

New guidelines on intra-group financing transactions

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The Luxembourg tax authorities issued today new guidelines (circulaire LIR n°56/56bis of 27 December 2016) on the tax treatment of companies carrying out intra-group financing transactions, which provide for new requirements in terms of transfer pricing and substance.

These guidelines apply to any activity consisting of the granting of loans or advancing money remunerated by interest to associated enterprises, refinanced by funds and financial instruments such as public offerings, private loans, advanced money or bank loans.

The new guidelines replace the existing guidelines of 28 January 2011 (circulaire LIR n°164/2) and of 8 April 2011 (circulaire LIR n°164/2bis) as of 1 January 2017.

The guidelines refer to the new article 56bis of the Luxembourg income tax law, introduced by the law of 23 December 2016 on the budget (and applicable as of 1 January 2017), which introduces many of the OECD Transfer Pricing Guidelines, as amended by the 2015 BEPS Report on Actions 8-10.

One of the key implications of the new guidelines is the removal of the current fixed 1% equity at risk requirement and of the EUR 2,000,000 cap for such equity at risk. Henceforth, a comprehensive risk analysis will need to be performed to determine the adequate level of equity required in relation to group financing transactions.

A more detailed analysis of these new guidelines will be provided shortly.

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For any further information please contact us or visit our website at **www.elvingerhoss.lu**.

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