NEWSLETTER

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50 YEARS ELVINGER, HOSS & PRUSSEN
LUXEMBOURG LAW FIRM

CONTENTS

ASSET MANAGEMENT AND INVESTMENT FUNDS

1. AIFMD

1. CSSF FAQ on AIFM law

On 20 February 2014, the CSSF updated its FAQs on AIFM ("**FAQ**"). Question 15 on valuation and Question 16 on transaction costs have been added.

On 17 March 2014, the FAQ were further amended. Additional information is now provided (i) on the date as of when authorised AIFMs and registered AIFMs which have been authorised or registered before 23 July 2014 have to file their first reports with the CSSF, and (ii) on the start date of the initial reporting period.

The updated FAQ is available on the CSSF's website.

2. EU list of cooperation arrangements

The updated table (20 February 2014) showing the state of play of Memoranda of Understanding or cooperation arrangements signed by EU national supervisors in the context of the AIFMD is published on ESMA's website.

3. ESMA Q&A

On 17 February 2014, ESMA published a Q&A on the application of the AIFMD. The Q&A is intended to help AIFM by providing clarity on the content of the AIFMD rules. The following topics are adressed:

- Remuneration: first application of the remuneration rules and remuneration rules in the case of delegation of portfolio management or risk management activities;
- Notification of AIFs: Annex IV of the AIFMD (concerning the documentation and information to be provided in the case of intended marketing in Member States other than the home Member State of the AIFM); and
- Reporting under Article 42 of the AIFMD (relating to the conditions for the marketing in the Member States without a passport of AIFs managed by a non-EU AIFM).

On 25 March 2014, ESMA published an updated version of its Q&A: additional questions on the reporting by AIFM (not limited to non-EU AIFM) have been added.

This Q&A is available on ESMA's website.

2. UCITS

1. Revision of collateral diversification requirement in ESMA's guidelines on ETFs and other UCITS issues

On 20 December 2013, ESMA published a consultation paper on the revision of the provisions on diversification of collateral contained in ESMA's guidelines on ETF and other UCITS issues (Ref. ESMA 2012/832) published in December 2012 (the "**Guidelines**"). Since the entry into force of the Guidelines on 18 February 2013, market participants have asked ESMA to reconsider its position on the requirements on collateral diversification (paragraph 43(e) of the Guidelines). According to said paragraph 43 (e) of the Guidelines cash collateral received in the context of OTC derivative transactions or efficient portfolio management techniques (i.e. securities lending, repurchase or reverse repurchase transactions) should be diversified so that exposure to any issues does not exceed 20% of the net asset value of the UCITS.

On 24 March 2014, ESMA published its final report on the revision of the provisions on diversification of collateral contained in the Guidelines. The final report is available on [ESMA's website]().

ESMA has decided to modify the rules on collateral diversification in paragraph 43(e) of the existing Guidelines and to introduce some further consequential changes:

- a derogation from the 20% exposure to a single issuer is introduced for UCITS which are fully collateralised in financial instruments issued or guaranteed by Governments or public international bodies;
- such UCITS should receive securities from at least six different issues, but securities from any single issue should not account for more than 30% of the UCITS NAV;
- this derogation from the collateral diversification requirements is applicable to all types of UCITS (and not only to money market funds);
- additional disclosure requirements (in the prospectus and in the annual report) apply to UCITS that are intending to make use of the derogation;
- this derogation does not affect the other criteria for collateral management as set out in paragraphs 41 to 47 of the Guidelines.

The revised Guidelines are currently being translated into all the official languages of the EU. They will become applicable two months after their official publication on ESMA's website in all these languages. The publication into the official EU languages will also trigger the two-month period for National competent authorities to inform ESMA of their intention to comply with the Guidelines.

2. ESMA Q&A on guidelines on ETFs and other UCITS issues

On 24 March 2014, ESMA also issued a revised version of its Q&A on the same guidelines on ETFs and other UCITS issues, with four additional questions and answers under the section on financial indices.
The updated Q&A is available on [ESMA's website]().

3. EuVECA - EuSEF

1. ESMA Q&A

On 26 March 2014, a [Q&A on Euveca and EuSEF]() ("**Q&A**") was published by ESMA. EuVECA and EuSEF refer, respectively, to Regulation 345/2013 on European Venture Capital Funds and Regulation 346/2013 on European Social Entrepreneurship Funds.

These Regulations provide for a common EU framework for the managers of EuVECA and EuSEF that are registered with the competent authorities, so that they can benefit from the EU passport in order to manage and market funds in the European Union with the specific EuSEF and EuVECA labels. They became applicable on 22 July 2013.

The current version of the Q&A deals with the management of EuSEF and EuVECA by authorised AIFMs, the registration process of EuSEF and EuVECA managers and the marketing of AIFs by EuSEF and EuVECA managers.

BANKING, INSURANCE AND FINANCE

1. Capital requirements regulation

On 1 January 2014, Regulation (EU) 575/2013 of 26 June 2013 on prudential requirements for credit institutions and investment firms (the Capital Requirements Regulation, in short the "**CRR**") came into force. It applies to all Luxembourg credit institutions and to certain investment firms defined as being within its scope (the "**CRR institutions**"). The CRR is one of two instruments adopted at the level of the European Union to implement the Basel III agreement on the regulatory framework for banks together with Directive 2013/36/EU of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms (the "**CRD IV**") which is in the process of being transposed into Luxembourg law.

Although being immediately applicable without any transposition into national law, the CRR leaves certain discretions on a number of points to Member States and their competent authorities. In this context, the CSSF adopted in February 2014 its CSSF Regulation 14-01 on the implementation of certain discretions of Regulation (EU) No 575/2013 (the "**Regulation 14-01**").

Among the salient provisions of Regulation 14-01 is the group exemption to the large exposure rules of the CRR. Under certain conditions laid out in Article 20 of Regulation 14-01, exposures (including any type of participation) incurred by a CRR institution towards its parent undertaking, other subsidiaries of that parent undertaking and its own subsidiaries, insofar as those undertakings are covered by the supervision on a consolidated basis to which the CRR institution is itself subject, are exempted from the large exposure limitations of the CRR. The conditions imposed by Regulation 14-01 aim to prevent a disproportionate negative impact resulting from intragroup exposures, both in a normal scenario and in a resolution scenario. CRR institutions must be in a position to justify compliance with these conditions. The CSSF may limit the application of the intragroup exemption if it deems that these conditions are not sufficiently met.

Regulation 14-01 also deals with the phase-in arrangements left to the discretion of the Member States regarding the new capital ratios set by the CRR. It imposes a minimum ratio of common equity Tier 1 capital of 4.5%, a Tier 1 Capital ratio of 6% and a total capital ratio of 8%. The three solvency ratios imposed by the CRR must therefore be complied with as of 2014.

Regulation 14-01 further imposes on CRR institutions to maintain an equity buffer composed of common equity Tier 1 instruments equal to 2.5% of their total risk exposure. This requirement is part of the new prudential tools introduced by the CRD IV. The CSSF decided to have it applied as of 1 January 2014 whereas the CRD IV provided for a progressive implementation until 2019. If the buffer is not maintained, CRR institutions face distribution restrictions (regarding, for instance, on dividend or bonuses payments or share buy-back) until it is reached again.

Finally, Regulation 14-01 implements other transitional measures left to the discretion of Member States, the details of which are beyond the scope of this article. They relate, among others, to liquidity requirements (national rules remain applicable until the introduction of minimum liquidity coverage standards in January 2015), unrealised losses and unrealised gains measured at fair value, and deduction rates applicable to elements of Common Equity Tier 1, Additional Tier 1 and Tier 2 Capital.

2. CSSF reporting handbook for credit institutions

Further to the publication on 8 January 2014 of the draft Implementing Technical Standards with regard to supervisory reporting of institutions[1] ("**ITS**") by the European Commission's DG "Internal Market and Services", the CSSF issued Circular 14/586 which completes and adds a reference in Circular 13/570 to a draft reporting handbook for credit institutions.

This draft reporting handbook aims at providing an overview of the periodical reporting requirements applicable to credit institutions in Luxembourg from January 2014 onwards as well as the reporting formats and technical specifications.

The ITS were formally adopted by the European Commission on 16 April 2014 under the form of a regulation. They will enter into force following their publication in the Official Journal of the European Union (expected by mid-June). Upon this publication, the CSSF will update the reporting handbook.

[1] These ITS set out reporting requirements related to own funds, financial information, losses stemming from lending collateralised by immovable property, large exposures, leverage ratio and liquidity ratios. They specify uniform formats, frequencies, dates of reporting, definitions and IT solutions to be applied by credit institutions and investment firms in Europe.

CAPITAL MARKETS

1. Derivatives: EMIR

1. Reminder of the deadlines for the reporting dates

The CSSF reminds all concerned counterparties that as from 12 February 2014 they have to report details of any derivative contract (OTC or exchange traded) they have concluded, or which they have modified or terminated, to a registered or recognised trade repository ("**TR**") (six TRs are currently registered with ESMA).

Derivative contracts which were outstanding on 16 August 2012 and remained outstanding on 12 February 2014 must be reported to a TR by 13 May 2014 (with an extension until 13 August 2014 for reporting of exposures) while derivative contracts which were no longer outstanding on 12 February 2014, but which were either outstanding on 16 August 2012 or were entered into after 16 August 2012 must be reported to a TR by 12 February 2017.

On another subject, the CSSF indicates that it is aware of the difficulties that many firms are facing in getting a "legal identity identifier" ("**LEI**") for the purpose of reporting but reiterates that counterparties which are subject to the reporting obligation should rather report without an LEI than not report at all.

For more details, see Press Release 14/11.

2. ESMA Q&A

On 11 February 2014, ESMA published an updated version of the Q&A (ESMA/164/2014).

2. Information requirements for exempted issuers: updated CSSF Q&A

On 25 February 2014, the CSSF issued its Press Release 14/13 stating that a new FAQ had been published with respect to the information requirements of issuers that benefit from an exemption under articles 7 or 30 (6) of the law of 11 January 2008 on transparency requirements for issuers of securities (the "**Transparency Law**"). The CSSF confirms that those exempted issuers are, however, still required to publish any information considered as inside information according to Directive 2003/6/CE on insider dealing and market manipulation (Market Abuse Directive).

Indeed, the CSSF considers that "a financial report made available to the public by an exempted issuer on its own initiative or in order to comply with another legal or regulatory requirement, represents in principle inside information, given the nature of the information it contains and in particular in the case where it includes financial figures or other important information that has not yet been published".

Any such financial report must therefore be published according to the provisions of the Transparency Law, i.e. disseminated effectively, stored on the OAM (Officially Appointed Mechanism) and filed with the CSSF.

According to the same principle, the CSSF confirms that the documents made available in the context of a general meeting and that fulfil the criteria of inside information must be published like any other regulated information.

The CSSF indicates that it will reinforce its reviews in respect of the above during the 2014 review campaign.

For more details, see Question 48 of the updated FAQ.

3. Issuers' financial statements: enforcement of the 2013 financial information

As for previous years, the CSSF has issued Press Release 14/02, indicating to the issuers (falling within the scope of the Transparency Law) who prepare their financial statements in accordance with IFRS, that the CSSF will review for the 2013 fiscal year, among other things, the following issues:

- Impairment of non-financial assets: with a specific focus on the methods and assumptions used to determine the recoverable amount of non-financial assets as well as on the related information provided in the financial information of issuers;
- Fair value measurement and disclosure: with a specific focus on the methods and assumptions used to calculate the fair value of assets and liabilities which IFRS 13 applies on a forward-looking basis to annual periods beginning on or after 1 January 2013;
- Measurement and disclosure of post-employment benefit obligations;
- Financial instruments and disclosure of related risks, particularly relevant for financial institutions: the CSSF will continue to focus on the qualitative and quantitative information provided regarding the exposure to risks related to financial instruments as well as on valuation and impairment issues related to these instruments;
- Disclosures related to significant accounting policies, judgments and estimates: the CSSF expects the issuers to avoid "boilerplate" disclosures in its financial information;
- New standards on consolidation (IFRS 10, 11, 12);
- Other newly issued or modified standards and interpretations that are not yet effective (required by paragraphs 30 and 31 of the standard IAS 8).

Some of these topics have been identified by ESMA as priorities within the scope of the supervision exercised by the national competent authorities, and have already been detailed in its publication dated 11 November 2013.

COMMERCIAL

1. New consumer law

The law of 2 April 2014 amending the Consumer Code in particular and repealing the amended Law of 16 July 1987 (on canvassing, street vending, displaying goods and seeking orders) was published in the *Mémorial* A on 22 April 2014 (the "**Law**").

This Law aims principally at implementing Directive 2011/83/UE of the European Parliament and of the Council of 25 October 2011 on consumer rights, whose purpose is to contribute to the proper functioning of the internal market by approximating certain aspects of the laws, regulations and administrative provisions of the Member States concerning, in particular, distance and off-premises contracts entered into between consumers and traders.

Thus, this Law constitutes a recast of existing European legislation relating to consumer law and particularly to distance and off-premises contracts.

The most important consequence of this implementation is the removal of the total prohibition of door-to-door selling in Luxembourg. In addition, the Law provides for the reinforcement of the trader's requirements relating to distance contracts.

1. Liberalisation of door-to-door selling

The general prohibition of door-to-door selling, (including the sale or the offer of sale of goods, share and securities) is abandoned. Pursuant to the new Article L.222-8 of the Consumer Code, any trader may enter into a contract with a consumer outside a business premises following canvassing or seeking orders.

However, the consumer may refuse to be canvassed. In that case, he can object to the practice by placing a thumbnail, sticker or any other *ad hoc* notice on the front door of his house or the entrance to his apartment building. In addition, the consumer may also express his objection by adding his name to a list of consumers who refuse canvassing or soliciting of orders. If the trader enters into a contract with a consumer despite this objection, the consumer may seek to cancel the contract as long as he can provide evidence of his objection. Additionally, the trader may be ordered to pay a fine of 251 euros to 120,000 euros and the canvassed goods may be seized.

According to the professional bodies consulted during the parliamentary debates, this opt-out system presents two limitations. First, in order not to be solicited or canvassed, the consumer will be required to formally express his objection by choosing one of the two opt-out systems described above. Then, that system needs to be perfectly monitored and managed in order, for instance, for traders to have easy access to the consumer list. In addition, this list shall be updated on a regular basis otherwise the trader, acting in good faith, may risk being accused of canvassing by a consumer who had expressed his objection to such a practice.

2. Reinforcement of the trader's requirements relating to distance contracts

The new Law reinforces the trader's requirements towards consumers. Indeed, the Law increases information requirements and establishes new formal requirements. In addition, the period of withdrawal during which the consumer may exercise his right of withdrawal is extended.

Thus, pursuant to the new Article L. 222-3 of the Consumer Code, prior to the conclusion of a distance contract the trader shall provide the consumer with a certain amount of information such as, in particular, the main characteristics of the goods or services, the geographical address at which the trader is established and the trader's telephone number, fax number and e-mail address where applicable, the arrangements for the payment, delivery, performance and time by which the trader undertakes to deliver the goods or to perform the services. Moreover, the trader shall also provide the consumer with the conditions, time limit and procedures for exercising his right of withdrawal.

The trader shall also comply with new formal requirements relating to: (i) the provision of the above information, (ii) the placing of the order and (iii) the confirmation of the concluded contract.

Pursuant to the new Article L.222-4(1) of the Consumer Code: "The information shall be provided by the trader to the consumer or made available by any appropriate means of distance communication used in plain and intelligible language. Insofar as the information is provided on a durable medium[2], it shall be legible".

Pursuant to the new Article L.222-4(2) of the Consumer Code, "the trader shall ensure that the consumer, when placing his order, explicitly acknowledges that the order implies an obligation to pay". Consequently, if placing an order entails activating a button or a similar function, that button shall be labelled in an easily legible manner mentioning for example "order with obligation to pay".

[2] Durable medium means "any instrument which enables the consumer or the trader to store information addressed personally to him in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored".

Moreover, the new Article L.222-5(1) of the Consumer Code states that confirmation of the concluded contract shall be provided by the trader to the consumer on a durable medium.

Finally, the period of withdrawal for the consumer to exercise his right of withdrawal relating to the distance contract is extended from seven to fourteen days. The new Article L.222-9 of the Consumer Code states that this period of time shall start either from the day of the conclusion of the contract (for services contracts) or from the day on which the consumer acquires physical possession of the goods (for sales contracts). If the consumer has not been informed of this right by the trader, the withdrawal period will be extended to twelve months from the end of the initial period of time of fourteen days. However, if, during this period, the trader informs the consumer of his right of withdrawal, the withdrawal period shall expire fourteen days after the day upon which the consumer receives that information.

2. Over-indebtedness regulation

The Grand-ducal Regulation of 17 January 2014 implementing the law of 8 January 2013 on over-indebtedness (*surendettement*) was published in the *Mémorial A* on 24 January 2014.

The key features of this law were highlighted in our Newsletter of January 2014.

CORPORATE

1. Introduction of the European cooperative society

The law of 10 March 2014 amending the Law of 10 August 1915 on commercial companies in order to implement Regulation (EC) 1435/2003 of the Council of 22 July 2003 relating to the status of a European cooperative society ("**SCE**") was published in the *Mémorial* A on 19 April 2014.

By introducing the SCE, the intention was to ensure equal terms of competition between cooperative societies and other companies notably to facilitate cross-border activities.

The main characteristics of an SCE may be summarised as follows:

- It has a legal personality;
- Its share capital and the number of its members are variable;
- Its main objective is to satisfy the needs of its members and/or the development of their economic and social activities, each member benefiting from the activities of the SCE in accordance with his/her participation;
- Each member must be involved in the activities of the SCE;
- Control must be shared equally between its members; although weighted voting rights may be organised in order to reflect each member's contribution to the SCE;
- There must be no artificial barriers to membership;
- Profits shall be distributed according to the activities carried out with the SCE or used to satisfy the needs of its members;
- In the event of dissolution, the net assets and reserves shall be distributed according to the principle of "disinterested distribution" (*dévolution désintéressée*), i.e. to another cooperative entity pursuing similar aims or general interest purposes.

INFORMATION AND COMMUNICATION TECHNOLOGIES

1. The normal use of a trademark

On 24 January 2014, the District Court of Luxembourg (*Tribunal d'Arrondissement de Luxembourg*) (the "**Court**"), was requested by Zara, internationally well-known in the area of clothing, to order the revocation of the trademarks "Pasta Zara" because of their non-normal use by their holder, a Luxembourgish seller of Italian products.

The claimant relied on Article 2.26.2 of the Benelux Convention on Intellectual Property stating that: "the right to a trademark shall be revoked […] if, following the date of registration within a continuous period of five years, it has not been put to normal use on Benelux territory in connection with the goods or services in respect of which it is registered and there are no proper reason for non-use; in the event of litigation, the courts may place all or part of the burden of proof on the holder of the trademark".

According to the Court, "normal use" shall have the same meaning as "genuine use", as mentioned in the Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States related to trademarks (Justice Court of Benelux, 27 January 1980, affair 80/1).

This notion was explained by the CJUE, which considers that: "a genuine use […] must be understood to denote actual use, consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of goods or services to the consumer […] by enabling him, without any possibility of confusion, to distinguish the goods or services from others which have another origin". In addition, the Court recalled that a "normal use" shall not be interpreted as "a use extended to all the Benelux territory" or "a well-known use" (CJUE, 15 January 2009, C-495/07).

By providing different invoices issued within the last five years and marked with the sign "Pasta Zara" showing that the products were sold in significant quantities during this period, the Court held that the defendant carried out a normal use of its trademarks on the grounds that it submitted sufficient proofs of this use. In this context, the Court dismissed the claim.

TAX

1. OECD global standard on reporting, due diligence and exchange of information

Following an invitation from the G20, the OECD has developed a global standard on automatic exchange of financial account information.

Under the global standard released by the OECD on 13 February 2014, jurisdictions will obtain financial information from financial institutions and automatically exchange that information with other jurisdictions on an annual basis.

The standard has two components: on the one hand, the Common Reporting Standard ("**CRS**") and on the other, the Model Competent Authority Agreement ("**Model CAA**").

The CRS details the reporting and due diligence rules to be imposed on financial institutions. In order to address the issues of international tax avoidance and evasion, the CRS has a particularly broad scope of application in terms of financial information to be reported, financial institutions that need to report and taxpayers covered:

- The financial information to be reported with respect to reportable accounts includes all types of investment income (including interest, dividends, income from certain insurance contracts and other similar types of income) but also account balances and sales proceeds from financial assets;
- The financial institutions that are required to report under the CRS not only include banks and custodians but also other financial institutions such as brokers, certain collective investment vehicles and certain insurance companies;
- Reportable accounts include accounts held by individuals and entities (which include trusts and foundations), and the standard includes a requirement to look through passive entities to report on the individuals that ultimately control these entities.

The Model CAA will link the CRS and the instrument that will serve as a legal basis for the automatic exchange of information. Different legal frameworks already exist, such as the equivalent of Article 26 of the OECD Model Tax Convention in bilateral tax treaties or the Multilateral Convention on Mutual Administrative Assistance in Tax Matters. The Model CAA can be executed within these frameworks in order to activate the automatic exchange of information between the participating jurisdictions.

During the 22-23 February 2014 meeting in Sydney, Australia, the G20 finance ministers endorsed the standard and declared that they will work with all relevant parties, including financial institutions, to detail its implementation plan at its September meeting.

The G20 members called all the jurisdictions for the early adoption of the standard and to sign the Multilateral Convention on Mutual Administrative Assistance in Tax Matters without further delay. To date, more than forty countries have committed themselves to the early adoption of the Common Reporting Standard through a joint statement. On 29 May 2013 Luxembourg signed the Multilateral Convention, but has not come out in favour of an early adoption.

2. Automatic exchange of information

1. Mandatory automatic exchange of information

The law of 26 March 2014 implementing article 8 of Council Directive 2011/16/EU dated 15 February 2011 on administrative cooperation in the field of taxation was published in the *Mémorial A* on 31 March 2014.

The key features of this Directive were highlighted in our Newsletter of January 2014.

2. Bill to implement the automatic exchange of information procedure under the Savings Directive

As announced in April 2013, Luxembourg will cease to apply the 35% withholding tax imposed under the European Savings Directive (Council Directive 2003/48/EC of 3 June 2003) and will proceed with the automatic exchange of information procedure with respect to savings income as of 1 January 2015.

On 18 March 2014, a bill of law No. 6668 was submitted to the Luxembourg Parliament. This bill amends the Laws of 21 June 2005 and 23 December 2005 on the taxation of savings in order to implement the automatic exchange of information on savings income under the Directive. These amendments will not affect Luxembourg residents who will continue to benefit from a final withholding tax of 10% on interest.

3. European Council adopted an extended version of the Savings Directive

On 24 March 2014, the European Council adopted the Council Directive amending the Directive 2003/48/EC on taxation of savings income in the form of interest payments (FISC 244).

The key measures, whose adoption should close the existing loopholes, are as follows:

- Expansion of the definition of interest payments in order to cover (i) financial instruments that generate substantially equivalent income, (ii) benefits from life insurance contracts, if the contract contains a guarantee of income return or whose performance is linked by more than 40% to income from debt claims or equivalent income, (iii) income and equivalent income from all investment funds, irrespective of their legal form and how they are placed with investors;
- Introduction of a look-through approach in order to avoid the application of the Savings Directive being circumvented through artificial channelling of an interest payment via an entity or a legal arrangement which is not subject to effective taxation and which is established outside the territorial scope of the Directive. The Directive includes under Annex I an indicative list of categories and legal arrangements that are considered not to be subject to effective taxation;
- Extension of the concept of paying agent upon receipt to entities and legal arrangements that have their place of effective management within a EU Member State and which are not subject to effective taxation. Again the objective is to avoid the application of the Savings Directive being circumvented by using an interposed entity or legal arrangement. The Directive includes under Annex II an indicative list of entities and legal arrangements which are considered not to be subject to effective taxation.

Luxembourg's consent to the enlargement of the scope of the Directive was subject to sufficient assurances from the European

Commission that Switzerland, Liechtenstein, Monaco, Andorra and San Marino will adopt equivalent measures by the end of the year.

The EU Member States must transpose the Directive into their domestic laws by 1 January 2016 and the new measures will be applicable as of 1 January 2017.

3. Reduction of net wealth tax

On 28 March 2014, the Luxembourg direct tax authorities (*Administration des contributions directes*) released a circular letter I. Fort. n°47 (the "**Circular**") clarifying the new rules applicable to the reduction of net wealth tax in the case of creation of a specific reserve following the modifications introduced by the Budget Law 2013 on paragraph 8a of the net wealth tax law.

Under this regime, a resident corporate taxpayer may benefit from a net wealth tax reduction if (i) it creates a special blocked reserve before the end of the following fiscal year, and (ii) it maintains that reserve on the balance sheet for the five following fiscal years. The net wealth tax reduction corresponds to one fifth of the reserve created.

The Circular confirms that the net wealth tax reserve may be created either through the allocation of profits or by other freely distributable reserves.

Nevertheless, the net wealth tax reduction is (i) limited to the amount of the corporate income tax (including the unemployment fund surcharge and prior to any tax credit but excluding the municipal business tax) due for the same fiscal year, and (ii) as from the fiscal year 2013, the reduction cannot be obtained for the amount of the minimum corporate income tax (see our Newsletter of October 2013).

In the case of a consolidated tax group (*intégration fiscale*), the amount of the net wealth tax reduction cannot exceed (i) the amount of the corporate income tax (including the unemployment fund surcharge and prior to any tax credit but excluding the municipal business tax) due by the group, and (ii) as from the fiscal year 2013, no net wealth tax reduction is granted up to the amount of the minimum tax that would be due on a stand-alone basis by each company of the group if there were no consolidated tax group.

Furthermore, taking account of recent case-law, the Circular confirms that in the case of migration of a Luxembourg corporate taxpayer into another EU Member State before the end of the five-year period, the net wealth tax reduction will not be affected (*Tribunal administratif*, n°27380a, 1 October 2013).

4. Increase of the VAT rates

The Prime Minister has confirmed that the main Luxembourg VAT rates are to be increased by 2% with effect from 1 January 2015, as follows:

- the normal rate of 15% is to be increased up to 17%;
- the intermediary rate of 12% is to be increased up to 14%; and
- the reduced rate of 6% is to be increased up to 8%.

The 3% rate applied on basic necessary product will not be increased.

Even after this increase, the Luxembourg normal rate will remain the lowest normal VAT rate within the European Union.

5. Tax treaties news

1. Russian Federation

In a letter dated 14 January 2014, the Russian Ministry of Finance, together with the Federal Tax Service, clarified the conditions to be met regarding the certificates of tax residence for the purpose of application of the double tax treaties concluded by Russia and other countries.

More specifically, the certificate of residence must provide the name of the taxpayer, the period for which the tax residency is confirmed, the applicable tax treaty and the signature of the foreign representative competent authority. The Ministry of Finance specified that although such certificates should be apostilled, there are some states for which an apostille is not required, such as Latvia, Switzerland and Luxembourg.

On 11 March 2014, the Russian Ministry of Finance added in another letter that the certificate of tax residence must confirm the tax residence at the moment the income is paid.

2. Democratic Socialist Republic of Sri Lanka

The conditions necessary for the entry into force of the new double tax treaty and its protocol concluded between Luxembourg and Sri Lanka on 31 January 2013 having been fulfilled on 12 March 2014, the foregoing agreements entered into force on 11 April 2014 and will be effective as of 1 January 2015.

See our Newsletter of October 2013 on the key features of this treaty.

3. Lao People's Democratic Republic

The conditions necessary for the entry into force of the new double tax treaty and the exchange of letters between Luxembourg and Laos signed on 4 November 2012 having been fulfilled on 19 February 2014, the foregoing agreements entered into force on 21 March 2014 and will generally apply from 1 January 2015.

This subject was mentioned in our Newsletter of October 2013.

4. Kingdom of Saudi Arabia

On 31 March 2014 the Saudi Arabian cabinet approved the Luxembourg-Saudi Arabia double tax treaty and its protocol signed on 7 May 2013. Details of this approval are not available yet but will be highlighted in a later edition, once available. Please also see our Newsletter of October 2013 on this topic.

5. Republic of Slovenia

The amending protocol signed on 20 June 2013 to the Luxembourg-Slovenia double tax treaty signed on 2 April 2001 was approved by the Slovenian government on 3 March 2014. It has been submitted to the National Assembly for approval. Details of this approval will be reported in a later edition, once available.

6. Republic of Mauritius

On 28 January 2014, the Luxembourg Minister of Finance and the ambassador of Mauritius signed an amending protocol to the Luxembourg-Mauritius double tax treaty signed on 15 February 1995. This amending protocol contains the OECD standard of exchange of information provision.

7. Principality of Andorra

On 14 January 2014, a double tax treaty was initiated between the Grand-Duchy of Luxembourg and Andorra.

8. Fiji

As a result of the recent press release from the government of Fiji dated 31 March 2014, Fiji has announced its intention to negotiate and sign a double tax treaty with Luxembourg.

6. FATCA

On 28 March 2014, an intergovernmental agreement (the "**Agreement**") was signed between the governments of the Grand-Duchy of Luxembourg and of the United States of America to implement the United States Foreign Account Tax Compliance Act ("**FATCA**").

This Agreement is based on the intergovernmental agreement drafted by the US Treasury, and more precisely on the Model 1 and its annexes. For more details, please refer to our Newsletter of June 2013.

It should enter into force before 30 September 2015. In this respect, the Luxembourg tax administration (*administration des contributions directes*) has launched two working groups to deal with (i) the general issues and (ii) the technical issues surrounding the implementation of the Agreement into Luxembourg domestic law.