

# Luxembourg: New One-Time Tax Reporting Obligation for Investment Vehicles

On 20 January 2022, the Luxembourg tax authorities issued a tax circular<sup>1</sup> clarifying the reporting obligations for certain Luxembourg investment vehicles in corporate form. This reporting is part of Luxembourg's new regime that imposes a 20% levy (the "Levy") on income and gains derived, directly or indirectly, from real estate located in Luxembourg, as promulgated in the Luxembourg Budget Law of 19 December 2020, effective since 1 January 2021.

It is worth highlighting that these reporting obligations apply even if the investment vehicle never invested, directly or indirectly, in Luxembourg real estate.

## One-Time Reporting Obligation for Alternative Luxembourg Tax-Exempt Corporate Investment Funds

All Luxembourg-exempt alternative investment vehicles in corporate form are generally required to file a one-time reporting obligation by 31 May 2022. These vehicles will have to file regardless of whether they have held, directly or indirectly, Luxembourg real estate during 2020 or 2021. Failure to comply with this one-time reporting obligation could trigger penalties of up to €10,000.

## Affected Luxembourg Investment Vehicles

The Luxembourg alternative investment vehicles affected by the reporting requirement and potential Levy are those in both corporate form (e.g. S.A., S.à r.l., or S.C.A.) and exempt from Luxembourg corporate income taxation. These vehicles include:

- Undertakings for collective investment (UCIs) subject to Part II<sup>2</sup>
- Specialised investment funds (SIFs)<sup>3</sup>
- Reserved alternative investment funds (RAIFs)<sup>4</sup>

Luxembourg tax-transparent limited partnerships (SCS and SCSp) and FCPs are excluded from both the scope of the Levy and the reporting obligations (except in the very specific case mentioned below). Foreign investment vehicles and SICARs<sup>5</sup> (under corporate or partnership forms) are also excluded. RAIFs in corporate form which invest exclusively in risk capital (and are thus subject to Luxembourg corporate income tax) may also be excluded from the scope of the Levy and reporting obligations, although this point is not clearly confirmed.

In addition, Luxembourg exempt alternative investment vehicles in corporate form which have changed their legal form in 2020 or 2021 to become a tax-transparent entity or an FCP are also subject to this reporting obligation to

<sup>1</sup> [Circulaire du directeur des contributions PRE\\_ IMM n° du 20 janvier 2022](#)

<sup>2</sup> The Luxembourg Law of 17 December 2010

<sup>3</sup> The Luxembourg Law of 13 February 2007

<sup>4</sup> Luxembourg Law of 23 July 2016

<sup>5</sup> The investment company in risk capital ("*société d'investissement en capital à risque*" or SICAR) subject to the Luxembourg Law of 15 June 2004

the extent that they have held (directly or indirectly) at least one Luxembourg real estate asset at the time of the change of their legal form.

### Scope of the 20% Luxembourg Real Estate Levy

The Levy applies on any income and gains derived from Luxembourg real estate which is owned, directly or indirectly, by the aforementioned Luxembourg investment vehicles. The Levy can still apply if the Luxembourg real estate was held indirectly through one or more tax transparent entities<sup>6</sup> or FCPs. Also there is no *de minimis* exception, so even small amounts of gains or income from such real estate assets are within the scope of the reporting and the Levy. For the sake of clarity, any real estate not physically located in Luxembourg is outside the scope of the Levy.

When the real estate asset is indirectly held via tax transparent Luxembourg entities or FCPs, the amount subject to the Levy will be determined on a pro rata basis to the ultimate Luxembourg corporate investment vehicle. The gain on a transfer of units in the tax-transparent entities or FCPs will be treated as the sale of the underlying real estate taking into consideration the increase in value of the real estate asset. This Levy is neither deductible when determining the amount of income from real estate nor is it creditable towards any other Luxembourg tax.

### Annual Reporting vs. 2022 One-Time Reporting

Luxembourg-exempt corporate investment vehicles with no direct or indirect Luxembourg real estate investments need only file the report this one time for tax years ending during 2021 with a deadline to file by 31 May 2022. However, Luxembourg investment vehicles which realise income or gains from Luxembourg real estate are subject to the Levy and filing requirements on an annual ongoing basis. The Levy is due as from 1 January of each year and a specific tax return should be filed before 31 May of the following calendar year (e.g. by 31 May 2022 for the financial year ending in 2021, *et seq.*).

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<sup>6</sup> Tax transparent entities within the meaning of Article 175(1) of the Luxembourg Income Tax Law ("LITL"). The reference to Article 175(1) LITL should include both Luxembourg tax-transparent entities and similar foreign tax transparent entities even if the reference to the latter could trigger, in

some cases, a double economic taxation of the same Luxembourg real estate income/gain (Luxembourg corporate income taxation at non-resident level under Article 156(7) and 8(a) and 20% real estate levy at Lux fund level).