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PRIIPs

As a reminder, on 1 January 2018, persons and entities advising on or selling a **PRIIP** (not benefiting from the grandfathering period like UCITS funds or AIFs issuing a UCITS KIID) to retail investors in the EU will be required to deliver a PRIIP KID to their retail investors before they invest in a PRIIP.

In addition, the PRIIPs regime has seen some developments over the past few months, amongst which is the following:

- In a series of FAQs, the CSSF has taken a position on a number of issues in relation to the impact of the PRIIPs Regulation in particular on AIFMs.

  The **FAQs on AIFMs** address various issues amongst which are (i) the possibility (and conditions) for non-UCITS to be exempt from producing a PRIIPs KID for Luxembourg AIFs sold, offered or advised on to retail investorswithin the EU when they have issued a UCITS KIID, and (ii) the notification process of a PRIIPs KID to the CSSF.

  In addition, the CSSF recommends Luxembourg AIFs which are sold only to non-retail investors to amend their prospectuses prior to 1 January 2018 by including a statement that their units are reserved to non-retail investors within the EU. As an alternative to the amendment mentioned above, the CSSF can be provided with a duly completed and signed **self-assessment form** which is available on their website and should be sent by e-mail to **opc@cssf.lu**.

- At EU level, Guidelines from the EU Commission and a Q&A from the European Supervisory Authorities ("**ESA Q&A**") are available.

  An updated version of this ESA Q&A was published in August 2017 together with a flow diagram for the risk and reward calculations in the PRIIPs KID. More recently, in November 2017, additional questions relating notably to multi-option products (MOPs), derivatives and performance scenarios have been added.

- As regards the implementation of the PRIIPs Regulation, a Bill of Law (**7199**) was deposited with the Parliament on 25 October 2017 amending the UCITS Law and the amended law of 7 December 2015 on the insurance sector. The Bill includes, in particular, provisions relating to administrative sanctions and other administrative measures that may be imposed by the CSSF and the CAA (*Commissariat aux Assurances*).

Deadline for Benchmark Regulation

On 30 October 2017, the CSSF published a **Press Release** stating that the Benchmark Regulation ("**BMR**")[1] will apply from 1 January 2018[2] . As a reminder, from that date, prospectuses issued in

accordance with the **Prospectus Directive** and the **UCITS Directive** should in principle include clear and prominent information stating whether the benchmark is provided by an administrator included in the register maintained by ESMA. However, UCITS prospectuses approved before that date must update their underlying documents at the first occasion or within 12 months at the latest. The CSSF missed the opportunity to clarify the reference used in BMR to "underlying documents"[3].

A Bill of Law (7164) implementing BMR in Luxembourg was deposited with the Parliament on 4 August 2017. The Bill of Law notably designates the CSSF as the competent authority in Luxembourg. On 8 November 2017, ESMA also published an updated version of its **Q&A on BMR**.

More information on this Regulation is available in our **Newsletter December 2016** and the article "**Benchmark Regulation: Key features and impact on investment funds**" published on our website.

> **1.** "**BRM**" refers to Regulation (EU) 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds (Benchmark Regulation).
> **2.** Except for the critical benchmark provisions (i.e. Chapter 4 and Article 46 of the BMR), which became applicable in June 2016. Certain transitional provisions are also provided.
> **3.** Article 52 of BMR.

UCITS: Closet index tracking

On 28 July 2017, the CSSF published a **Press Release on its conclusions on closet index tracking work** following its investigations further to the publication on 2 February 2016 of ESMA's Statement "**Supervisory work on potential closet index tracking**" concerning UCITS qualifying as closet index trackers.

In its press release, the CSSF states that the description of the investment objectives and policies of UCITS funds in their prospectuses and KIIDs shall indicate any benchmark used explicitly or implicitly by the UCITS in its investment approach, along with the degree of freedom in relation to this benchmark.

At EFAMA's Investment Management Forum in Brussels on 16 November 2017, the Chair of the ESMA, Steven Maijoor, mentioned that further work on closet indexing would be performed.

EMIR: Revisit of FX collateral requirements

On 18 December 2017, the European Supervisory Authorities (EBA, EIOPA, ESMA – **ESAs**") published **draft Regulatory Technical Standards** (RTS) amending the framework of the European Market Infrastructure Regulation (EMIR) with regard to the requirement to exchange variation margin for physically settled foreign exchange forward contracts ("**FX Forwards**"). More specifically, the amendment of the current RTS and their subsequent implementation would entail the application of the requirement to exchange variation margin for physically settled FX Forwards only to transactions between institutions, as defined in **CRD IV Regulation** (i.e. credit institutions and investment firms). As a result, investment funds, which are currently in scope of the variation margin requirements, would be exempt from providing variation margin for FX Forwards.

In anticipation of the adoption of these changes in European legislation, the ESAs stated on **24 November**

2017 that they expect the competent authorities to apply their risk-based supervisory power in a proportionate manner regarding their day-to-day enforcement of applicable legislation (i.e. the requirement under EMIR to exchange variation margin for FX Forwards from 3 January 2017).

On this basis, the CSSF has indicated that it will not insist on UCITS and AIFs posting or collecting variation margin for their FX Forwards.

UCITS ESMA Q&A: Update October 2017

On 5 October 2017, ESMA added a new question and answer in its **Q&A on the application of the UCITS Directive** in order to clarify that the additional information to be inserted in the UCITS half-yearly and annual reports in accordance with Article 13 of the SFT Regulation[1] should be based on the information at the end of the reporting period ("snapshot"), with the exception of (i) the cash collateral reinvestment returns to the UCITS and (ii) the data on return and costs for each type of securities financing transactions and total return swaps for which ESMA provides further guidance.

> 1. "**SFT Regulation**" refers to **Regulation (EU) 2015/2365** of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012.

AIFM ESMA Q&A: Update October 2017

Additional questions have been added to the **ESMA Q&A on the application of the AIFM Directive**. Those questions relate to the disclosures to be inserted in the annual reports in accordance with (i) SFT Regulation[1] and (ii) Article 22 of the AIFM Directive.

As regards the SFT Regulation, ESMA adopts the same approach as for UCITS for disclosing the information required by Article 13 and Section A of the Annex of this Regulation.

In addition, ESMA clarifies that the remuneration-related disclosure requirements under Article 22 (2) (e) also apply to the staff of the delegate of an AIFM to whom portfolio management or risk management activities have been delegated. ESMA also provides for two different ways for complying with this requirement.

Finally, ESMA indicates that it is not possible to insert in the annual reports a link to a document where the information required pursuant to Article 22 (2) (e) and (f) of the AIFM Directive is available in order to comply with the AIFM Directive.

> 1. "**SFT Regulation**" refers to **Regulation (EU) 2015/2365** of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012.

Banking and financial services

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MiFID II: LEI obligation

The obligation for EU investment firms to identify their clients (which are legal persons) with the Legal Entity Identifier ("**LEI**") is required by MiFIR[1]. This "LEI" obligation is already provided for in other EU legislation (e.g. EMIR). However, MiFID II framework extends the scope of entities covered by this requirement. For example, it will now include clients (buyer, seller) on whose behalf an investment firm executes transactions (when the client is a legal entity) and the issuers of financial instrument listed and/or traded on a trading venue.

In October 2017, the CSSF published a **Press Release** to remind the industry that under MiFID II, the LEI will be mandatory as of 3 January 2018.

However, in the last weeks, ESMA and the national competent authorities (NCAs) were informed that not all investment firms may succeed in obtaining LEI codes from all their clients that are legal persons ahead of the 3 January 2018 deadline.

In this context and in order to avoid any market disruption, ESMA opted for a smooth introduction of the LEI requirement. On 20 December 2017, it published a **Statement** whereby during a transitional period of six months:

- Investment firms are allowed to provide a service triggering the obligation to submit a transaction report to the client, from which it did not previously obtain an LEI code, under the condition that before providing such service the investment firm obtains the necessary documentation from this client to apply for an LEI code on its behalf; and
- Trading venues are authorised to report their own LEI codes instead of LEI codes of non-EU issuers currently not having their own LEI codes.

1. Art. 26.6 of Regulation (EU) 600/2014 on markets in financial instruments (" **MiFIR**").

Information accompanying transfers of funds

Regulation (EU) 2015/847 of 20 May 2015 on information accompanying transfers of funds ("**Regulation (EU) 2015/847**") repeals Regulation (CE) 1781/2006 ("**Regulation 2006**") which laid down the rules for nearly a decade on the information accompanying transfers of funds with relation to the payer. The requirements of Regulation (EU) 2015/847 became applicable on 26 June 2017. The CSSF has pointed out the main changes introduced by this Regulation in its **Circular 17/660**.

The objective of Regulation (EU) 2015/847 is to update and strengthen the anti-money laundering (AML) and counter-terrorist financing (CTF) regulation by ensuring the traceability of payment transactions, thereby facilitating the prevention, detection and investigation of money laundering and terrorist financing. In order to achieve this goal, Regulation (EU) 2015/847 updates and extends the existing requirements under Regulation 2006.

One of the main innovations of Regulation (EU) 2015/847 is that it lays down rules about information accompanying transfers not only in relation to the payer but also the payee (as opposed to Regulation 2006), thereby implementing TAFTF Recommendation N°16 on wire transfers ("**Recommendation N°16**").

The aim of Recommendation N°16 is "to ensure that basic information on the originator and the beneficiary of wire transfers is immediately available"[1].

As of 26 June 2017, information relating to both payers and payees must accompany a transfer of funds, sent or received in any currency, when either the payer's or payee's payment service provider ("**PSP**"), or an intermediary PSP is established in the European Union.

However, Regulation (EU) 2015/847 does not set out in detail what PSPs should do to comply with the new requirements under Regulation (EU) 2015/847. For this reason, Article 25 of Regulation (EU) 2015/847 requires the European Supervisory Authorities to issue guidelines to competent authorities and PSPs on the measures to be implemented and in particular with respect to Articles 7, 8, 11 and 12 of Regulation (EU) 2015/847[2].

The records of information on the payer and the payee may be kept by the payment service providers for a period of 5 years and may be extended for a further period of 5 years "where the necessity and proportionality of such further retention has been established for the prevention, detection, investigation or prosecution of suspected money laundering or terrorist financing"[3].

Finally, it should be noted that Regulation (EU) 2015/847 imposes obligations on PSPs only, and not on payment service users. In addition, Article 2 of Regulation (EU) 2015/847 also provides for cases that fall out of its scope. For instance, Regulation (EU) 2015/847 does not apply to persons that have no activity other than to convert paper documents into electronic data and that do so pursuant to a contract with a payment service provider, or to persons that have no activity other than to provide payment service providers with messaging or other support systems for transmitting funds or with clearing and settlement systems[4].

> 1. The **FATF Recommendations**, Interpretative note to Recommendation N°16 (Wire Tranfers), p. 70, updated June 2017.
> 2. Consultation Paper on Draft Joint Guidelines under Article 25 of Regulation (EU) 2015/847 on the measures payment service providers should take to detect missing or incomplete information on the payer and the payee, and the procedures they should put in place to manage a transfer of funds lacking the required information, 5 April 2017, **JC/GL/2017/16**, p.4.
> 3. Regulation (EU) 2015/847, Article 16.1.
> 4. Regulation (EU) 2015/847, Article 2(4).

Qualifying holdings in the financial sector

In September 2017, the CSSF published a new Circular (**Circular 17/669**) on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector[1].

It applies to qualifying holdings in the following entities:

- credit institutions;
- investment firms;
- insurance companies;
- reinsurance companies;
- Central counterparties.

This new Circular follows the publication by ESMA, EBA and EIOPA of joint guidelines ("**Guidelines**") on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector. (**JC/GL/2016/01 of 20 December 2016**)

It became applicable on 1 October 2017 and the previous CSSF Circular on that topic (Circular 09/392), was repealed on that date.

The Guidelines further specify certain concepts and in the appendices, (i) a list of information required by the competent authorities for the purpose of evaluating an acquisition or increase in qualified participation, and (ii) practical examples of determination of acquisitions of indirect holdings, are provided.

Where the proposed acquirer is an entity authorised and supervised within the European Union and where the target undertaking meets certain criteria, the information requirements are reduced.

> **1.** It follows the publication by ESMA, EBA and EIOPA of joint guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector. (JC/GL/2016/01 of 20 December 2016)

Corporate, banking and finance

Coordination of the Law of 1915 on commercial companies

On 15 December 2017, the **Grand-Ducal Regulation (the "Regulation") coordinating the amended law of 10 August 1915 on commercial companies** ("**Company Law**") was published in the Luxembourg official gazette (*Mémorial A*) and applies from 19 December 2017.

This Regulation does not further amend the Company Law but it significantly reorganises the numbering of its articles and sections. From 19 December 2017, all references to the Company Law shall now take into account the new numbering. The constitutional documents of Luxembourg companies in force before 19 December 2017 do not need to be amended and reference to an old number will automatically be deemed to refer to the corresponding new number of an article or a section. A table listing each article with its new number of the Company Law and its corresponding old number can be found at the end of the Regulation. A table "from old number to new number" can be found on **our website**.

Employment and pensions law

Law amending certain paid leaves

A **law** aiming at reforming leave for family reasons and certain extraordinary paid leave was published in the official gazette (*Mémorial A*) on 18 December 2017 (the "**Law**").

This Law will enter into force on 1 January 2018.

The changes can be summarised as follows:

Repeal of special leave before enrolment for military service

The Law repeals the special leave of one day before enrolment for military services as obligatory military service in Luxembourg no longer exists.

Paternity leave and fostering leave

The Law aims to extend paternity leave and leave for fostering a child under 16 years for adoption purposes (except in the case where adoption leave is taken), which is currently set at two days, to ten days.

The leave may be split and must be taken within two months following the birth or the welcoming of the child (in case of fostering leave). The leave is fixed, in principle, according to the employee's preferences, provided that it does not compromise business needs. If the employer and the employee do not agree on when the leave is to be taken, the leave must be taken immediately after the birth or the welcoming of the child without being split.

The employee must inform the employer in writing two months in advance of the predicted date on which he/she intends to take the leave. This information must be accompanied by a copy of a medical certificate attesting to the presumed date of childbirth or by a document attesting to the date on which the child will be welcomed.

In case of failure to notify the employer within the time limit, the employer may decide to reduce the leave to two days.

The salary paid during the first two days of leave is borne by the employer. The salary paid during the following days will be reimbursed to the employer by the State. The reimbursement is limited to five times the minimum social salary for unqualified workers.

Leave in the event of marriage or declaration of partnership of a child

Currently, employees are entitled to two days of paid leave in the event of marriage or declaration of partnership of their child.

The Law aims to reduce the paid leave to one day which will be due only in the event of marriage of the child. Hence, employees will no longer be entitled to paid leave in the event of declaration of partnership of their child.

Leave for moving house

Currently, employees are entitled to two days of paid leave for moving house.

The Law does not change the number of days but provides that the leave may only be taken once over a three-year-period of employment with the same employer, except in the event of moving house for professional reasons.

Leave in the event of marriage or declaration of partnership

Currently, employees are entitled to six days of paid leave if they marry or declare a partnership.

The Law intends to reduce this paid leave as follows: three days in the event of marriage and one day in the event of declaration of partnership.

Leave in the event of death of a minor child

Currently, employees are entitled to three days of paid leave in the event of death of a first degree family member.

The Law provides that employees are entitled to five days of paid leave in the event of death of their underage child.

Maternity leave

Currently, Luxembourg law already provides for maternity leave of

- eight weeks before the scheduled childbirth (prenatal leave) and
- eight weeks after childbirth (postnatal leave) extended to twelve weeks in case of premature birth or multiple births or where a mother is breastfeeding her child.

The Law aims to harmonise the duration of the post-natal leave to twelve weeks for all women no matter what the case may be (breastfeeding the child or not,...).

Adoption leave

The Law aims to extend adoption leave from the current eight weeks to twelve weeks.

Leave for family reasons (congé pour raisons familiales)

Currently, the Labour Code provides for special leave if an employee's child under age 15 needs the presence of a parent because it is seriously ill, has had an accident or for serious health reasons. The length of this paid leave is two days per year per child.

The Law aims at extending and making leave for family reasons more flexible by providing that:

- the leave applies to children under the age of 18;
- the length of the leave will depend on the age of the child:
  - < 4 years: 12 days per child;
  - 4 - 12 years : 18 days per child;
  - 13 - 18 years: 5 days per child if the child is hospitalised.

Therefore, instead of providing for two days of paid leave per year which are forfeited if the employee does not use them during the calendar year, as is currently the case, the Law provides for a quota of days which can be used at any moment during the age range in question.

The leave may be split but the parents may not take leave for family reasons at the same time.

Selective distribution and online sales

On 6 December 2017, the Court of Justice of the European Union ("**CJEU**") rendered a long-awaited **judgment** in case C-230/16 opposing Coty Germany, a supplier of luxury cosmetics, to Parfümerie Akzente, one of its authorised selective distributors.

In this case, the Higher Regional Court of Frankfurt am Main had sought a preliminary ruling from the CJEU as to the validity of a contractual clause prohibiting Parfümerie Akzente from distributing Coty goods via third-party platforms such as eBay or Amazon.

First of all, the CJEU confirmed its well-established case-law according to which a selective distribution system for luxury goods designed, primarily, to preserve the luxury image of those goods, does not constitute an agreement contrary to Article 101 (1) of the Treaty on the Functioning of the European Union ("**TFEU**"), provided that (i) resellers are chosen on the basis of objective criteria of a qualitative nature, (ii) laid down uniformly for all potential resellers and applied in a non-discriminatory fashion, and (iii) that the criteria laid down do not go beyond what is necessary.

Next, the CJEU ruled that Article 101(1) TFEU does not preclude a contractual clause which prohibits authorised distributors of luxury goods from using, in a discernible manner, third-party platforms for internet sales, on condition that (i) such a clause has the objective of preserving the luxury image of the goods, (ii) it is laid down uniformly and not applied in a discriminatory fashion, and (iii) it is proportionate in light of the objective pursued.

Finally, the CJEU stressed that, in the event that the Higher Regional Court of Frankfurt am Main should conclude that the clause at issue falls, in principle, under Article 101(1) TFEU, the clause does not constitute a hardcore restriction and may benefit from the block exemption of Regulation 330/2010 of 20 April 2010 relating to vertical agreements.

With this judgment, the CJEU largely followed the Advocate General's **opinion** delivered on 26 July 2017 although, contrary to the latter, it expressly limited its analysis to luxury goods. It gives welcome guidance to producers of luxury goods who are operating selective distribution systems that, in the absence of an absolute ban on online sales, an online marketplace ban is not a restriction "by object" within the meaning of Article 101(1) TFEU, although room for discussion remains around the delimitation of the concept of "luxury goods".

Digital Single Market: Ending unjustified geo-blocking

On 20 November 2017, the European Parliament, the Council of the European Union and the European Commission reached an **agreement** to end unjustified geo-blocking for consumers who wish to buy products or services online within the EU. The Commission submitted a **draft Regulation** to the Council and the Parliament on 25 May 2016.

The new rules aim to put an end to unjustified discrimination of consumers when shopping online by defining specific situations where there can be no justification for different treatment between consumers from different EU Member States. For example, it also bans automatic re-routing to another website for reasons related to the consumer's nationality or place of residence without the consumer's

prior consent.

It should be noted that digital copyrighted content, e.g. e-books, music or video games, is for the time being excluded from the scope of the draft Regulation.

The draft Regulation still needs to be put to a vote by the Parliament in an upcoming plenary session and formally approved by the Council. It will enter into force after nine months from the publication in the EU Official Journal, to allow small businesses in particular to comply with the requirements.

Competition: CJUE landmark judgment (Intel)

On 6 September 2017, the Court of Justice of the European Union ("**CJEU**") rendered a highly anticipated **judgment** in case C-413/14 P, opposing the US-based microchip manufacturer Intel to the European Commission.

The CJEU quashed the 2014 judgment of the General Court which had upheld the then-record fine of € 1.06 billion imposed on Intel by the Commission for infringement of the competition rules. According to the Commission, Intel had abused of its dominant position on the market for a certain type of central processing unit by implementing a strategy including, in particular, loyalty rebates to certain important customers, aimed at foreclosing from the market its most important competitor.

The CJEU refuted the position adopted by the Commission and the General Court that the rebates at issue were, by their very nature, capable of restricting competition and therefore prohibited without it being necessary to analyse all the circumstances of the case and, in particular, whether they were capable of foreclosing as efficient competitors.

Since the Commission had carried out an in-depth examination of the circumstances of the case in its decision to determine, in particular, whether the rebates were likely or capable to cause anticompetitive foreclosure and since the "as efficient competitor" test had played an important role in that analysis, the CJEU held that the General Court was required to examine all Intel's arguments concerning that test.

The CJEU therefore referred the case back to the General Court, which will now have to review whether the rebates at issue are capable of restricting competition in the light of the arguments put forward by Intel.

The judgment provides some clarity in the debate on whether loyalty rebates granted by undertakings in a dominant position are anti-competitive by nature or whether competition law enforcers need to prove anti-competitive effects. It follows from the CJUE's ruling, in essence, that dominant undertakings may seek to rebut the presumption of the prima facie anti-competitive nature of such rebates. An analysis of their capacity to foreclose is then required.

Tax

Updated rules on tax residence certificates for UCIs, now including RAIFs

In the new **Circular of 8 December 2017** (the "**Circular**"), which replaces Circular L.G. – No. 61 of 12 February 2015 dealing with the issuing of tax residence certificates for UCIs, the Luxembourg Tax

Administration now includes reserved alternative investment funds ("**RAIFs**") governed by the Luxembourg Law of 23 July 2016 on reserved alternative investment funds ("**RAIF Law**") in these guidelines. The Circular also includes an updated list of countries with double tax treaties ("**DTT**") that apply (or not) to UCIs. The following jurisdictions have been added to the list of countries granting DTT access to corporate UCIs: Andorra, Brunei, Croatia, Estonia, Serbia and Uruguay.

The issuing of tax residence certificates is of particular interest for UCIs to claim for reduced withholding tax rates or exemptions under applicable DTT. However, a tax residence certificate for a corporate UCI (i.e., established under the form of a limited company) may also be issued on the basis of Luxembourg domestic laws. This certificate may in all events be issued for corporate UCIs if they have established their statutory seat or their central administration in Luxembourg.

For other UCIs (governed by the Law of 17 December 2010 relating to undertakings for collective investment, as amended and the Law of 13 February 2007 on specialised investment funds, as amended), we refer to **our Newsletter May 2015** .

The Circular does not apply to RAIFs that qualify as investment companies in risk capital, i.e. RAIF-SICARs governed by Article 48 of the RAIF Law. RAIF-SICARs are fully subject to corporation taxes and should hence benefit from DTT access in the same way as any other ordinary company.

The Circular further clarifies (i) certain aspects for DTT access for FCPs or other transparent entities (such as a SCS/SCSp) as well as (ii) the application procedure for tax residence certificate (for DTT or domestic purposes) for RAIFs.

Budget Law 2018: Changes for corporate tax payers

The most important tax-related changes for corporate taxpayers under the **Budget Law** ("**Law**") can be summarised as follows:

Extension of the investment tax credits to acquired software from unrelated parties and zero-emission cars

Luxembourg tax law provides for (i) a global investment tax credit, which amounts to 8% for the first tranche of EUR 150,000 and 2% for the tranche exceeding EUR 150,000 without exceeding 10% of the tax due for the fiscal year in which the operating year is ending during which the acquisition was made and (ii) an additional investment credit, which amounts to 13% of the acquisition price of the qualifying investment.

New zero-emission cars acquired after 31 December 2017 would benefit from both the global tax credit (but limited to an amount of EUR 50,000 of the acquisition price of the car per car) and the additional tax credit (without limitation) whereas software acquired from unrelated parties would benefit from the global tax credit.

Self-developed software will be covered by the new intellectual property box regime as of fiscal year 2018, as announced in the released Bill 7163 (for a more detailed analysis of the proposal see the article "**New Luxembourg IP regime**").

Clarification of the tax exemption of capital gains realised in the context of a merger

The aim of the amendment of Article 171 of the Luxembourg income tax law is to specify that the participation exemption applies on the capital gains realised by a resident company on the shares of a subsidiary that is absorbed in the context of a reorganisation even if the minimum holding period of 12

months is not met at the date of the reorganisation.

Extension of the VAT exemption for management of investment fund services

The Law extends the VAT exemption under Article 44 paragraph 1, d), i) of the VAT Law applicable to the management of investment fund services by including collective internal funds held by a life insurance undertaking whose investment risks are borne by the policyholders and which are subject to the supervision of the Luxembourg Insurance Authority (*Commissariat aux assurances*) or an equivalent supervision in another EU Member State.

Finally, it should be remembered that certain measures, which had already been adopted within the 2017 Luxembourg Tax Reform such as the reduction of the corporate tax rate from 19% to 18% will become effective as of 1 January 2018, leading to an effective combined income tax rate of 26.01 % for companies resident in Luxembourg city.

New Luxembourg IP regime

On 4 August the Luxembourg government released **Bill of Law 7163** for a new intellectual property ("**IP**") tax regime, which shall take effect in the tax year 2018.

Since 2008, Luxembourg has offered a tax incentive consisting of an 80% exemption from corporate income tax for qualifying income and capital gains derived from certain types of intellectual property assets. Moreover, from 1 January 2009, a 100% exemption from net wealth tax ("**NWT**") had been applied to qualifying IP rights.

Following agreement on a modified nexus approach for IP regimes at both OECD and EU level, Luxembourg decided to abolish its IP box regime as of 1 July 2016 (with a grandfathering period of five years).

As was the case in the previous regime, under the new regime, eligible income from qualifying IP assets will benefit from an 80% exemption from Luxembourg income tax, resulting in an effective tax rate of approximately 5.2%, and a full exemption from Luxembourg NWT.

For further insight on the key features brought by this Bill of law, see the article "**New Luxembourg IP regime**" on our website.

Tax treaties news

Ukraine

On 18 April 2017, the amending protocol signed by Luxembourg and Ukraine on 30 September 2016 on the Ukraine-Luxembourg double tax treaty entered into force. The treaty and the amending protocol will generally apply as of 1 January 2018.

The following withholding tax rates will apply under the amended treaty:

- Dividends: the treaty provides for a standard withholding tax rate of 15% which can be reduced to 5% if the receiving company owns directly at least 20% of the share capital of the company paying the dividends.

- Interest: the treaty provides for a standard withholding tax rate of 10% which can be reduced to 5% for interest paid in connection with the sale on credit of industrial, commercial or scientific equipment or interest on bank loans.
- Royalties: the treaty provides for a standard withholding tax rate of 10% which can be reduced to 5% on royalties for copyrights on scientific work, patents, trademarks, secret formulas or process information concerning industrial, commercial or scientific experience.

Luxembourg applies the credit and exemption methods for the avoidance of double taxation.

Uzbekistan

On 18 September 2017, Luxembourg and Uzbekistan signed an amending protocol to the Uzbekistan-Luxembourg double tax treaty. The new provision are not yet in force and further details will be provided once an official copy of the text is available.

Negotiations

Based on recent public information, Luxembourg has started negotiations to sign a double tax treaty on income and capital with Colombia.

Luxembourg and Sri Lanka have expressed their intention to negotiate an update to the existing double tax treaty on income and capital of 31 January 1983.

Luxembourg and Albania have also expressed their intention to negotiate an update to the existing (but not yet in force) double tax treaty on income and capital of 14 January 2009.

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

The information contained herein is not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific legal advice concerning particular situations.

We undertake no responsibility to notify any change in law or practice after the date of this newsletter.