

Theme	Source of law	Object / Date of application	Impact / Comments
PAST CHANGES			
1. Transfer Pricing	Article 56 of the Luxembourg Income Tax Law (LIR) and paragraph 171 <i>Abgabenordnung</i>	Introduction of the at-arm's-length principle in Luxembourg legislation and requirement to document Since 1 January 2015	<ul style="list-style-type: none"> - Tax positions taken in tax returns should be at-arm's-length and underpinned by TP documentation (NB: so far this obligation only existed for transactions falling in the scope of the Circular letter LIR n° 164/2 on intra-group financing transactions) - Detail of documentation is a balance between risk and costs and a Grand-Ducal Decree regarding the documentation is expected
	Article 56 Bis LIR	Formalization of the OECD Guidelines that have been revised further to actions 8 – 10 of the BEPS Action Plan Since 1 January 2017	Luxembourg companies rendering services for which a remuneration is received in a controlled transaction (a transaction between associated entities) should determine the level of that remuneration on the basis of a comparability analysis, i.e. compare the controlled transaction with an uncontrolled transaction (value chain, what is the role of the parties, real intentions of the parties, etc.). The new article 56 Bis LIR describes such analysis and merely complements article 56 LIR. Hence this may not be seen as a change to the Luxembourg position towards transfer pricing.
	Circular Letter LIR n° 56/1 – n° 56/1 Bis on the tax treatment of companies engaged in intra-group financing transactions	Replacement of the old Circular Letters LIR n° 164/2 and 164/2 Bis Since 1 January 2017 NB 1: This only applies to companies granting	<p>The Circular letter LIR n° 164/2 needed to be adapted further to the new article 56 Bis LIR, in particular in view of the minimum equity requirements. The main features are as follows:</p> <ul style="list-style-type: none"> - Comparability analysis; - Functional analysis; - Risk and equity analysis to determine the amount of equity whereby a distinction is made between companies with a "bank" profile (Basel III regulations may be applied and in such case a remuneration of 10% of such equity is accepted) and other entities (case-by-case assessment) - Substance – board members should be able to control the risk and to make sure that the company can bear the risk - Simplification rule for pure intermediary companies : remuneration

		<p>loans to intra-group companies</p> <p>NB 2: Affected companies have time until 31 December 2017 to comply</p>	<p>of 2% on the total lending volume but compliance with substance rules and information will be exchanged with foreign tax authorities (NB: the purpose is to penalize such companies and thus a proper comparability analysis is encouraged)</p>
2. Hybrid mismatches	Article 166 LIR	<p>Anti-hybrid rule as introduced by the revised EU Parent Subsidiary Directive (EUPSD)</p> <p>Since 1 January 2015</p>	<ul style="list-style-type: none"> - Only in an EU context - Receiving country should not apply the dividend exemption if deduction in source country
3. General Anti-Abuse Rule (GAAR)	Article 166 LIR Article 147 LIR	<p>GAAR as introduced by the revised EUPSD</p> <p>Since 1 January 2015</p>	<ul style="list-style-type: none"> - Only in EU context - If interposition company is solely to benefit from the EU PSD dividend exemption of CIT (art 166 LIR) or WHT (art 147 LIR), exemption will be denied by Luxembourg
4. Tax losses carry forward	Article 114 LIR	<p>Limitation of tax losses carry forward to 17 years</p> <p>As of fiscal year 2017</p>	<ul style="list-style-type: none"> - No impact on tax losses accumulated till 31 December 2016 - May ultimately have an impact on the recapture of previously deducted expenses upon the realisation of capital gains under the participation exemption regime (remote risk – only if eligible investments are disposed of more than 17 years after acquisition)

5. Corporate Income Tax (CIT) rates	Article 174 LIR	<ul style="list-style-type: none"> - CIT rate 19% (fiscal year 2017) - CIT rate 18% (fiscal year 2018) 	<ul style="list-style-type: none"> - Aggregate rate (Luxembourg-City): 27.08% - Aggregate rate (Luxembourg -City): 26.01%
6. Net Wealth Tax (NWT) rates	Paragraph 8 <i>Vermögenssteuergesetz</i> (VStG)	<p>Rate of 0.05% introduced for portion of unitary value exceeding € 500,000,000</p> <p>As of 1 January 2016</p>	
7. NWT flat tax	Paragraph 3 VStG	<p>Introduction of minimum NWT flat tax (replacing the minimum flat CIT)</p> <p>As of 1 January 2016</p>	<ul style="list-style-type: none"> - Minimum flat CIT was abolished as of fiscal year 2016 and replaced by the minimum flat NWT - Securitization vehicle and SICAR subject to minimum NWT flat tax
	Paragraph 8 VStG	<p>Increase minimum NWT to € 4,815 p.a. for companies having financial fixed assets exceeding 90% of the balance sheet total</p> <p>As of 1 January 2017</p>	<p>If a company has a balance sheet total of less than €350,000, the minimum NWT is equal to € 535 p.a.</p>

8. Exchange of information (EOI)	FATCA - Law of 24 July 2015	Implementation of the Model 1 Luxembourg – US intergovernmental agreement of 28 March 2014 in Luxembourg law As of 1 August 2015	<ul style="list-style-type: none"> - First EOI on fiscal year 2014 with the Luxembourg tax authorities before 30 June 2015 (extended until 31 August 2015) - Second EOI on fiscal year 2015 with the Luxembourg tax authorities before 30 June 2016 - The circular letters ECHA - n°2 and ECHA - n°3 have been issued by the Luxembourg tax authorities to ensure proper implementation
	DAC 2 – Law of 18 December 2015	Introduction Common Reporting Standard (CRS) in Luxembourg law As of 1 January 2016	<ul style="list-style-type: none"> - First EOI on fiscal year 2016 with the Luxembourg tax authorities before 30 June 2017 - First EOI on fiscal year 2016 by the Luxembourg tax authorities before 30 September 2017 - The circular letter ECHA – n°4 has been issued by the Luxembourg tax authorities - Grand-Ducal Decree of 24 March 2017 has released the CRS list of reportable jurisdictions (48 to date)
	DAC 3 – Law of 23 July 2016	Exchange of rulings with EU Member States and the European Commission As of fiscal year 2016	<ul style="list-style-type: none"> - For advance tax and pricing agreements concluded or amended after of 31 December 2016 - Retroactive dispositions for advance tax and pricing agreements concluded since 1 January 2012 - Tax Form 777 to be completed

	DAC 4 - Law of 13 December 2016	Country-by-Country Reporting - transposition of Action 13 BEPS Action Plan Applicable as of fiscal year 2016 Deadline for first notification : 31 March 2017	<ul style="list-style-type: none"> - Luxembourg companies being the ultimate parent of a group of companies with consolidated group revenue of € 750 million p.a. are subject to reporting obligations. - A Luxembourg company can be obliged to notify that it will be the reporting entity even if not the ultimate parent under a surrogate - and a secondary system (e.g. the ultimate parent's jurisdiction has not introduced Country-by-Country Reporting in its legislation.)
FUTURE CHANGES			
1. Anti – Tax Avoidance Package	Anti-Tax Avoidance Directive - "ATAD 1" – adopted by the European Commission on 12 July 2016	Coordinated introduction of the OECD recommendations in the field of BEPS on an EU level to facilitate introduction in the individual member states To be implemented by the EU Member States before 31 December 2018 Application as of 1 January 2019	<ul style="list-style-type: none"> - Action 2: hybrid mismatches: only in a EU context and for hybrid instruments, hybrid entities and EU permanent establishments of non-EU entities – outcomes : double deduction (D/D) or deduction/non-inclusion (D/NI) (partially implemented through the anti-hybrid rule in article 166 LIR following the revised EUPSD) - Action 3: CFC rules: taxation of foreign non-taxed income realised by a subsidiary that has not been distributed yet based on a look-through approach – no implementation yet but impact for holding companies is limited given the subject-to-tax condition embedded in the participation exemption regime - Action 4: Interest deduction limitation to 30% of EBITDA - no impact on financing companies since the limitation concerns the "net" finance expenses + the 85/15 debt/equity ratio ratio is a partial implementation - Action 6 : anti-treaty shopping : GAAR in article 147 and 166 LIR following revised EUPSD to be extended to treaty situations (not only EU context) - Introduction of exit tax upon migration of companies – tax deferral of 5 years possible if migration within the EU and thus the recently introduced unlimited tax deferral to countries with which Lux has an EOI agreement needs to be amended

	<p>"ATAD 2" – proposal by the European Commission on 21 February 2017</p>	<p>Extension of hybrid mismatches materially and geographically</p> <p>Implementation before 31 December 2019</p> <p>Application as of 31 December 2020</p> <p><u>But first:</u> ATAD 2 should be voted by the European Parliament</p>	<ul style="list-style-type: none"> - Action 2 – Hybrid mismatches extended to hybrid transfers, hybrid PE structures, imported mismatches, dual resident mismatches, reverse hybrids and additional outcomes (i.e. Non-taxation / Non-Inclusion(NT/NI) and Double Tax relief (DTR)) - NB: hybrid mismatches involving non-EU jurisdictions will be captured as well. Thus in case a tax exemption or long-term tax deferral is obtained in a jurisdiction that holds a hybrid instrument issued by a Luxembourg company, the deduction of the interest and redemption premiums should be denied by Luxembourg. - It should be kept in mind that one of the main conditions for Luxembourg to participate in the BEPS project is the guarantee of a level playing field.
<p>2. Multilateral Instrument</p>	<p>MLI – OECD</p>	<p>BEPS Action 15 : Instrument allowing the individual governments to quickly align their bilateral tax treaties with the anti-BEPS standards</p> <p>Published on 24 November 2016</p> <p>Open for signature as of 31 December 2016 (formal signing ceremony in June 2017)</p>	<ul style="list-style-type: none"> - Signed by Luxembourg and more than 100 other jurisdictions - Jurisdictions have to notify the OECD which tax treaties they would like to amend under the MLI - Several anti-BEPS measures are covered : avoidance of PE (action 7), hybrid mismatches (action 2), anti-treaty abuse (action 6) (limitation of Benefits provisions, Principal Purpose Test clause) and improvement of dispute resolution (action 14) - Luxembourg has not taken a position yet but it should at least implement the Principal Purpose Test clause and the mutual agreement procedure - Ordinary ratification process will have to be followed to implement the MLI in Luxembourg - After ratification, Luxembourg needs to provide a list of covered treaties and options