxembourg company for lack of sufficient grounds and ordered the requested exchange of information heavily focused on transfer pricing to proceed.

This case illustrates how transfer pricing-based audits by EU tax authorities are increasing and demonstrates the Luxembourg tax authorities' willingness to cooperate with such information requests from neighbouring tax authorities.

Luxembourg Court rules on tax treatment of hybrid instruments (MRPS)

On 10 May 2021, the Luxembourg Administrative Court rendered a decision related to mandatory redeemable preferred shares ("MRPS") where the Luxembourg tax authorities refused their debt qualification for income and net wealth tax purposes. The MRPS are preferred shares treated as equity from a Luxembourg legal and accounting perspective. However, for tax purposes, they were usually issued with characteristics to be treated as debt. The Court concluded in favour of the equity qualification of the MRPS at hand based on their legal features but also on the grounds that an equity funding of the investment was economically consistent and that the taxpayer had failed to demonstrate that a different qualification for tax purposes was motivated by considerations other than tax considerations. Finally, the Court noted that the taxpayer was not entitled to rely on past tax administrative practice and that tax treatment of the instruments was not covered by a tax letter.

This case, which focused on the hybrid analysis (debt *vs* equity) of the MRPS, demonstrates that use of hybrid instruments may become increasingly the focus of tax litigation and scrutiny by the Luxembourg tax authorities.

Luxembourg Court

On 11 May 2021, the Administrative Court refused to respect the contributions made by a shareholder to an equity account without issuing shares ("account 115") of a Luxembourg company for the purpose of determining whether its parent company held a participation representing an acquisition price of at least EUR 1,200,000 (as an alternative to the minimum shareholding representing at least 10% of the share capital of the subsidiary) under the Luxembourg withholding exemption regime for dividends.

This case demonstrates the importance of having solid accounting and business purpose supporting positions taken for Luxembourg tax purposes such as having the minimum amount of equity for purposes of applying Luxembourg's domestic tax exemption regimes.

Tax treaty updates

New Russia-Luxembourg Protocol to the double tax treaty ("Protocol")

Russia and Luxembourg negotiated a new Protocol to the existing double tax treaty, which entered into force on 5 March 2021. The new Protocol notably increases withholding tax rates for dividends and interest and is consistent with recently renegotiated tax treaties that Russia has with Cyprus and the Netherlands. Conversely, Russia's tax treaty with Ireland has not been renegotiated (as of the submission date of this update) and still has comparably lower withholding taxes on interest.

The Protocol increases the withholding tax on dividends from 5% of the gross amount to a new rate of 15%. However, the lower 5% rate may still be applicable to certain beneficial owners including: insurance undertakings; pension funds; listed companies on a stock exchange (conditions apply) directly holding 15% of the capital of the dividend payer for 365 days; governments (including subdivisions thereof); and central banks.

It is worth highlighting that Luxembourg has a domestic withholding tax exemption on dividends available to corporate shareholders resident in a tax treaty jurisdiction (conditions apply) and this domestic exemption should still be available for qualifying Russian corporate shareholders despite the treaty's increase in withholding tax rates.

The new Protocol introduces a withholding tax of 15% on the gross amount of interest paid, whereas the prior rate had provided for no withholding tax on interest (only residents' jurisdiction had taxation rights). A reduced 5% rate applies on certain interest payments made to beneficial owners who are listed companies on a stock exchange (conditions apply) holding directly 15% of the capital of the interest payer for 365 days. Also, a withholding on interest exemption may still be applicable to the following beneficial owners: insurance undertakings; or pension funds. Furthermore, certain securities are excluded including Eurobonds, government or corporate bonds.

It is also worth highlighting that Luxembourg generally does not impose withholding tax on interest (exceptions apply) and this domestic exemption will continue to apply in Luxembourg regardless of the treaty's increased withholding tax rates.

Other tax treaty developments

As of 31 May 2021, Luxembourg's tax treaty network has expanded to 84 tax treaties in force, six pending ratification and eight under negotiation. The new double tax treaty concluded with Botswana entered into force during 2021. Treaties currently under negotiation include Chile, Mali and Kyrgyzstan. Tax treaties pending ratification include Kuwait and Albania.

OECD and EU developments

Amazon wins appeal against the EC's State Aid accusations

On 12 May 2021, the General Court of the European Union ("General Court") ruled in favour of Amazon on its appeal against EU State Aid charges citing that the EC had failed to prove any specific tax advantage in its transfer pricing-focused charges.

The case relates to tax years 2006 to 2014, where the Amazon group had a Luxembourg transparent limited partnership ("LuxSCS") that held valuable IP rights related to technology, trademarks, and customer lists. The LuxSCS received substantial royalty payments from its wholly owned Luxembourg tax-resident subsidiary ("LuxOpCo").

These royalty payments caused a large portion of Amazon's European-related profits to be outside of Luxembourg taxation due to the transparent nature of the LuxSCS. The core of the EC's arguments included the following:

- the LuxSCS did not have any physical presence or employees in Luxembourg and had only one function, which was to passively hold the IP rights;
- the LuxOpCo functioned as the European headquarters of the Amazon group with a robust physical presence and several key functions including operating Amazon's European online retail and sales business and managing inventory;
- Luxembourg should have applied more appropriate transfer pricing methodologies, which, if so applied, would have resulted in lower royalty payments and a thus higher taxable base for the LuxOpCo;
- the LuxSCS was only providing a mere "intermediary function" and thus Luxembourg should have applied the "transactional net margin method" (i.e., costs plus a percentage mark-up);
- the Luxembourg tax authorities agreed erroneously via a Luxembourg tax letter on applying inappropriate methods of transfer pricing including the comparable uncontrolled price and the residual profits split method;
- as a result, Luxembourg conferred on the Amazon Luxembourg entities an unfair selective tax advantage by excessively eroding the LuxOpCo's tax base and thereby shifting too much profit to the tax-transparent LuxSCSp in violation of the arm's length standard; and
- the EC also relied heavily on applying the 2017 OECD transfer pricing guidelines even though the tax years in question were related to prior years before such updated guidelines had been issued.

After a detailed analysis of the EC's arguments, the General Court ruled that the EC simply did not provide a convincing case based on its challenges of transfer pricing methods that Luxembourg awarded a selective tax advantage to the Amazon Luxembourg entities.

It is worth highlighting that the General Court stated that "*the mere fact*" of setting up a structure solely for the purpose of tax optimisation via an intragroup royalty structure is not sufficient in itself to support a conclusion that there is a selective tax advantage constituting State Aid.

The Amazon appeal is particularly relevant going forward for the following reasons:

- it highlights the ever-increasing importance of applying OECD transfer pricing methodologies correctly to all related party transactions;
- the EC will continue to investigate State Aid cases where EU Member States grant selective tax advantages (unlike Amazon, the General Court has found State Aid in transfer pricing-focused tax rulings such as with Fiat); and
- the General Court rejected the EC's "*ex post facto*" application of 2017 OECD transfer pricing guidelines and instead applied the OECD 1995 transfer pricing guidelines.

It is worth noting that Amazon's Luxembourg structure was reorganised in 2017. The use of such a transparent Luxembourg limited partnership now would likely result in adverse tax consequences by application of more recent anti-abuse measures found in ATAD I and II. Notably, ATAD II's reverse hybrid rule may trigger Luxembourg corporate income tax at the level of the otherwise transparent LuxSCS if such a structure existed into 2022 given its hybrid nature (the LuxSCS was tax transparent for Luxembourg tax purposes but tax opaque from a US tax point of view, the jurisdiction of its shareholder in the Amazon Group).

ENGIE loses appeal on EC's State Aid findings

Also on 12 May 2021 (the same day Amazon won its appeal), the General Court upheld the EC's State Aid charges against the ENGIE Group (formerly GDF Suez). The *ENGIE* case is particularly unique because the State Aid charges focused on Luxembourg's domestic general anti-avoidance rules, as well as its interpretation that Luxembourg had inconsistently applied its participation exemption rules.

The *ENGIE* case involved a series of Luxembourg tax rulings covering multiple Luxembourg entities, which included the use of mandatory redeemable convertible bonds (a.k.a. "ZORAs") and forward sale contracts of shares, which resulted in tax-deductible amortisations on the ZORA but no corresponding taxable income pick-up within ENGIE's Luxembourg corporate group.

The European Court agreed with the EC's charges of State Aid by taking the "economic approach" and linking the various seemingly separate transactions, which, when taken together, resulted in the mismatch of taxable deductions and exempt income elsewhere. The resulting exemption was due to Luxembourg's domestic rules at the time, which did not tax the appreciation of convertible debt when converted into equity.

This case demonstrates that the EC has a variety of avenues of attack when launching State Aid charges.

It is worth noting that, as part of the ATAD I tax reforms, Luxembourg has already amended its tax laws, which now consider a conversion of debt into equity as a deemed taxable sale of the debt at the market value followed by a conversion into equity (i.e., the mismatch that occurred in the *ENGIE* case would be fully taxable if the conversion of the ZORAs were to occur in 2021).

Italian Supreme Court affirms Luxembourg holding company benefits from EU PSD

In its decision dated 10 July 2020, the Italian Supreme Court rejected the Italian tax authorities' argument that a Luxembourg holding company ("LuxHoldCo") was merely a conduit entity and thus subject to Italian withholding tax at 26% rather than the withholding tax exemption under Italy's adoption of the EU Royalty and Interest Directive. The judgment hinged in particular on whether LuxHoldCo was the beneficial owner of interest payments received from its Italian subsidiary.

The decision is quite relevant as the Italian Supreme Court applied the criteria for beneficial ownership and economic substance as elaborated in the so-called ECJ Danish Holding Cases, which laid out criteria on whether intermediate EU holding companies can benefit from EU Directives providing withholding tax exemptions. The Italian judges cited the following as the basis for the beneficial ownership test being met and thus favourably applying the EU Directive-based withholding tax exemptions to LuxHoldCo:

- the mere fact that LuxHoldCo engaged only in carrying out group holding and intragroup financing was not enough to automatically consider it a conduit company;
- LuxHoldCo made independent management decisions regarding its activities and items of income (including the Italian source interest in question);
- its functions were for the benefit of the group (not only for the Italian subsidiary) noting that there were loans to multiple group entities;
- there was no binding legal obligation for LuxHoldCo to pay onward any interest it had received from the Italian subsidiary; and
- the net commercial profits of LuxHoldCo earned from its group holding and intragroup financing activities were adequate from a transfer pricing point of view given its specific functionalities.

This case is particularly relevant as it demonstrated that EU-based intermediate holding companies (Luxembourg, Ireland, Netherlands, etc.) can still benefit from EU Directives on withholding tax exemptions by application of the ECJ's tests found in the Danish Holding Cases. It also reinforces the increasing importance of economic substance, transfer pricing and beneficial ownership criteria in international tax structures.

OECD BEPS 2.0

On 12 October 2020, the OECD published two reports in connection with the ongoing project on addressing the tax challenges arising from the digitalisation of the economy (BEPS 2.0). These reports, referred to as "blueprints", address what have come to be known as Pillar One and Pillar Two of BEPS 2.0. They do not reflect an agreement as no consensus has been reached but the OECD launched a consultation period with a view to reaching consensus by mid-2021.

Pillar One seeks to introduce a new international framework under which more of the profits of global multinationals ("MNCs") would be allocated to market jurisdictions. Pillar Two intends to implement a global minimum tax rate for MNCs on a jurisdiction-by-jurisdiction basis.

Proposed new framework for business taxation in the EU

On 18 May 2021, the EC adopted a Communication on Business Taxation for the 21st Century (the "Communication"), which takes into account the G20/OECD discussions on global tax reform and sets out a long-term and short-term vision to support the EU's recovery from the COVID-19 pandemic. The framework focuses on several aspects, which could impact Luxembourg corporate taxation. The Business in Europe: Framework for Income Taxation has an objective of attaining a single corporate tax rulebook for the EU. Secondly, the Communication also defines a tax agenda for the next two years with measures that focus, *inter alia*, on greater transparency for large corporate groups within the EU and the curtail of "shell companies" via additional anti-avoidance measures. The Communication suggests the future possibility of legislative measures defining substance requirements for corporate entities within the EU.

OECD released Multi-Lateral Instrument ("MLI") Guiding Principles

On 3 May 2021, the OECD released an opinion approved by the Conference of the Parties to the MLI setting out "Guiding Principles" on the interpretation of the MLI by the various participating jurisdictions. The main principles focus on interpreting the MLI in light of the BEPS-related measures.

European Parliament establishes a "Tax Subcommittee" aimed at tax abuse and avoidance

In 2020, the European Parliament recently established a Subcommittee on Tax Matters ("FISC") and its objectives including curbing tax avoidance and abuses within the EU. As of the writing of this submission, the FISC so far has not produced any recommendations or reports to the public.

The year ahead

As we have already witnessed into 2021, EU Member State tax authorities continue to focus attention on beneficial ownership, business purposes, economic substance and transfer pricing with respect to cross-border structures and financing arrangements. Prudent international tax planning should include a high-priority focus on such aspects.

DAC6 should now become an integral part of the initial planning of any international corporate, investment or financing structure to assess what mandatory reporting obligations could be applicable.

With respect to the coming year, the AIF space should continue to prosper with particular focus on alternative asset classes and the suitability of the SCS/SCSp and RAIF structures for such investment vehicles.

We also expect to see a significant increase in Luxembourg as the location of SPAC transactions and increasing M&A activity as the post COVID-19 economy progresses.

Lastly, we should expect to see the OECD BEPS Pillar 2.0 start to materialise in shape and policy as 2021 progresses, with particular focus on how the global minimum tax would apply to Luxembourg structures within the EU and beyond.

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