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EDITORIAL

Greetings!

As we turn the page from summer, we are pleased to present our latest Insights, highlighting key developments shaping the tax landscape.

Focusing first on Luxembourg, we delve into significant legislative updates. We analyse a new draft law introducing a start-up tax credit for individuals, a key incentive aimed at boosting innovation and economic diversification.

Our analysis extends to the long-awaited Luxembourg property tax reform, detailing its objectives, the proposed new valuation model, and the introduction of a land mobilisation tax aimed at addressing the country's housing shortage.

Furthermore, we provide insights into the draft law transposing the DAC9 directive and Pillar Two rules, which establishes standardised reporting requirements, clarifies filing obligations for Luxembourg entities, and sets out the framework for the automatic exchange of top-up tax information.

We also turn our attention to the draft law on carried interest, which confirms the existing framework while introducing clarifications and innovations aimed at strengthening Luxembourg's competitiveness and providing greater certainty for carried interest holders.

Rounding off our Luxembourg coverage, we offer an overview of the country's evolving double tax treaties network, highlighting recent treaties and protocols that reinforce legal certainty for cross-border investors and align with international tax standards.

At the European tax level, we provide a comprehensive overview of recent EU tax developments, covering the Danish Presidency's priorities, reforms of the Directive on Administrative Cooperation (DAC), the (lack of) progress on initiatives such as the Transfer Pricing, BEFIT and the Unshell Directive proposals, the Pillar Two and global minimum tax framework, corporate tax simplification measures, the proposed Corporate Resource for Europe (CORE), and incentives for start-ups and scale-ups.

From the Middle East, we explore the United Arab Emirates' new guidance on the mutual agreement procedure, providing businesses with a clear framework to resolve cross-border tax disputes, including transfer pricing and jurisdictional issues, in line with international tax standards.

We hope you enjoy reading our Insights.

The ATOZ Editorial team

Draft law introducing a new start-up tax credit for individuals as from 2026

OUR INSIGHTS AT A GLANCE

- Earlier this year, a legislative proposal introducing a new tax credit to encourage individuals to invest in young innovative companies was presented to Parliament.
- The draft law forms part of Luxembourg's broader strategy to foster innovation, entrepreneurship, and economic diversification.
- Strict eligibility conditions for both investors and start-up entities have led to formal objections from the Council of State, which are examined in this article.
- If adopted before year-end, the start-up tax credit would apply as from the 2026 tax year and could become a key instrument to mobilise private capital and strengthen Luxembourg's start-up ecosystem.

On 4 April 2025, the Luxembourg Government approved draft law No. 8526 ("**Draft Law**"). This legislative proposal aims to introduce a new fiscal incentive, a tax credit specifically designed to encourage individuals to invest in young innovative companies (the "**Start-Up Tax Credit**"). This new Start-Up Tax Credit, if adopted, would apply as from the 2026 tax year.

This initiative, part of a broader national strategy to boost innovation, entrepreneurship, diversification, and competitiveness of the Luxembourg economy, is intended to encourage individuals to invest in young innovative companies (the "**Start-Up Entity**").

To benefit from the Start-Up Tax Credit, taxpayers must be tax residents or assimilated non-resident individuals (the "**Investors**") who invest in and hold, for an uninterrupted period of a minimum of three years, shares directly in an entity qualifying as Start-Up Entity.

In this article, we outline the conditions that must be fulfilled by both the Investors and the Start-Up Entity in order to benefit from the Start-Up Tax Credit, as well as the rules governing the determination of the Start-Up Tax Credit amount.

Background

The Start-Up Tax Credit proposed under the Draft Law is designed to incentivise private investment in the early stages of young innovative businesses. This aims to address the structural difficulties these entities face in accessing funding, especially during the critical early years of their development. The Draft Law is consistent with both national policies, as outlined in the 2023-2028 coalition agreement "*Lëtzebuerg fir d'Zukunft staërken*", and European-level reflections stemming from the Draghi and Letta reports, which emphasise the importance of developing local investment ecosystems for start-ups.

Through this Draft Law, the government seeks to mobilise private savings, including those of so-called "business angels", to reinforce the innovation economy. Similar tax schemes already exist in countries like the UK (Enterprise Investment Scheme), Germany (INVEST program), and Belgium (Tax Shelter for Start-ups), demonstrating the feasibility and relevance of such a fiscal approach.

The Draft Law, though still under parliamentary discussion and pending amendments, particularly in light of formal objections raised by the Council of State, has already attracted significant attention from stakeholders.

Conditions to be fulfilled by the Investor

Eligible Investors and investment structures

According to the Draft Law, the Start-Up Tax Credit is reserved for Investors that are individual taxpayers, whether they are resident or assimilated non-resident, subject to Luxembourg personal income tax.

Investments must be made directly into the share capital of qualifying Start-Up Entity through cash contributions in exchange for new fully paid-up shares.

To avoid situations of double benefit, the Start-Up Tax Credit is not granted to a taxpayer who invests in the Start-Up Entity through a business, even if the taxpayer exploits such business on an individual basis.

Participation through fiscally transparent vehicles

Indirect investment methods are explicitly excluded from the benefit of the Start-Up Tax Credit: any participation through fiscally transparent vehicles such as SCS (*Société en Commandite Simple*), SCSp (*Société en Commandite Spéciale*), or SC (*Société Coopérative*) is thus not eligible. As presented in the Draft Law, this exclusion aims to preserve traceability and ensure that the benefit targets genuine at-risk capital contributions.

However, the Council of State issued a formal opposition on this point, arguing that it infringes the Luxembourg Constitution by treating similar situations unequally without objective justification. From a tax law perspective, transparent vehicles are fiscally neutral, and the income is taxed directly in the hands of the individual partners. Consequently, there is no reason to deny the benefit to investors acting through such structures when the fiscal result is identical.

Moreover, this limitation fails to account for market realities. In the venture capital ecosystem, many business angels invest through syndicates or pooling vehicles, especially to diversify risk or for administrative efficiency. Therefore, the exclusion of these structures could significantly hinder the effectiveness of the regime and contradict the underlying policy objective.

A formal opposition by the Council of State implies that the government must either introduce amendments to the Draft Law or submit the unamended version to Parliament for a vote. In the latter case, the Council of State will not waive the requirement for a second constitutional vote.

Start-up employees or founders

In addition, the Investor must not be employed by the Start-Up, as defined by Luxembourg labour law, or be one of its founders within the meaning of the Law of 10 August 1915 on commercial companies during the year in which the Start-Up Tax Credit is claimed. This aims to prevent self-dealing or abuse by insiders who could manipulate the scheme for personal gain.

However, the Council of State raised a formal opposition also on this element of the Draft Law. It notes that founders and early employees are often key actors in innovative enterprises, especially in their formative years. These individuals typically take on substantial personal and financial risk, and excluding them from a regime designed to support risky investment seems paradoxical. The Council therefore suggests a more nuanced approach, possibly allowing such individuals to benefit within certain limits or under specific safeguards.

Conditions regarding the investment

In order to benefit from the Start-Up Tax Credit, the Investor must invest in a Start-Up Entity directly and acquire new shares or securities representing the share capital of that entity either at the moment of the incorporation of the Start-Up Entity or upon an increase of the share capital of the Start-Up Entity.

The shares must be fully paid up in cash by the end of the tax year during which the acquisition took place and for which the Start-Up Tax Credit is claimed. If the shares are only fully paid up during the subsequent year, the taxpayer will not be entitled to the Start-Up Tax Credit for this investment.

The Draft Law determines eligibility based on the date of full capital payment, not subscription. This means that an investment subscribed in December but paid in January would be deferred to the next fiscal year. This could potentially disqualify investors, depending on the evolution of the company's status. Both the Chamber of Commerce

and the Council of State find this rigidity counterproductive and recommend a more flexible rule, such as a 12-month window following subscription.

Qualifying investment thresholds

To ensure that only substantial investments benefit from the tax credit, the Draft Law sets a minimum investment threshold of EUR 10,000. This amount is assessed individually for each Investor and per Start-Up Entity. It also imposes an upper cap on the ownership stake: the Investor may not acquire more than 30% of the share capital of the Start-Up Entity. Moreover, a single Start-Up Entity may not receive more than EUR 1.5 million in total qualifying investments under the regime.

However, several concerns arise. First, the 30% cap is vague in its application, especially in case of dilution or post-subscription capital increase. The Council of State recommends clarifying the methodology used to calculate ownership thresholds, including how indirect holdings are treated, and how breaches are to be remedied or penalised. Finally, the EUR 1.5 million ceiling per Start-Up Entity, though likely intended to avoid over-concentration of aid, may limit the attractiveness of the scheme for companies seeking significant early-stage capital. The Chamber of Commerce suggests revisiting this cap, particularly for sectors with capital-intensive models.

Holding period

To ensure the investment is truly long-term and supports the business over time, the Draft Law requires that the subscribed shares be held for a minimum uninterrupted period of three years.

The Investor must undertake to hold the shares directly for an uninterrupted period of at least three years as from the end of the tax year for which the Start-Up Tax Credit is claimed. For example, a taxpayer will have to hold a qualifying investment made in 2026 until 31 December 2029.

Failure to comply with the minimum holding period of three years will result in a retroactive adjustment of the taxation (*imposition rectificative*) for the tax year for which the tax credit was granted (and for the subsequent tax year in case the Start-Up Tax Credit has been carried forward[1]). This could happen if the Start-Up Entity shares are sold by the Investor within three years, or in case the Start-up Entity is placed into voluntary liquidation during this period. However, there will be no retroactive adjustment of the taxation in certain exceptional cases exhaustively listed in the Draft Law, such as the bankruptcy of the Start-Up Entity or the death, disability, or permanent incapacity of the taxpayer to work.

Conditions to be fulfilled by the Start-Up Entity

The Start-Up Entity must be a resident collective entity or a PE of a collective entity established in an EEA member state

To be eligible for the Start-Up Tax Credit, the investment must be made in a fully taxable resident collective entity incorporated in the form of a capital company or a cooperative company, or in a fully taxable collective entity that is a resident of a State that is a party to the Agreement on the European Economic Area ("**EEA**"), provided that such entity is subject to a corporate income tax comparable to the Luxembourg corporate income tax and has a domestic permanent establishment ("**PE**").

To be eligible, the Start-Up Entity receiving the investment must be:

- A capital company or cooperative (e.g., SA, Sàrl, SCA);
- Fully subject to Luxembourg corporate tax, or subject to an equivalent tax regime in another EEA member state and operating via a Luxembourg PE.

The Start-Up Entity must have been incorporated for a period not exceeding 5 years

The Start-Up Entity must have been incorporated for no more than five years at the end of the tax year for which the Start-Up Tax Credit is claimed (i.e., as of 31 December of the year for which the Start-Up Tax Credit is claimed, regardless of whether the Start-Up Entity has a divergent financial year-end).

[1] See below about this.

The Start-Up Entity must meet an employee number threshold and a total assets or annual turnover threshold

The Start-Up Entity must:

- employ fewer than 50 employees (the "**Employee Criterion**"); and
- have total assets or an annual turnover not exceeding EUR 10,000,000 (the "**Size Criterion**") as at the end of the financial year ending during the tax year for which the Start-Up Tax Credit is claimed, i.e., 31 December (in the case of a financial year aligned with the calendar year) or another date (in the case of a divergent financial year – for example, if the financial year ends as of 30 June each year, the criteria are to be assessed as of 30 June N for the tax year N).

If the Start-Up Entity is part of a group, the Employee Criterion and the Size Criterion must be met at group level and certified by a statutory auditor (*réviseur d'entreprises agréé*) or a chartered accountant.

Where a group is involved, all entities forming part of the group must, at the end of the tax year in respect of which the Start-Up Tax Credit is claimed, have been incorporated for less than five years. A group means the Start-Up Entity and its related enterprises as defined by the Draft Law.

The Draft Law introduces a bespoke definition of "related enterprises" for the purpose of determining whether a company meets the SME criteria on a consolidated basis. However, this definition is considered by the Council of State as legally fragile, and thus it formally opposed this provision in its current form. It departs from the standard definitions found in the Law on Commercial Companies and the Luxembourg Income Tax Law, leading to interpretative uncertainty. In particular, the concept of indirect control is undefined, and its application could vary from one case to another.

In this respect, the Council of State urges alignment with established legal standards or, at the very least, the introduction of precise criteria and examples, without which legal certainty for both companies and investors is compromised.

Conditions regarding the innovative activity carried out by the Start-Up Entity

In order for the investment to be eligible for the Start-Up Tax Credit, the Start-Up Entity must carry on an innovative activity. An activity is considered to be innovative when the following cumulative conditions are met:

- **At least two individuals work on a full-time basis for the Start-Up Entity**. These individuals are not required to be employed under labour law so that an independent director may be considered for the purpose of verifying this criterion provided that they work on a full-time equivalent basis for the Start-Up Entity. However, external service providers such as consultants cannot be taken into account for the purposes of this criterion.

- **The Start-Up Entity has incurred research and development ("R&D") expenses**, such as personnel and equipment costs, representing at least 15% of its total operating expenses during at least one of the three financial years preceding the tax year for which the Start-Up Tax Credit is claimed. R&D refers to systematic efforts undertaken to increase the knowledge and to apply this knowledge to develop new applications, whether in the form of products, services, processes, methods, or organizational structures.

The Chamber of Commerce suggests aligning the R&D intensity criterion with EU Regulation 651/2014, which sets a 10% threshold. This change would broaden access to the scheme without undermining its purpose. It also notes that in many early-stage companies, R&D is conducted by founders or management rather than designated R&D teams. According to the Chamber of Commerce, their contributions should be considered in the cost base to reflect the true innovative character of the company.

Sectoral Exclusions

The Draft Law contains a list of exclusions for certain sectors of activity deemed not to meet the innovative character requirement and therefore ineligible for the Start-Up Tax Credit. This criterion is assessed at the moment when the shares or securities in the Start-Up Entity are fully paid-up by the Investor and is not required to be continuously

satisfied during the relevant tax year.

The Draft Law excludes investments in companies operating in certain sectors:

- Law firms;
- Statutory audit firms, approved audit firms, audit companies, or certified accountants;
- Entities whose main corporate object consists of the construction, development, exchange, management, leasing, promotion, enhancement, or disposal of immovable properties or rights over immovable properties, or in the holding of equity interests in companies pursuing a similar object;
- Investment companies in risk capital (*société d'investissement en capital à risque* or "SICARs") ;
- Entities whose securities are admitted to trading on a regulated market within the meaning of the amended Law of 11 January 2008 on transparency requirements for issuers;
- Entities incorporated as a result of a merger or demerger of companies, as defined in the Merger Directive;
- Entities that have made, since incorporation, a dividend distribution or a share capital reduction, except for a capital reduction intended to offset losses. This provision is specifically aimed at preventing the risk of abuse and in any case, the general anti-abuse rule ("GAAR") of §6 *Steueranpassungsgesetz* remains applicable; or
- Entities subject to an unenforced recovery order issued in a previous decision by the European Commission declaring an aid granted to be illegal and incompatible with the internal market. This exclusion is provided to ensure full compliance with the applicable state aid rules.

While these exclusions aim to focus the tax credit on high-risk, high-innovation ventures, they raise issues. The Council of State highlights inconsistencies, such as the exclusion of the certified accountants but not other similar professions. It stresses that any categorical exclusion must be based on objective, proportionate, and justifiable criteria. The Council of State thus formally opposed this provision in its current form and requested that the exclusion be extended to accountants as well.

Furthermore, excluding all dividend-paying entities may inadvertently penalise profitable, well-managed start-ups that use dividends to attract or retain investors. The Council of State suggests refining the provision to exclude only abusive practices, rather than legitimate business decisions.

Determination of the Start-Up Tax Credit amount

The Start-Up Tax Credit amounts to 20% of the eligible investment and is capped at EUR 100,000 per Investor per year. If the amount of the Start-Up Tax Credit granted to the taxpayer for a given tax year exceeds the income tax liability due by the taxpayer for that year, the difference between the amount of the tax credit and the tax liability is non-refundable to the taxpayer. This difference may nevertheless be carried forward to the subsequent tax year and deducted, under the same conditions, from the tax liability due for that subsequent tax year.

I. Determination of the eligible investment amount

Total amount invested in the share capital

The 20% Start-Up Tax Credit amount is calculated based on the total amount invested in the share capital of the Start-Up Entity, also taking into account share premium (but excluding amounts that would be recorded in account 115 of the standard chart of accounts). As outlined above, to be eligible for the Start-Up Tax Credit, the total amount invested must reach at least EUR 10,000. The Start-Up Tax Credit is claimed for the tax year during which the shares subscribed by the Investor were fully paid up.

Maximum ownership threshold of 30%

The Investor may not hold more than 30% of the share capital of the Start-Up Entity. If the 30% threshold is exceeded, the exceeding amount is not eligible for the Start-Up Tax Credit. This non-eligible portion of the total investment amount may not be carried forward to a subsequent tax year.

Maximum threshold of EUR 1,500,000 of eligible investments within the Start-Up Entity

The Draft Law provides for a maximum threshold of investments eligible for the Start-Up Tax Credit within the same Start-Up Entity. Only the first total investments of EUR 1,500,000 received from Investors eligible for the credit (excluding, for instance, founders, corporate investors, or

investments that do not exceed the minimum threshold of EUR 10,000) will benefit from the Start-Up Tax Credit.

This threshold must be verified independently of the number of Investors claiming the Start-Up Tax Credit for an investment in the same Start-Up Entity.

II. Determination of the Start-Up Tax Credit amount

20% of the (lower) eligible investment amount

Under the Draft Law, the amount of the Start-Up Tax Credit corresponds to 20% of the lower eligible investment amount resulting from the application of the 30% ownership threshold or the EUR 1,500,000 threshold, as applicable.

Maximum EUR 100,000 per tax year

The total amount of Start-Up Tax Credit that can be granted to a taxpayer for a given tax year, based on all investments made, is limited to a maximum of EUR 100,000. Any amount exceeding EUR 100,000 cannot be carried forward to a subsequent tax year. This threshold is to be considered excluding any carry forward of a Start-Up Tax Credit that may have been obtained for a prior tax year.

Potential carry forward of the tax credit

If the amount of the Start-Up Tax Credit granted to the taxpayer for a given tax year exceeds the income tax liability due by the taxpayer for that year, the difference between the amount of the tax credit and the tax liability is non-refundable to the taxpayer. This difference may nevertheless be carried forward to the subsequent tax year and deducted, under the same conditions, from the tax liability due for that subsequent tax year.

Formal condition

To obtain the Start-Up Tax Credit, the taxpayer must attach the following documents to the income tax return for the tax year in respect of which the Start-Up Tax Credit is claimed:

- a certificate issued by the Start-Up Entity no later than two months after the shares have been fully paid up, certifying compliance with the 30% ownership threshold and the EUR 1,500,000 threshold;
- a certificate issued by the Start-Up Entity after the end of the tax year for which the tax credit is claimed, certifying compliance with the eligibility conditions for the Start-Up Entity as detailed above; and
- a certificate issued by an approved auditor or accountant confirming the Start-Up Entity's eligibility conditions as at the end of the tax year.

These requirements, while necessary for oversight, could create administrative burdens. The Chamber of Commerce recommends establishing a centralised labelling process, possibly under the Ministry of the Economy, to pre-approve qualifying companies. The Council of State flags a possible overlap with draft law No. 8314, introducing a certification regime for "young innovative companies". If both regimes adopt distinct definitions and procedures, confusion and legal uncertainty could result. The Council of State recommends harmonizing the two initiatives or recognising a single certification for both schemes. This would enhance legal certainty for investors and streamline the administrative process.

Conclusion

Despite the fact that the Start-Up Tax Credit has a limited scope and strict conditions, this new initiative demonstrates once again the commitment of the Luxembourg Government to the promotion and enhancement of the competitiveness of Luxembourg. The Draft Law must now go through the legislative process before being put to a parliamentary vote, ideally before the end of the year.

Beyond technicalities, the Draft Law represents a strategic tool to mobilise private savings and deepen Luxembourg's entrepreneurial ecosystem. In particular, it aims to create a more attractive environment for high-growth, innovation-driven companies.

Nonetheless, stakeholders stress the need for balance. An overly restrictive framework will discourage participation, especially from experienced investors accustomed to using flexible legal structures. Similarly, misaligned definitions and thresholds may disqualify deserving companies. Ensuring consistency with EU practices, clarity in legal drafting, and procedural efficiency will be key to achieving the Draft Law's objectives.

The Draft Law marks a significant and promising step by the Luxembourg Government to foster innovation through fiscal policy. However, the initial version of the text suffers from a number of legal, constitutional, and practical flaws. The Council of State's formal objections, particularly regarding transparency vehicle exclusions, founder/employee treatment, vague definitions, and sectoral inconsistencies, must be addressed to ensure the Draft Law's enforceability and fairness.

Amendments are therefore expected in the coming weeks or months, potentially including expanded eligibility for indirect investments, refined definitions, alignment with EU R&D criteria, and procedural simplifications. If adopted in an improved form, the regime could become a cornerstone of Luxembourg's innovation strategy, boosting early-stage financing while ensuring legal clarity and equity for all stakeholders.

Furthermore, in addition to the specific tax regime for impatriates as well as the profit participation regime already in place, the Government announced the introduction of a new tax regime for stock option plans granted to employees of start-up companies.

Do you have any questions?

ANTOINE DUPUIS
Partner
antoine.dupuis@atoz.lu

MARIE BENTLEY
Chief Knowledge Officer
marie.bentley@atoz.lu

The Luxembourg property tax reform: Where are we going?

OUR INSIGHTS AT A GLANCE

- On 10 October 2022, a draft law was presented to the Luxembourg parliament with the aim of carrying out the awaited reform of the Luxembourg property tax.
- This draft law aims at modernising the property tax and at introducing two new taxes to combat the increasing housing shortage in Luxembourg.
- The draft law introduces, for property tax purposes, a new valuation model of properties that is supposed to be more objective, transparent and fair.
- The draft law also introduces a tax on the mobilisation of land, whose purpose is to encourage the effective construction of housing on the land dedicated to this end.
- The deadlines for the implementation of the reform do not correspond to the emergency experienced by people wishing to find housing in Luxembourg.

Background

In the Grand Duchy of Luxembourg, property tax is one of the oldest taxes, and its reform, which has been part of the political discussion for years, is also one of the longest awaited. The situation of the housing market in Luxembourg is well known: the housing shortage is a challenge and the price of building land rose by almost 137% between 2010 and 2021. This performance is better than that of the Euro Stoxx 50 (+90%), the DAX 30 (+129%) and the CAC 40 (+40%) over the same period, before tax.

The OECD's economic review of Luxembourg, published in July 2019, concluded that housing market pressures include limited use of building land and complex zoning regulations which have pushed up prices and encouraged land speculation. In response, one of the recommendations was to increase the opportunity cost of unused land by reforming periodic taxes on real estate ownership.

On 10 October 2022, a draft law No. 8082 was presented to the Luxembourg parliament with the aim of carrying out the awaited reform of the Luxembourg property tax. The three major axes of this draft law were based on a modernisation of the property tax ("**IFON**") and the introduction of two new taxes encouraging property owners to mobilise building land (i.e.,"**IMOB**") and uninhabited dwellings (tax on the non-occupation of housing or "**INOL**") to combat the increasing housing shortage in Luxembourg. This reform is in line with the philosophy of the OECD's comments. The 2022 draft law on property tax, land mobilisation tax and non-occupancy tax executes and complements the broad lines set out in the coalition agreement 2018-2023.

Since its initial submission to Parliament on 10 October 2022, the original draft law No. 8082 has undergone significant restructuring. It has recently been split into two separate legislative tracks: draft law No. 8082A, addressing IFON and IMOB on the one hand, and draft law No. 8082B, relating to INOL on the other hand. This split was deemed necessary to separate the legislative process, as the INOL depends on draft law No. 8086 relating to the national and municipal registers of buildings and housing. This avoids delaying the adoption of the IFON and IMOB provisions due to dependencies related to INOL.

On 15 July 2025, the Luxembourg Government submitted a series of governmental amendments to draft law No. 8082A (the "**Draft Law**") on IFON and on IMOB. The proposed legislative package seeks to modernise and update the property tax regime while fostering housing development by discouraging speculative land retention.

The reform is explained hereafter.

Who is subject to the IFON and IMOB?

For the purpose of the IFON and the IMOB, the taxpayers are in principle the owners of the taxable property or in the case of division of ownership, the usufructuary (*usufruitier*), the holder of the right to build (*droit de superficie*), or the holder of the right of emphyteusis on 1 January of the tax year concerned.

In the event of a dismemberment of ownership rights, the taxpayer is an usufructuary, an emphyteuta (holder of a long-term lease), or a superficiary (holder of surface rights), and not necessarily the person who owns the parcel.

> Under the initial draft law, the usufructuary and the bare owner shared the tax burden equally in relation to the IMOB in case of all man-made usufructs (that are not legal usufructs) established before the law came into force. The taxation of the bare owner has been abolished following a formal objection by the Council of State, so that only the usufructuary remains liable for the tax, to the exclusion of the bare owner.

In undivided ownership as well as in matrimonial communities, the tax due by each taxpayer is fixed in proportion to his respective share, as shown in the cadastral documentation. In the absence of any indication in the cadastral documentation, the taxpayers are presumed to be liable for tax in equal shares. In co-ownership, the tax due by each taxpayer is fixed in proportion to his share in the common parts, as resulting from the descriptive statement of division of the building or, failing that, the cadastral documentation. In the absence of any indication in the cadastral documentation, taxpayers are presumed to be liable according to equal shares.

Who is exempted?

The Draft Law exempts some public institutions from the IFON. As a result, are exempt from property tax: 1° the State; 2° the municipalities ; 3° the syndicates of municipalities; 4° public promoters within the meaning of Article 16 of the amended Act of 25 February 1979 on housing assistance; 5° foundations and non-profit associations recognised as being of public utility, within the meaning of the amended law of 21 April 1928 on non-profit associations and foundations; 6° legal persons governed by public international law; and 7° approved sports federations and their affiliated clubs.

The Draft Law does not grant any exemption from the IMOB to public institutions. The Government wishes to treat all the private and public actors such as the State, the municipalities, the public institutions on an equal footing in order not to create an infringement of competition law, as both categories of actors operate in a common market, namely housing.

Exemption of investment funds and public promoters repealed

To reinforce legal certainty and ensure equal treatment, the Draft Law repeals tax exemptions previously available to investment funds. It is proposed that investment funds be subject to IFON and IMOB whenever they hold real estate assets under the conditions set out in the Draft Law. Similarly, no exemptions will apply to public promoters such as the State, municipalities, or public institutions.

Properties excluded from the IFON and IMOB scope

Green Zone

Plots or parts of plots located in green zones are, by virtue of the definition of the taxable land, not subject to taxation.

Despite the formal opposition of the Council of State in relation to an IFON exemption of lands located in green zones, the Government does not envisage a taxation of lands in green zones. To justify its position, the Government explains that the Draft Law introduces a new way to assess land value, focusing on how suitable a plot is for building.

Indeed, studies show that buildability and location are the biggest factors influencing land prices. Since green zones are areas where construction is strictly prohibited, they naturally have no building potential.

To put things in perspective, the value of land in green zones is dramatically lower than in areas where building is allowed. For example, in 2021, agricultural land sold for about EUR 460 per are, while residential building plots ranged from EUR 60,000 to over EUR 150,000 per are depending on the municipality. This means buildable land can be worth more than 130 to 320 times as much as agricultural land.

The Government considers that because of this huge difference, comparing the value of buildable and non-buildable land does not make much sense. Yet, the new tax model is based on these very factors.

Exemption for the agricultural and viticultural sector

Under the amended Draft Law, exemptions from both IFON and IMOB are proposed for lands already used for agricultural or viticultural activities, by full-time farmers, during the first tax year of the new regime. However, lands located within localities deemed of particular interest under territorial planning policies; lands not used for these purposes during the first tax year of the new regime; or lands newly zoned as buildable (from former green zones), will not benefit from such exemptions. Even if certain buildable plots are exempt from the IMOB due to agricultural activity being carried out on them, they remain listed in the national register of buildable land. It serves, even in the absence of taxation, as a reminder to holders of rights *in rem* that these plots may become subject to the IMOB once agricultural activity ceases.

New property tax (*Impôt Foncier*, "IFON") computation method

The main objectives of the property tax reform are to eliminate the inequalities generated by the current IFON and to create a new valuation model that will be more objective, transparent and fair. The property tax reform targets "the antiquated nature of the current property tax system". For that purpose, the ambition of the Draft Law is to revalue all lands, ensuring that, in determining the tax base, the proportions of real land value between these lands are respected so that the system is considered as fair, and the tax respects the principle of proportionality and equality before the law.

IFON computation

Each plot of land is annually assigned a base value for IFON purposes, which may be broken down by taxpayer where applicable. The proposed new formula for valuing lands is based on a recognition of factors that are widely recognised as determining the value of a property, namely (1) the reference base value, (2) the geographical location, (3) the development phasing (immediate availability for construction or not), (4) the available surface area, (5) the number of facilities and services available in the neighborhood, (6) the general level of property prices and (7) the shares and portions of rights *in rem* of the tax debtor. To keep up to date the data needed for the evaluation of the land, the data will be re-evaluated periodically - at least every 3 years.

The most important parameter defining the value of a land is its geographical location, and more specifically its distance from the center of Luxembourg. Indeed, studies conducted by the *Observatoire de l'Habitat* have long confirmed that land prices decrease exponentially in proportion to the distance to the capital. It is emphasised that it was decided to consider the travel time to Luxembourg City, and not the travel distance, as this is the main factor in the choice of the location.

The amended Draft Law introduces multiple formulas for calculating the reference base value:

♣ A first distinction is made between the base value of plots ($V_{D,fi}$) – which constitutes the taxable object for IFON – and buildable land, which is taxable under the IMOB. Since the taxable object differs between the two taxes, the tax base for buildable land under the IMOB does not necessarily correspond to the underlying land base used for IFON. Therefore, the use of two separate base values – one for each type of tax – is necessary.
♣ A second distinction is made within buildable lands between serviced buildable land ($V_{D,fvci}$) and non-serviced buildable land ($V_{D,fncvi}$), subject to slightly different calculation formulas, depending on the nature of the land. This distinction is essential because these two types of

buildable land are subject to different tax rates.

According to the Draft Law as amended, the proposed IFON formula is a simple multiplication between a unitary value of the cadastral parcel per tax debtor, based on the sum of the base values of the various plots ($V_{D,p} = \sum_i V_{D,f_i}$) - and no longer a evaluation dating from 1941- reduced by the allowance granted to the tax debtor for a given parcel and a IFON tax rate set by the municipality where the land is located.

The amended Draft Law removes the previously proposed mandatory rate range - between 9% and 11% - for the IFON, thereby reinstating full discretion for municipal councils to set local rates, consistent with the current framework.

Additionally, the IFON will now be calculated per cadastral parcel rather than per plot of land. Both the base value (used to determine the IFON) and the applicable allowance will be expressed in points instead of euros. This change replaces the euro-based valuation from the initial Draft Law with a point-based system to avoid giving taxpayers the impression that they are immediately liable for a monetary payment at the stage of the base value assessment. Moreover, expressing these values in euros could be misleading, as they are not intended to reflect actual market property prices.

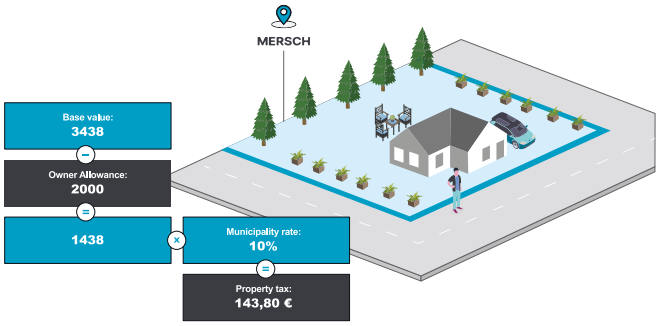
IFON allowance

The property tax reform also introduces a tax reduction on the main residence. As a result, every individual taxpayer will be entitled to a flat-rate allowance of two thousand points (and no longer euros) on the base value of the property on which he has registered his principal abode as at 1 January of the taxable year. However, no allowance will apply if it brings the base value of a property below 500 points for the taxpayer concerned. Unless exempt, taxpayers will thus always be subject to a minimum IFON on the minimum base value of 500 points.

$$IFON = (V_{D,p} - A_{D,p}) * t_{com}$$

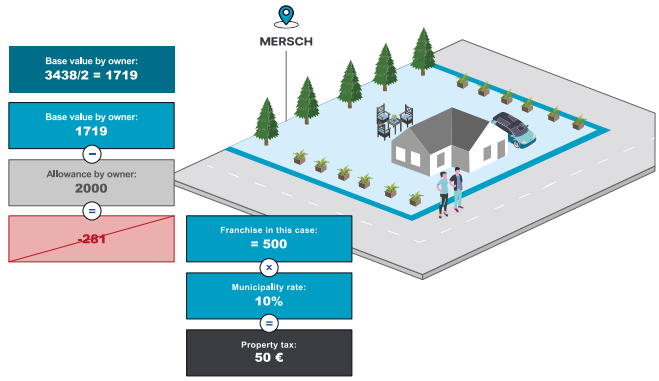
Examples

1 resident-owner : land of 6 acres in Mersch



Source: www.gouvernement.lu

2 resident-owners : land of 6 acres in Mersch



If the tax allowance for the usual residence is welcome, the way it is implemented is surprising. Indeed, the aim of the reform is to implement a fair system with a tax respecting the principles of proportionality and equality in front of the law. However, as the allowance is allocated by taxpayer (i.e., by owner) and not by property, the fairness of the system is not obvious. Indeed, as a result of this system, two owners, resident in their home built on a property valuated at 3438 euros, will pay less (IFON: 500 x 10% x 2 owners = 100) tax in total than a single resident-owner who would reside on the exact same property (IFON: 1438 x 10% = 143.80 euros). In this respect, it seems that the Government applies the same philosophy as the one applicable for the already criticised tax class rates (i.e., class 1, 1a and 2) resulting in higher taxes due by single taxpayers/owners compared to the one due by married taxpayers. In addition, in such example, if one of the 2 owners must leave the residence because of a separation/divorce for example, then the total tax payable rises to 221.9 euros (i.e., 50 + 171.9). Similarly, in a more theoretical case, if there are 3 resident-owners in the house, the total IFON due would

amount to 150 euros (3438/3 – 2000 would be less than 500 euros so the tax due would be 50X3 = 150 euros). Nothing justifies that the IFON amount varies depending on the number of the property's owners. As it is the same land with the same building, the amount of tax should be the same. The property tax is a tax on a land/property and thus the personal situation of the owners should not impact the amount of tax due in total.

As a result, wouldn't it be fairer to apply the tax allowance for residential buildings on the total value of the land/property and not to allocate the allowance to each owner individually? Currently, the level of property tax to be paid depends on the base value of the land, if necessary, broken down between several owners, and then allowances are applied. To better respect the principle of equality and fairness, it should not be the value of the land that is broken down between several owners, but the amount of tax due. The allowance would thus be granted depending on whether the property is assigned to the residence of the owner(s) but would not vary based on the number of owners. In the example above, the IFON due on a house allocated to the residence of at least one of its owners should amount to 143.8 euros in every case (i.e., (3438 – 2000) x10%) and such tax should then be shared amongst the owners proportionately to their ownership rights. Neither the Council of State nor the Government, in its latest amendments to the Draft Law addresses this point.

Introduction of a tax on the mobilisation of land (*Impôt à la mobilisation de terrains*, "IMOB")

Another challenge of this reform is the fight against the notorious housing shortage in Luxembourg. The purpose of the IMOB is to encourage the effective construction of housing on the land dedicated to this end. The IMOB is an innovation and is based on the establishment of a national register of undeveloped land, which lists all land available for construction under the general development plans (PAG).

In a recent contribution, we stated that "[a] low level of property tax reduces the financial burden on property investors who decide to keep properties unused". It was also clear to us that there was a need to "improve the effectiveness of the non-occupation tax to stimulate the rental market and, in the case of long-term vacancies, to encourage the sale of such properties" and to "incentivise (or reduce the barriers to) the sale of vacant buildings or land", which are now the stated objectives of the new national tax on the non-occupation of housing and on the mobilisation of land.

The amended Draft Law introduces a tax on the mobilisation of land, also called IMOB. Contrary to the IFON, the tax on the mobilisation of land will be a national tax to achieve a uniform situation in the country. The IMOB revenue will accrue entirely to the State.

IMOB scope

Under the initial Draft Law, a distinction was made between land immediately suitable for construction and land requiring prior development, such as roadworks and public or shared infrastructure. Land that was too small or irregularly shaped to allow for compliant residential construction was exempt from taxation. Likewise, no tax was applied to land already built upon if it could not accommodate additional structures. However, if a property had enough remaining space to support new construction – even in case of existing building – it was subject to tax unless that space was utilised.

Under the amended Draft Law, land merely deemed technically buildable will no longer fall within the scope of IMOB by default. The scope of the IMOB is now more targeted, applying primarily to:

- Unbuilt lands located in "new district" planning zones (*plan d'aménagement particulier "nouveau quartier"*); and
- Unbuilt lands located in "existing district" planning zones (*plan d'aménagement particulier "quartier existant"*).

The reform seeks to balance the policy goal of incentivising land development with the need to protect ongoing land uses and existing rights.

Under the Draft Law, buildable land is defined based on plots located in areas designated by the general development plan (PAG) and specific development plans (PAP) that allow for the construction of buildings intended, wholly or partially, for residential use, covering at least 25 percent of the gross built-up area. However, the Draft Law introduces exclusions for certain lands based on their legal, planning, or physical constraints. It targets, for example, lands located in zones

where residential construction is either not permitted or only allowed under very limited conditions, portions of land that, although potentially within buildable zones, are rendered unbuildable due to legal or regulatory constraints or technically unserviceable lands.

IMOB computation

Each buildable plot of land is annually assigned a base value for the IMOB, which may be broken down by taxpayer where applicable. The IMOB base value will be calculated on a basis of the same factors as the one used for the IFON computation but will also take into consideration the surface area of the serviced buildable plot and the surface area of the unserviced buildable plot.

In addition, the Government plans to introduce a flat-rate allowance of 3400 euros for each child under the age of 35 (instead of 25 under the initial Draft Law), facilitating intergenerational land transfers. This measure should allow a reasonable size of land for each child to be released from taxation, to enable the future construction of a single-family home. A taxpayer that is under the age of 35 will benefit from the same flat-rate allowance.

$$IMOB = (Vf - Amob) \times Tmob$$

The rate of the IMOB will be progressive and will increase sharply in order to motivate recalcitrant owners to sell or build on their land. For example, the national rates of the **tax on the mobilisation of lands that are immediately constructible** vary from 0% to 450% (0 to 4.5 euros per point) depending on the duration of registration of the land in the national register of undeveloped land at the reference date of the tax year.

In the initial Draft Law, national rates of the **tax on the mobilisation of lands that are not immediately constructible** vary from 0% to 150%, the ceiling rate being applied as from the 20th year of registration in the national register of undeveloped land. The amended Draft Law mentions that these national rates vary from 0 to 9 euros per point, the ceiling rate being applied as from the 18th year of registration in the national register of undeveloped land.

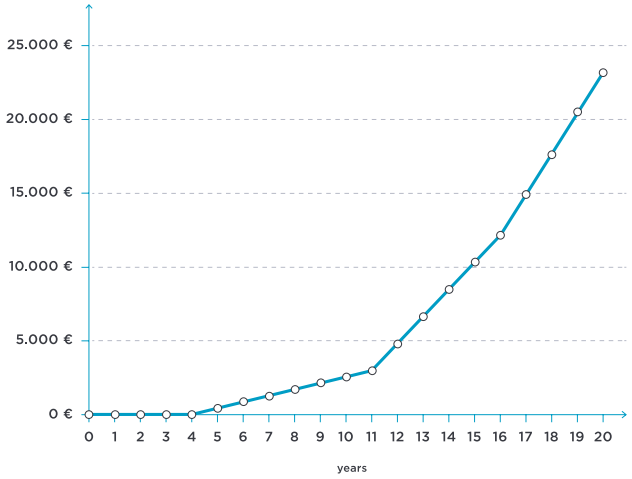
However, we believe there is an error here that requires correction and that the correct range should be from 0 to 0.9 (and not 9) euros per point: to maintain consistency and coherence with the initial Draft Law—where 90% corresponds to the rate applied as from the 18th year—and with the amended Draft Law where 450% was converted into 4.5 euros per point. Otherwise, the maximum IMOB rate would imply a tax of 900%, which is clearly unintended.

In addition, the amended Draft Law suppresses the 120% and 150% rates that were originally applied under the initial draft when land had been registered in the national register of undeveloped land for at least 19 and 20 years, respectively. Since the Government does not say a word about this repeal one can wonder whether this is voluntary or an inadvertent mistake.

National rates of the tax on the mobilisation of lands are in addition inflated by 50% or 100% if the land is located in a priority locality under the terms of the spatial planning policy.

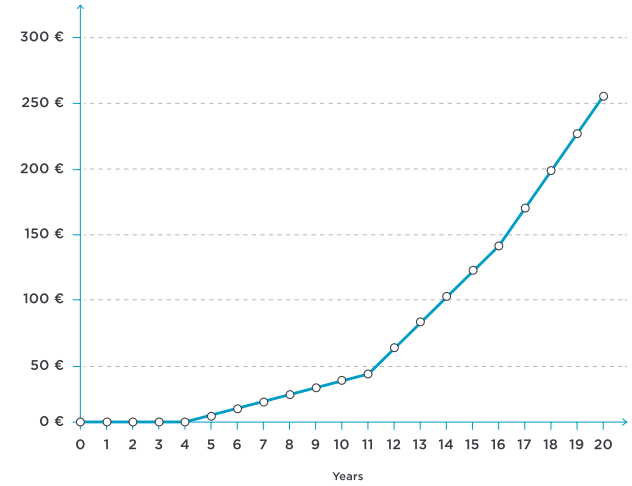
Exemples:

Land of 6 acres in Mersch



years	IFON	IMOB
0	344 €	0 €
1	344 €	0 €
2	344 €	0 €
3	344 €	0 €
4	344 €	0 €
5	344 €	258 €
6	344 €	516 €
7	344 €	774 €
8	344 €	1.031 €
9	344 €	1.289 €
10	344 €	2.579 €
11	344 €	3.868 €
12	344 €	5.157 €
13	344 €	6.446 €
14	344 €	7.736 €
15	344 €	10.314 €
16	344 €	12.893 €
17	344 €	15.471 €
18	344 €	18.050 €
19	344 €	20.628 €
20	344 €	23.207 €

Land of 6 acres in Mersch,
owner with 1 child (‹35 years old)



Years	IFON	IMOB
0	344 €	0 €
1	344 €	0 €
2	344 €	0 €
3	344 €	0 €
4	344 €	0 €
5	344 €	3 €
6	344 €	6 €
7	344 €	9 €
8	344 €	11 €
9	344 €	14 €
10	344 €	29 €
11	344 €	43 €
12	344 €	57 €
13	344 €	71 €
14	344 €	86 €
15	344 €	114 €
16	344 €	143 €
17	344 €	171 €
18	344 €	200 €
19	344 €	228 €
20	344 €	257 €

On the one hand, the longer it takes to build, the higher the rate will be. On the other hand, a 0% rate applies during the first 5 to 10 years depending on whether the land is immediately constructible or not. The taxation of undeveloped plots as from the 10th year is deferred by two years compared to the initial Draft Law, in order to account for the actual time required to develop projects.

Thus, the progressive evolution of the rates over the years increases the incentive to build over time but also gives the opportunity for the holders of the rights *in rem* in the land to carry out construction planning. If a transitional period is appreciated, we can nevertheless regret that if the national register of undeveloped land is effective in 2029 for the entry into force of the draft reform and its application as from 2030, the first tax would only be collected for the 2036 tax year at the earliest (due to the 0% tax rate applicable for at least the five first years). That transitional period should be way shorter: the holders of the rights *in rem* in the land can indeed start to carry out construction planning as from today.

The flat-rate allowance of EUR 3,400 for each child under the age of 35 is also a positive measure that raises questions. The maximum of tax may indeed become due if the land is not mobilised as soon as the children of the taxpayers turn 35, since the applicable rate depends on the duration of registration of the land in the national register of undeveloped land at the reference date of the tax year.

Main procedural amendments

Introduction of a unified tax procedure

The IMOB and the IFON will be established based on the base value assessment (*bulletin de valeur de base*) by which the Administration des contributions directes ("**ACD**") will determine the base value of the property, using data provided by the relevant ministries and public services.

Under the amended Draft law, the *Abgabenordnung* ("AO") is introduced as the harmonised tax procedure for the IMOB and related assessments, excluding IFON assessments which remain governed by municipal law. As a result, the ACD will serve as the single point of contact for the base value assessment (*bulletin de valeur de base*) and the IMOB assessment (*bulletin IMOB*), whereas the IFON assessment remains under municipal jurisdiction.

Digitalisation of notifications and claims procedure

The amended Draft Law also provides that taxpayers can opt for an electronic notification of the base value and IMOB assessments. In such cases, the AO provisions remain applicable and, like for postal notifications, electronic notification is presumed to have been completed on the third working day following the electronic transmission of the assessment.

Given the data-intensive nature of the new valuation model, especially as it underpins tax assessments, the claims procedure against the tax assessments is also being digitalised for the base value and the IMOB. This aims to ensure efficient administration and reduce processing delays.

The amended Draft Law provides that tax claims against the base value or the IMOB assessments must be submitted to the director of the ACD in accordance with the AO. However, by way of derogation from the AO, tax claims must be submitted electronically using a form provided through the "guichet.lu" digital platform.

Failure to do so will result in the inadmissibility of the claim. The ACD shall also notify the director's decision electronically.

Extending the electronic procedure to the IFON is however considered as generating additional costs disproportionate to the benefits gained and thus the use of an electronic procedure has not been fully integrated into the amended Draft Law with regard to IFON.

Under the amended Draft Law, if a correction to a base value assessment affects the amount of IFON or IMOB due for the relevant tax year, revised IFON and IMOB assessments will be issued automatically. However, objections filed against IFON or IMOB assessments may not challenge elements of the base value assessment.

This appears to imply – though it remains somewhat unclear – that once the base value assessment becomes final, it is binding for both taxes. As a result, any tax claim against an IFON or IMOB assessment would be inadmissible if it seeks to contest a base value that has already been definitively established.

Entry into force of the draft reform

This reform is welcome but unfortunately, implementation timeline does not take into consideration the emergency experienced by people wishing to find housing in Luxembourg. Indeed, the law will enter into force on 1 January 2029 and 2030 will be the first tax year.

In this respect, the IFON and the IMOB will be determined on an annual basis. The reference date for determining land, buildable land, base values, tax debtors, exemptions, deductions, and the rates of property tax and land mobilisation tax is set as 1 January of the relevant tax year.

We imagine that constraints linked to the administrative and IT implementation of the reform justify this delay. However, the argument does not work: the Grand Duchy has demonstrated its ability to mobilise about COVID notably as a matter of urgency

Do you have any questions?

JAMAL AFAKIR
Partner, Head of International & Corporate Tax
jamal.afakir@atoz.lu

MARIE BENTLEY
Chief Knowledge Officer
marie.bentley@atoz.lu

Pillar Two and DAC9: New draft law eases filing obligations and clarifies treatment of deferred taxes

OUR INSIGHTS AT A GLANCE

- On 24 July 2025, the Luxembourg Government submitted draft law No. 8591 to Parliament, aiming to transpose the EU Directive 2025/872 (DAC9) into national law and amend notably the existing Pillar Two Law. This legislative update introduces key measures to streamline compliance with the GloBE Information Return requirements under the OECD/G20 Pillar Two framework.
- Key highlights include:
  - Standardised reporting: Introduction of a uniform GIR template aligned with OECD standards, detailing constituent entities, tax computations, and elections made.
  - Filing obligations: Clarification of local vs. centralised filing rules, including fallback obligations if automatic exchange fails.
  - Simplified transitional reporting: Temporary relief for certain jurisdictions through aggregated reporting until mid-2030.
  - Automatic exchange of Information: Establishment of a dissemination framework based on jurisdictions' taxing rights, with strict timelines for data exchange.
  - Rectification and penalties: Procedures for correcting manifest errors and a tiered penalty regime for non-compliance, including misuse of the local filing exemption.
  - Deferred tax clarifications: Implementation of OECD Administrative Guidance to limit recognition of deferred tax assets arising from post-2021 tax planning measures.
- This draft law marks a significant step in aligning Luxembourg's tax transparency framework with evolving international standards and reinforces the country's commitment to effective implementation of Pillar Two rules.

On 24 July 2025, the Luxembourg Government released the draft law No. 8591 ("the **Draft Law**") transposing the Directive (EU) 2025/872 ("**DAC9**") amending the Directive on administrative cooperation in the field of taxation ("**DAC**") for the ninth time. DAC9 aims to facilitate compliance with the filing obligations of companies under the 2022 Pillar Two directive[2] which aims to ensure a global minimum level of taxation for multinational enterprise ("**MNE**") groups and large-scale domestic groups ("**LSDGs**") in the EU.

The objective of DAC9 is to put into operation specific provisions regarding the "Top-up tax information return" ("**GloBE Information Return**" or "**GIR**"), as outlined in the Pillar Two directive, by:

- **introducing a standardised form for filing** the GIR across the EU, consistent with the one developed by the G20/OECD's Inclusive Framework on Base Erosion and Profit Shifting ("**BEPS**");
- **making it easier for companies** to fulfil their filing obligations under the Pillar Two directive; and
- **establishing** a system for tax authorities to **exchange information** with each other.

The purpose of the Draft Law is to transpose DAC9 into Luxembourg domestic law, notably by amending the Luxembourgish law transposing the Pillar Two directive ("the **Pillar Two Law**"), while also ensuring alignment with:

- the Multilateral Competent Authority Agreement on the exchange of GloBE Information signed by Luxembourg on 26 June 2025, and

[2] Council Directive (EU) 2022/2523 of 14 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union.

- the OECD/G20 Inclusive Framework's Approved Administrative Guidance of January 2025, which provides further clarifications on the transitional treatment of deferred taxes under the Pillar Two rules.

In this article, we provide an overview of the Draft Law's key provisions and assess its implications for Luxembourg entities, particularly in relation to reporting requirements, automatic exchange of information, and the applicable penalty regime.

Standardised reporting of Top-up tax information return

The obligation to prepare a GloBE Information Return is distinct from the requirement to declare and pay Luxembourg top-up taxes under a Luxembourg tax return. DAC9 does not prevent Luxembourg constituent entities to file such Income Inclusion Rule ("**IIR**"), Undertaxed Profits Rule ("**UTPR**") or Qualified Domestic Top-up Tax ("**QDMTT**") returns in Luxembourg.

Elements to be reported

The Pillar Two Law already provides specific provisions regarding the GloBE Information Return. Accordingly, the essential elements that must be included in this return are determined by the Pillar Two Law, namely:

- the identification of the constituent entities, including their tax identification numbers, if any, the jurisdiction in which they are located and their status under the Pillar Two Law;
- information on the overall corporate structure of the MNE group or LSDG, including the controlling interests in the constituent entities held by other constituent entities;
- the information that is necessary in order to compute:
  - (i) the effective tax rate for each jurisdiction and the top-up tax applicable to each constituent entity;
  - (ii) the top-up tax applicable to a member of a joint venture group;
  - (iii) the amount of top-up tax under the IIR and the UTPR to allocate to each jurisdiction; and
- a record of the elections made in accordance with the Pillar Two Law.

As required by DAC9, the Draft Law requires, in addition, the constituent entity filing the GloBE Information Return to also indicate the relevant information and jurisdictions with which the information must be automatically exchanged, in accordance with the dissemination approach described hereafter.

A draft grand-ducal regulation (the "**Draft Grand-Ducal Regulation**") establishes a standard template for the GloBE Information Return, reflecting the standard form set out in Annex VII of DAC9. For more information about this standard form, reference may be made to our previous Alert: EU Commission adopted a DAC9 proposal to ease filing obligations under the Pillar Two directive.

Filing of top-up tax information return in Luxembourg

Under the Pillar Two Law, each Luxembourg constituent entity is generally required to file a local GloBE Information Return in Luxembourg (local filing). However, constituent entities are exempt from this local filing obligation if a compliant GloBE Information Return is timely filed by the UPE or designated filing entity of the MNE group in a jurisdiction that has concluded a "qualifying competent authority agreement" with Luxembourg that provides for the automatic exchange of annual top-up tax information returns (centralised filing).

In the context of intra-EU exchanges, DAC9 qualifies as a competent authority agreement. As regards non-EU jurisdictions, the Draft Law enables the automatic exchange of GloBE Information Returns filed under centralised filing pursuant to the Multilateral Competent Authority Agreement on the exchange of GloBE Information (the "**Multilateral Agreement**") with jurisdictions that have signed and activated the Multilateral Agreement with Luxembourg and hold taxing rights under Pillar Two rules. The list of signatories of the Multilateral Agreement dated 19 September 2025 mentions only 17 jurisdictions out of which 5 are out of the EU (the UK, Japan, New Zealand, Korea, Switzerland).

When the centralised filing is applied, the Luxembourg constituent entity, or the designated local filing entity on its behalf, shall notify the *Administration des contributions directes* ("**ACD**") of the identity of the entity that is filing the GloBE Information Return as well as the jurisdiction in which it is located.

The obligation to prepare a GloBE Information Return is distinct from the requirement to declare and pay Luxembourg top-up taxes under a Luxembourg tax return. DAC9 does not prevent Luxembourg constituent entities to file such IIR, UTPR or QDMTT returns in Luxembourg.

Obligation to file locally due to failure of automatic Exchange

If the ACD does not receive an expected exchange following notification that the GloBE Information Return will be filed by the UPE or designated filing entity in another jurisdiction, it must promptly inform the foreign competent authority of the missing exchange.

Should the ACD fail to obtain the information via automatic exchange within three months, the Draft Law mandates that the Luxembourg constituent entity, including any joint venture or affiliate located in Luxembourg, must file locally within one month of notification by the ACD, overriding the initial local filing exemption.

Transitional simplified jurisdictional reporting

Finally, the Draft Law provides for transitional simplified jurisdictional reporting. To ease compliance during the initial implementation phase, the Draft Law introduces a transitional measure allowing aggregated jurisdictional reporting.

For tax years starting before 1 January 2029 and ending before 1 July 2030, Luxembourg constituent entities may opt to file a simplified jurisdictional information return for non-Luxembourg jurisdictions where either (i) no top-up tax is calculated, or (ii) no entity-level allocation is required.

This option is subject to reciprocity and cannot be applied to jurisdictions that do not allow simplified reporting under their own domestic rules.

The standard form annexed to the Draft Grand-Ducal Regulation provides for the exercise of this option.

Automatic Exchange of Information

The Draft Law establishes a framework for the automatic exchange of GloBE Information Returns between tax authorities as required under the Pillar Two directive and DAC9.

Qualifying competent authority agreement requirement

When a GloBE Information Return is filed in Luxembourg by the UPE or the designated local filing entity of an MNE group or LSDG, the Draft Law imposes a specific obligation on the Luxembourg tax authorities ("**LTA**"). They must automatically transmit the relevant information to eligible jurisdictions, following the dissemination approach described below.

However, such exchanges are limited to jurisdictions with which Luxembourg has entered into a "qualifying competent authority agreement" in force, and which are listed by grand-ducal regulation as having concluded such an agreement. Such grand-ducal regulation has not yet been published at the time of writing. However, in the context of intra-EU exchanges, we already know that DAC9 qualifies as a competent authority agreement.

Dissemination approach

This dissemination approach determines which jurisdictions are entitled to receive specific parts of the GloBE Information Return, based on the type of taxing rights they hold under the Pillar Two rules.

When filing the GloBE Information Return, the constituent entity must identify two key elements:

- The relevant general and jurisdictional sections of the return.
- The jurisdictions with which the information must be automatically exchanged.

This identification must follow the following dissemination approach outlined in the Draft Law:

- **Implementing Jurisdictions**[3] are entitled to receive the **full general section** of the GloBE Information Return.

  This section includes:
  - General information about the MNE group or LSDG as a whole,
  - Its legal structure, and
  - A consolidated summary of how the Pillar Two Law is applied.

[3] Jurisdictions that have implemented a Qualified IIR or a Qualified UTPR.

However, this applies only if:
- the UPE or one or more constituent entities of the group are located in that jurisdiction; or
- a joint venture or affiliate thereof is located in that jurisdiction and is subject to a QDMTT.

- **QDMTT-only Jurisdictions**[4] are entitled to receive the **general section excluding the consolidated summary**, but only if:
  - a constituent entity of the MNE group is located there; or
  - a joint venture or affiliate thereof is located there and subject to QDMTT; or
  - the jurisdiction applies QDMTT to a stateless entity or joint venture.

- **Jurisdictions with Taxing Rights**[5] are entitled to receive the **relevant jurisdictional sections** of the return that pertain to them. These sections provide detailed information on how the Qualified IIR, Qualified UTPR, and QDMTT are applied in each jurisdiction where the MNE group or LSDG operates.

Moreover, **the jurisdiction of the UPE** always receives **all jurisdictional sections**.

Modalities and timing of information exchange

The Draft Law provides that the ACD shall exchange the GloBE Information Returns received no later than **three months** after the filing deadline for the relevant reporting fiscal year. In practice, the exchange of information will generally occur 18 months after the end of the relevant fiscal year.

In the first year of operation, the exchange deadline is prolonged to **six months** after receipt. The first exchanges, relating to tax years starting on or after 31 December 2023, will occur as from 31 December 2026 and no exchange of a GloBE Information Return shall take place before 1 December 2026. When the GloBE Information Return is received after the filing deadline, the ACD shall exchange the information no later than **three months** following the date it is received.

If the ACD does not receive an expected exchange following a notification from a constituent entity, including a joint venture or an affiliate thereof located in Luxembourg, stating that the GloBE Information Return will be filed by the UPE or designated filing entity of the MNE group located in another jurisdiction, it must act without undue delay. Specifically, the ACD must notify the competent authority that was expected to transmit the information that the exchange is missing.

Conversely, where a foreign competent authority notifies the ACD that a GloBE Information Return expected to be filed by a Luxembourg UPE or designated filing entity has not been received within the required deadlines, the ACD must investigate the cause of the missing exchange. This may include reasons such as:
- The Luxembourg constituent entity failed to complete centralised filing within the deadline, or
- The foreign jurisdiction was not designated as a recipient under the dissemination approach.

Once the reason is identified, the ACD must inform the notifying authority accordingly. It must also indicate a new expected exchange date, which must be no later than three months after receiving the notification.

Rectification of GloBE Information Return in cases of manifest errors

According to the Draft Law, a GloBE Information Return containing errors or manifest errors may need to be rectified.
- If a reporting entity amends its GloBE Information Return, the ACD must, without undue delay, transmit **corrected** Top-up Tax Returns it receives under the Pillar Two Law to all jurisdictions with which an automatic exchange is required.
- If the ACD considers that there is a manifest error in a GloBE Information Return received through automatic exchange, it shall notify the other competent authority of this situation without undue delay.
- Where the ACD receives a notification from a foreign competent authority indicating that manifest errors may be present in a GloBE Information Return filed by a Luxembourg UPE or designated filing entity and exchanged under the automatic exchange framework, and the ACD agrees that corrections are necessary, it shall issue a formal rectification order (so-called "*sommation-astreinte*"). This order compels the Luxembourg constituent entity to file a corrected GloBE Information Return addressing the identified manifest errors. The Luxembourg constituent entity may demonstrate that the return in question does not in fact contain any manifest error.

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4 Jurisdictions that apply only a QDMTT.

5 Jurisdictions that have implemented rules equivalent to those under Luxembourg's Pillar Two Law, including QDMTT.

The Pillar Two Law already stipulates that the ACD is responsible for monitoring compliance with information reporting obligations related to the top-up tax or required notifications. To this end, the provisions of the General Tax Law (*Abgabenordnung*) apply. Therefore, where the ACD identifies errors, it may also, by means of a formal notice with penalty, require a Luxembourg constituent entity to file a corrected GloBE Information Return, that addresses the identified errors. Upon receiving the corrected return, the ACD will proceed with the automatic exchange of information without undue delay, in line with the established dissemination approach.

According to the Commentary to the Multilateral Agreement, the notion of "manifest error" excludes errors identified through detailed risk assessment or tax audit, as well as interpretive disputes between jurisdictions concerning the application of Pillar Two rules.

A GloBE Information Return containing manifest errors may be considered an incomplete or incorrect return and may therefore give rise to the application of penalties.

Penalties for non-compliance with filing and notifications obligations

The applicable penalties for non-compliance with filing and notification requirements related to the GloBE Information Return by Luxembourg entities are set out below.

(i) Incomplete, incorrect or late notification

In cases where the conditions for exemption from a local filing are met, the Pillar Two Law provides for a flat fine amounting to **EUR 5,000** if the Luxembourg constituent entity or designated local filing entity submits an incomplete, incorrect, or late notification regarding the identity of the filing entity and the jurisdiction where it is located.
For example, this may occur where a constituent entity fails to provide certain required information in the notification or incorrectly identifies the jurisdiction in which the GloBE Information Return is centrally filed.

(ii) Incomplete, incorrect or late return

The Pillar Two Law provides for a fine amounting up to **EUR 250,000** if the Luxembourg constituent entity or designated local filing entity submits an incomplete, incorrect, or late GloBE Information Return. This sanction does not apply where the entity is exempt from filing the Global Tax Return.

(iii) Misuse of the local filing exemption

The Draft Law introduces a penalty targeting Luxembourg constituent entities or designated local filing entities that fail to meet follow-up obligations after opting for centralised filing. Specifically, if such an entity has notified the ACD that the GloBE Information Return will be filed centrally, but—after the relevant exchange deadlines have passed—fails to provide, upon request, evidence that the return was duly filed in the other jurisdiction, a penalty may apply.

In such circumstances, the entity may incur a penalty of up to **EUR 300,000**. The amount of the fine may be adjusted based on the specific facts, notably the diligence exercised by the Luxembourg constituent entity in verifying that the central filing occurred in the other jurisdiction.

This penalty aims to deter delaying tactics, such as invoking the local filing exemption without ensuring that the GloBE Information Return is properly filed in the designated jurisdiction. It serves to ensure that the conditions for the local filing exemption are effectively met and that the ACD receives the information through automatic exchange.

The case of misuse of local filing exemption does not pertain to an incorrect notification (see (i)) and constitutes a distinct sanction mechanism that derogates from the general penalty applicable to incomplete, incorrect, or late returns (see (ii)).

Clarification on the transitional treatment of deferred taxes

According to the Pillar Two law, when assessing the effective tax rate in a given jurisdiction during a transition year (and for each subsequent fiscal year), the MNE group or the LSDG must include all deferred tax assets and liabilities recorded in the financial statements of entities located in that jurisdiction. These deferred taxes must be accounted for at the **lower** of the minimum tax rate, and the domestic statutory tax rate.

However, a deferred tax asset recorded at a rate lower than the minimum tax rate may be taken into account at the minimum tax rate if the taxpayer can demonstrate that it is attributable to an eligible loss.

According to the Pillar Two Law, deferred tax assets arising from items excluded from the calculation of qualifying income or eligible losses are excluded from the calculation when they are generated in connection with a transaction carried out after 30 November 2021.

This Draft Law also proposes to implement the OECD/G20 Inclusive Framework's Approved Administrative Guidance of 13 January 2025 (the "**Administrative Guidance**"), which clarifies the treatment of deferred taxes during the transitional period preceding the entry into force of the Pillar Two rules. This Administrative Guidance was adopted in response to the OECD/G20 Inclusive Framework's observation that certain jurisdictions had granted tax benefits or relief to groups, prior to the entry into force of the Pillar Two rules, with the aim of mitigating their impact during the initial years of application.

To address such practices, the Administrative Guidance specifies that the recognition of deferred tax liabilities and assets resulting from agreements concluded with a general government, retroactively exercised elections or options, or the introduction of a corporate income tax in a given jurisdiction after 30 November 2021, may not, under the conditions set out therein, be taken into account for the purposes of determining the effective tax rate of the relevant groups following the entry into force of the Pillar Two rules.

The Draft Law intends thus to extend the current exclusion to:

(a) deferred tax assets arising from an agreement with a public authority, as referred to in paragraph 3, second subparagraph, concluded or amended after 30 November 2021;
(b) deferred tax assets resulting from an option or election exercised or amended after 30 November 2021, where such option or election retroactively alters the tax treatment of a transaction for a year in respect of which a tax return has already been filed or an assessment issued; and
(c) deferred tax assets or liabilities arising from a difference between the tax base or tax value and the accounting value of an asset or liability, where the tax base or value was established under a corporate income tax regime introduced after 30 November 2021 and before the transition year by a jurisdiction that did not previously have such a regime in place.

However, by way of derogation, the law allows partial recognition of deferred tax reversals in these cases, subject to:

- A 20% cap on the initially recognised deferred tax assets.
- A limit based on the lower of the minimum tax rate or the applicable domestic tax rate.
- Specific fiscal year windows and cut-off dates:

Scenario	Fiscal Years Allowed	Eligibility Cut-off Date
a) Agreements with general government	- Starting from 01/01/2024 and before 01/01/2026 - Excluding years ending after 30/06/2027	Agreements concluded or amended no later than 18 November 2024
b) Options or elections	- Starting from 01/01/2024 and before 01/01/2026 - Excluding years ending after 30/06/2027	Options or choices exercised or amended no later than 18 November 2024
c) New corporate tax regimes	- Starting from 01/01/2025 and before 01/01/2027 - Excluding years ending after 30/06/2028	Regimes introduced no later than 18 November 2024

The Draft Law also provides that deferred tax assets related to losses incurred more than five years before the entry into force of a new corporate income tax regime (introduced after 30 November 2021) are also excluded from the calculation.

Do you have any questions?

ANDREAS MEDLER
Partner
andreas.medler@atoz.lu

MARIE BENTLEY
Chief Knowledge Officer
marie.bentley@atoz.lu

Luxembourg confirms and enhances its carried interest tax framework

OUR INSIGHTS AT A GLANCE

- On 24 July 2025, the Luxembourg Government issued a draft law with the aim to clarify and modernise the Luxembourg tax regime applicable to carried interest received by individual managers of alternative investment fund managers.
- The draft law confirms that carried interest is treated as speculative gains and clarifies under what conditions it is taxable or exempt, differentiating between "contractual" and "invested" carried interest.
- It modernises the regime by extending eligibility, simplifying conditions, introducing a permanent preferential tax rate for contractual carried interest, and providing a targeted exception to the tax transparency principle.
- We analyse hereafter the clarifications provided by the draft law to the current Luxembourg carried interest tax regime as well as the innovations it introduces and their consequences for carried interest holders.

On 24 July 2025, the Luxembourg Government released a draft law (the "**Draft Law**") with the aim to clarify and modernise the Luxembourg tax regime applicable to carried interest received by individual managers of alternative investment fund managers ("**AIFMs**"). The carried interest tax regime, included in Article 99bis §1a of the Luxembourg income tax law ("**LITL**"), was initially introduced by the Law of 12 July 2013 on Alternative Investment Fund Managers (the "**2013 Law**") transposing into Luxembourg law Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers ("**AIFMD**").

The aim of this reform, announced in the government's 2023–2028 coalition agreement, is to create a legal framework that is favourable to alternative investment funds ("**AIF**") and digital assets. It also seeks to support economic recovery through measures that enhance overall competitiveness, particularly in the financial sector, to attract qualified front-office active fund management talent.

The Draft Law confirms that the carried interest is categorised as a miscellaneous income, in the subcategory speculative gains (i.e. a form of capital gain) and not as employment, professional nor business income[6]. It also clarifies under what conditions these speculative gains are taxable or exempt. For that purpose, the Draft Law confirms that the Luxembourg carried interest regime targets, and differentiates, two different hypotheses:

- the contractual carried interest entitlement; and
- what is often called the "invested" carried interest.

To modernise the carried interest tax regime, the Draft Law also innovates on various aspects:

- it extends the scope of its beneficiaries;
- it removes certain requirements conditioning the benefit of the regime;
- it reintroduces, with a view to keep it permanently, the quarter of the tax rate determined on the basis of the progressive scale with a larger scope (for all contractual carried interest)7; and
- it introduces an exception to the tax transparency of certain investment funds.

We analyse hereafter the clarifications provided by the Draft Law to the current Luxembourg carried interest tax regime as well as the innovations it introduces and their consequences for carried interest holders. .

6 The LITL functions by classifying income and gains in a series of categories with different rules. There are separate categories inter alia for salaried income, professional income, business income, and miscellaneous income.

7 Originally applicable to carried interest earned by impatriates for a limited period of time.

Extension of the scope of beneficiaries

The current carried interest tax regime only applies to employees of AIFMs or of AIF management companies. Employees of fund's affiliated companies others than the AIFM or the AIF management companies, or individuals who are not employed as such, therefore do not fall within the scope of the regime.

In practice, however, carried interest can be allocated not only to employees but also to other individuals such as advisory board members, strategic partners or key co-investors. The carry holder may also be employed by an entity other than the AIF or its management company (e.g., an investment advisory firm).

The Draft Law proposes to extend the scope of the Luxembourg carried interest regime to all individual carry holders who are either managers or who work directly or indirectly for AIF managers or management companies, regardless of their status.

This category of beneficiaries is intended to be flexible, without opening the door to abuse — particularly practices that would disguise fixed income or a professional bonus as investment income in order to benefit from potentially more favourable tax treatment.

For example, a carried interest allocation expressed as a percentage of salary and granted with relatively predictable or recuring frequency would be considered abusive. A carried interest must be assessed based on its actual commercial and financial substance when evaluating these criteria.

The commentary on the Draft Law further specifies that carried interest may be paid directly by the AIF to the individual concerned, or alternatively, through the AIF's manager or the general partner — if the manager or general partner receives the carried interest on behalf of the beneficiaries and then passes it on to them directly.

Modification of requirements for the application of the carried interest regime

Under the current tax framework, the allocation of carried interest based on a contractual carried interest entitlement must depend on the quality of the employee. Given that the right to carried interest is widely recognised as having a strong intuitu personae character, the Draft Law deems it unnecessary to explicitly state this condition and therefore repeals it.

The Draft Law also seeks to clarify the range of funds eligible to distribute carried interest under the Luxembourg tax regime, while preserving the existing requirement that such funds must qualify as AIFs. To that end, the Draft Law proposes removing the current requirement that investors' contributions to the AIF be fully repaid before carried interest can be distributed. This change reflects the recognition that such a condition may unwantedly exclude deal-by-deal carried interest arrangements, where managers are compensated progressively as assets are realized, rather than under a whole-of-fund model.

Carried interest received on the basis of contractual entitlements

Principle clarified

The Draft Law confirms that the Luxembourg carried interest tax regime targets carried interest received on the basis of a contractual entitlement, meaning the manager is not required to subscribe to a participation in the investment fund to be eligible for the carried interest. In this scenario, carried interest entitlements are not materialised by shares and are not intimately linked to an investment in the AIF.

Carried interest received exclusively on the basis of contractual entitlements are, in principle, granted to the manager for no consideration, without the requirement to subscribe to a direct or indirect shareholding in the AIF, and are paid by the AIF or the general partner, out of proceeds realised by the fund once the hurdle rate is reached. Nevertheless, holders of contractual carried interest entitlements have the right to hold, in the same way as « ordinary » investors (« limited partners ») a participation in the AIF. However, they are not required to do so.

Tax regime amendment

Currently, carried interest received on the basis of contractual entitlements are considered as speculative profits - and not as employment income - in principle to be aggregated with the taxpayer's other income and taxed in accordance with the rates applicable to direct taxes. They are therefore fully taxable at the progressive income tax rate (marginal rate of 45.78%).

However, the 2013 Law introduced a specific temporary tax regime for carried interest received by impatriates. Under certain conditions, this results in a taxation at a quarter of the tax rate determined on the basis of the progressive scale.

This lower tax rate applies only to impatriates who established their tax residence in Luxembourg in 2013 or during the five following years (i.e., before the end of 2018), and remains applicable until the tenth tax year following the year in which they took up the job giving rise to the income in question (at the latest, the 2028 tax year). Consequently, unless the measure is renewed, new residents in Luxembourg can no longer benefit from this provision.

The Draft Law proposes making the quarter-rate permanent and applicable to all carried interest received on the basis of contractual entitlements (not only the ones received by impatriates), arguing that a longer-term, competitive framework is essential to attract and retain fund managers and support the growth of the financial sector.

In addition, the commentary on the Draft Law specifies that the wording of the law remains unchanged regarding the element triggering taxation: carried interest must be 'received' to be taxable. This sets aside any discussion about a potential taxable benefit in kind that might be granted to taxpayers prior to the actual payment of the carried interest. Thus, the mere "attribution" of a contractual carried interest entitlement should not constitute a taxable event.

Carried interest received on the basis of an "invested" carried interest

Principle clarified

The Draft Law clarifies that the Luxembourg 'invested' carried interest regime targets carried interest received either on the basis of carried interest rights materialised by shares in the AIF that yield carry interest or on the basis of a carried interest that is intimately linked to an 'ordinary' direct or indirect investment in the AIF.

The commentary on the Draft Law offers valuable insights into the scope of these terms:

- Carry interest 'intimately linked' to an 'ordinary' direct or indirect investment in the AIF refers to a contractual entitlement to carried interest, for which the manager is mandatorily required to take an 'ordinary' direct or indirect stake in the AIF. In this case, the investment goes hand in hand with the attribution of the carried interest. This link must have a commercial and financial reality in order to avoid falling under the abuse of law provision.
- Carried interest rights materialised by shares that yield carry interest refers to the case where the manager is offered the opportunity to acquire such rights for consideration through an investment (commonly referred to as "carry shares"), usually via an ad hoc vehicle (e.g., a Luxembourg special limited partnership or a foreign law partnership).

The commentary on the Draft Law clarifies that when it comes to investments, shareholdings of all kinds are targeted, including shares, units, or other rights in capital companies or partnerships. In accordance with the substance over form principle, the meaning of shareholding in an AIF must be assessed based on the economic nature of the instrument rather than its legal qualification.

Clarification of the tax regime

The Draft Law specifies that "when the interval between the acquisition or constitution of these carried interest investments and their realisation exceeds six months, the speculative profit resulting from the carried interest does not constitute a taxable income, unless the provisions of Article 100 come into effect".

This should mean that if carried interest are paid after a period of six months has elapsed, they are not subject to tax unless the shareholding in the AIF represents a significant shareholding in a tax opaque AIF.

A shareholding is considered significant if it directly or indirectly represents more than 10% of the AIF's capital (which is very rare in practice). In this case, capital gains are taxed at half the progressive rate of income tax (marginal rate of 22.89%).

As a result:

- The carried interest component of the investment is subject to the special tax treatment described in Article 99bis, §1a, point 2 of the LITL. This covers carried interest received on the basis of:
  - a contractual entitlement to carry interest that is 'intimately linked' to an 'ordinary' direct or indirect investment in the AIF; and
  - carry shares.

- Any income from other investments is subject the common tax regime applicable to investment income (e.g., dividends, interest, capital gains) and the transparency of the AIF will not be disregarded. This includes:
  - 'ordinary' direct or indirect investments in the AIF to which a contractual entitlement to carried interest is intimately linked and which are mandatorily subscribed to by the carry holder; and
  - any 'ordinary' shares freely subscribed to by the carry holder.

Innovation: the tax transparency of the AIFs will be disregarded

The current carried interest legal provisions do not derogate from the tax transparency principle. There is therefore no reason to exclude the application of this principle for the purposes of the carried interest tax regime. As a result, when AIFs are set up as tax transparent entities or as undertaking for collective investment (UCI or fonds communs de placement), carried interest received by managers holding an investment in the AIF should be taxed as per the nature of the income generated from the underlying investments.

The Draft Law proposes now an innovation by explicitly excluding the application of this principle for the purposes of the carried-interest tax regime. Accordingly, it is proposed that the tax transparency principle will no longer apply for the only purpose of applying the carried interest tax regime. However, it is clearly stated that for all other purposes (e.g., taxation of income from an investment in 'ordinary' shares), the tax transparency principle remains applicable.

Valuation of the investment

The commentary on the Draft Law makes it clear that a carried interest investment acquired free of charge or below market value may be taxed under other provisions of the LITL, particularly the rules relating to benefits in kind for employees or professional income for non-salaried managers.

Accordingly, the Luxembourg 'invested' carried interest tax regime does not refer to the free "attribution" of a financial instrument that yield carried interest or if subscription is authorised at a lower value than the market value. In that case, it may constitute a taxable event under certain conditions. Specially, an asset, whether in cash or in kind, granted to an employee in the context of their employment. may be taxable as employment income under the benefit in kind provisions, or under the professional income in the case of non-salaried.

Our Insights

The clarifications introduced by the Draft Law align with the widely held interpretation and application of the current Luxembourg carried interest tax regime (for example, see our article "Carried Interest in Luxembourg: individual tax regime", Revue de Droit Fiscal, 24-25/2025, Legitech). The commentaries on the Draft Law reaffirm the validity of past implementations and provide clear and positive guidance on how the highly favourable tax regime will be applied going forward.

In addition, the Draft Law extends the scope of application of the regime, innovates with the tax transparency exception and provides for a more favourable tax treatment of contractual (non-invested) carried interest.

This reform aligns with Luxembourg's ambition to attract front-office fund management and support the growth of alternative and digital asset funds. It reflects a shift toward a more inclusive and competitive tax framework, while maintaining safeguards against abuses.

Subject to the Council of State's approval of the Draft Law for constitutionality, the Draft Law is expected to be adopted before the end of the year.

Do you have any questions?

PETYA DIMITROVA
Partner
petya.dimitrova@atoz.lu

MARIE BENTLEY
Chief Knowledge Officer
marie.bentley@atoz.lu

Luxembourg's evolving DTT network: Overview of recent agreements and amendments

OUR INSIGHTS AT A GLANCE

- Luxembourg continues to expand and modernise its double tax treaty network through the conclusion of new treaties and the amendment of existing ones, reflecting its commitment to international tax standards and the BEPS framework.
- Recent developments include new double tax treaties with jurisdictions such as Albania, Colombia, Oman and the UK, as well as protocols with countries including France, Germany, Romania and Moldova, addressing issues such as withholding taxes, mutual agreement procedures, exchange of information and anti-abuse provisions.
- These changes aim to enhance legal certainty for cross-border investors while balancing the elimination of double taxation with the prevention of tax avoidance and evasion.
- This article provides an overview of the double tax treaties and amending protocols signed or ratified by Luxembourg since 2023. It highlights key developments across selected provisions.

In line with its longstanding commitment to the modernisation and continuous development of its double tax treaty ("**DTT**") network, Luxembourg actively pursues the conclusion of new DTTs and the amendment of existing ones. These efforts reflect the country's objective to reinforce legal certainty for cross-border investors, align with international tax standards, and prevent treaty abuse in accordance with the OECD/G20 Base Erosion and Profit Shifting (BEPS) framework.

The development of Luxembourg's DTT network has notably focused on the inclusion of updated OECD provisions, such as enhanced rules on the exchange of information ("**EOI**"), the introduction of mutual agreement procedures ("**MAP**"), and the implementation of anti-abuse clauses, most notably the principal purpose test ("**PPT**"). These changes contribute to the broad policy goal of balancing the elimination of double taxation with the prevention of tax evasion and avoidance.

In this article, we provide an overview of the DTTs and amending protocols signed or ratified by Luxembourg since 2023. We highlight key developments across selected provisions.

New DTTs recently ratified

Luxembourg has concluded several new DTTs with a range of jurisdictions, i.e., Albania[8], Cabo Verde[9], Colombia[10],

[8] The Albania-Luxembourg DTT was signed on 14 January 2009 and the Protocol on 21 October 2020. They were ratified by Luxembourg on 18 December 2024. To the best of our knowledge, neither the protocol nor the DTT is however yet in force.

[9] The Cabo Verde-Luxembourg DTT was signed on 13 January 2022 and ratified by Luxembourg on 22 May 2024. To the best of our knowledge, the DTT is however not yet in force.

[10] The Colombia-Luxembourg DTT was signed on 19 January 2024 and ratified by Luxembourg on 21 May 2025. To the best of our knowledge, the DTT is however not yet in force.

Ethiopia[11], Montenegro[12], Oman[13], Rwanda[14] and the UK[15]. It is worth noting that they have not all come into force yet.

While each DTT reflects a degree of bilateral negotiation and specificity, they all largely adhere to the OECD Model Tax Convention. The following comparative table provides an overview of the key features of these DTTs including rules on the tax residence for Luxembourg undertakings for collective investment ("**UCIs**") and the resolution of dual residence for companies, tailored withholding tax ("**WHT**") regimes for dividends, interest and royalties, clauses addressing capital gains on real estate-rich companies, access to MAP and, in some cases, arbitration mechanisms. Notably, all new treaties include comprehensive EOI provisions and a PPT to counter treaty abuse, coupled with a consultation mechanism between competent authorities.

Country	Signature	Lux Ratification	In Force	UCIs Treaty Access	Tie-Breaker Rules for Companies	WHT Rates			Real Estate Rich Companies Clause	MAP/ Arbitration Clause		EOI Clause	PPT Clause
						Dividends	Interests	Royalties					
Albania	14 Jan 2009	18 Dec 2024	Not yet	/	POEM	10% (5% if holding ≥25%)	5%		No	Yes	No	OECD 2017	Yes, with consultation mechanism
Cabo Verde	13 Jan 2022	22 May 2024	Not yet	SICAV/SICAF	POEM	10% (0% if holding ≥10% for 1y)	10%		No	Yes	Yes	OECD 2014	
Colombia	19 Jan 2024	21 May 2025	Not yet	SICAV/SICAF/ Recognised pension funds	MAP	15% (5% if holding ≥20% for 365d; and 0% for pension funds)	10%		Yes	Yes	Yes	OECD 2017	
Ethiopia	22 Jun 2021	22 Jun 2022	Yes	SICAV/SICAF/ FCP	POEM	10% (5% if holding ≥25%)	5%		Yes	Yes	No	OECD 2017	
Montenegro	29 Jan 2024	18 Dec 2024	Not yet	SICAV/ SICAF/FCP/ Recognised pension funds	POEM	10% (5% if holding ≥10% for 365d)	10%	5% or 10%	No	Yes	No	OECD 2017	
Oman	16 Oct 2024	4 Jul 2025	Not yet	SICAV/SICAF/ FCP	MAP	10% (0% if holding ≥10%)	/	8%	No	Yes	No	OECD 2017	
Rwanda	29 Sep 2021	30 Nov 2022	Yes	SICAV/SICAF	POEM	10%			Yes	Yes	Yes	OECD 2017	
United Kingdom	7 Jun 2022	18 Sep 2023	Yes	SICAV/SICAF/ Recognised pension funds	MAP	0%			Yes	Yes	Yes	OECD 2017	

Undertakings for Collective Investment access to DTT

Luxembourg UCIs may perform a wide range of investments in numerous jurisdictions. The returns on such investments are often subject to source-state WHT, which DTTs commonly reduce. A fundamental question is whether Luxembourg UCIs may be regarded as tax residents of Luxembourg so as to claim the benefits of these DTTs. UCIs may take the form of a corporate UCI, such as an investment company with variable capital (*société d'investissement à capital variable*, or "**SICAV**") or fixed capital (*société d'investissement à capital fixe*, or "**SICAF**"). They may also be established as contractual vehicles without legal personality (*fonds commun de placement*, or "**FCP**"), or other tax-transparent entities. While the DTT with **Albania** does not include provisions addressing the residence of UCIs, the other DTTs recognise the residence of SICAVs, SICAFs, and, in some cases, FCPs, other transparent entities, and pension funds[16].

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11 The Ethiopia-Luxembourg DTT was signed on 22 June 2021 and ratified by Luxembourg on 22 June 2022. It is effective in Luxembourg as from 1 January 2024.

12 The Montenegro-Luxembourg DTT was signed on 29 January 2024 and ratified by Luxembourg on 18 December 2024. To the best of our knowledge, the DTT is however not yet in force.

13 The Oman-Luxembourg DTT was signed on 16 October 2024 and ratified by Luxembourg on 4 July 2025. To the best of our knowledge, the DTT is however not yet in force.

14 The Rwanda-Luxembourg DTT was signed on 29 September 2021 and ratified by Luxembourg on 30 November 2022. The DTT is effective as from 1 January 2025.

15 The new UK-Luxembourg DTT was signed on 7 June 2022 and ratified by Luxembourg on 18 September 2023. The DTT is effective in Luxembourg as from 1 January 2024. For more details, please refer to our previous publication on the topic.

16 For Luxembourg, recognised pension funds include pension-savings companies with variable capital (*sociétés d'épargne-pension à capital variable*: "SEPCAV"); pension-savings associations (*associations d'épargne-pension*: "ASSEP"); pension funds subject to supervision and regulation by the Insurance Commissioner (*Commissariat aux assurances*); and the Social Security Compensation Fund (*Fonds de Compensation de la Sécurité Sociale*: "SICAV-FIS").

Corporate dual residence conflicts

Luxembourg's treaty practice shows two distinct approaches to resolving corporate dual residence conflicts. Some DTTs, such as those with **Albania, Cabo Verde, Ethiopia, Montenegro, and Rwanda**, the tiebreaker is determined solely by the place of effective management ("**POEM**"), providing an objective and relatively predictable criterion but one that has been subject to varying interpretations in international case law. These DTT adopted the «old» OECD tie-breaker rule. Other recent DTTs, notably with **Colombia, Oman, and the UK**, abandon an automatic POEM rule in favour of a MAP between competent authorities. Under this approach, POEM remains a relevant factor, but is considered alongside other criteria such as the place of incorporation or constitution, and any other circumstances deemed pertinent. This reflects the 2017 OECD Model Convention's move away from the POEM unilateral mechanical tests toward negotiated determinations, in part to reduce the risk of treaty abuse through corporate migration strategies.

Withholding taxes (WHT)

With respect to WHT rates under Luxembourg's treaty network, passive income is generally subject to WHT rates ranging from 0% to 15%. The reduced rates for dividends are often conditioned upon minimum ownership thresholds and, in some cases, holding periods. Interest and royalty payments may also be subject to specific requirements. Moreover, the application of treaty benefits is generally conditional upon the beneficial ownership of the income by the recipient.

Notably, the DTT with **Oman** provides that dividends paid to the beneficial owner, being a company directly holding at least 10% of the payer's capital, are exempt from WHT. Moreover, when the beneficial owner is resident in Luxembourg, such dividends are also exempt from Luxembourg tax, provided the Omani company is subject to a tax comparable to Luxembourg's corporate income tax.

Capital gains and real estate rich clauses

The treatment of gains from shares in "real estate rich" companies is not uniform across Luxembourg's treaties. **Albania, Cabo Verde, Montenegro, and Oman** omit such clauses, leaving gains taxable solely in the alienator's residence state, regardless of the underlying asset composition. By contrast, **Colombia, Ethiopia, Rwanda, and the UK** adopt clauses permitting source taxation where more than 50% of the share value derives directly or indirectly from immovable property situated in that state.

Multilateral agreement procedure (MAP)

All treaties reviewed contain a MAP clause, generally granting taxpayers three years from first notification to bring a claim of taxation not in accordance with the treaty. Competent authorities are required to endeavour to resolve disputes by mutual agreement. Arbitration is, however, inconsistently available: it is included in treaties with Cabo Verde, Colombia, Rwanda, and the UK, offering binding resolution if MAP fails (subject to certain exclusions), but omitted in agreements with Albania, Ethiopia, Montenegro, and Oman.

Exchange of Information (EOI)

The EOI clauses in Luxembourg's treaties consistently adhere to OECD standards, permitting competent authorities to exchange foreseeably relevant information for tax administration and enforcement purposes.

Anti-abuse provisions (PPT)

All treaties incorporate a PPT clause, derived from BEPS Action 6, to deny treaty benefits where one of the principal purposes of an arrangement is to obtain such benefits in a manner contrary to the treaty's object and purpose. All treaties reviewed provide for a consultation mechanism before denying benefits under the PPT, allowing competent authorities to discuss borderline cases.

Finally, the protocols to the DTTs with **Colombia, Ethiopia, and Montenegro** precise that Luxembourg may continue to apply Controlled Foreign Company (CFC) rules notwithstanding treaty provisions.

New protocols to existing DTTs

In addition to concluding new DTTs, Luxembourg has actively engaged in updating its existing treaties through a series of protocols. These instruments serve to adapt and modernise bilateral agreements in response to evolving international tax standards and practical needs identified by the contracting states, on a case-by-case basis.
The scope of modifications addresses issues such as WHT exemptions, tolerance thresholds for cross-border employment taxation, the elimination of double taxation, MAP, EOI provisions, and anti-abuse measures including the PPT.

Argentina-Luxembourg protocol

The protocol amending the Argentina-Luxembourg DTT was signed on 25 October 2024 and ratified by Luxembourg on 4 July 2025. To the best of our knowledge, neither the DTT, signed in 2019, nor the protocol is yet in force. The protocol limits the scope of interest WHT tax exemption to loans granted by financial institutions for at least three years, excluding those represented by bearer instruments.

France-Luxembourg protocol

A protocol amending the France-Luxembourg DTT was signed on 7 November 2022 and ratified by Luxembourg on 19 June 2023. The protocol adjusts the tolerance threshold allowing individuals residing in France and employed in Luxembourg to perform their salaried activity outside Luxembourg for up to 34 entered into force on 4 March 2025 and applies retroactively from 1 January 2023.

Georgia-Luxembourg protocol

The protocol amending the Georgia-Luxembourg DTT was signed on 3 July 2025. Luxembourg has however not yet ratified the protocol. At the time of writing, the text of this protocol is not yet available; however, it is expected that the amending protocol will bring the DTT into alignment with the 2017 OECD Model Tax Convention.

Germany-Luxembourg protocol

The protocol amending the Germany-Luxembourg DTT was signed on 6 July 2023 and ratified by Luxembourg on 22 December 2023. The protocol is effective as from 1 January 2024. For more details, please refer to our previous publication on the topic.

Moldova-Luxembourg protocol

The protocol amending the Moldova-Luxembourg DTT was signed on 25 June 2024 and ratified by Luxembourg on 25 March 2025. The protocol entered into force and will be effective as from 1 January 2026. The protocol, *inter alia*:

- updates the MAP allowing taxpayers to present cases of taxation not in accordance with the DTT within three years of first notification of the action resulting in taxation not in accordance with the DTT, but however does not include an arbitration clause;
- replaces the former provision on exchange of information with a new provision consistent with the 2017 OECD Model Tax Convention; and
- introduces a PPT, aiming to deny treaty benefits where one of the principal purposes of an arrangement is to obtain such benefits in a manner contrary to the object and purpose of the DTT. A consultation mechanism is available where benefits are denied under the PPT.

Romania-Luxembourg protocol

The second protocol amending the Romania-Luxembourg DTT was signed on 6 December 2022 and ratified by Luxembourg on 5 September 2023. The protocol is effective as from 1 January 2024. The protocol revises the rules for eliminating double taxation: Luxembourg maintains the exemption method with credit for certain income, while Romania switches to the credit method for all Luxembourg-source income. A new safeguard prevents double non-taxation due to interpretative mismatches.

San Marino-Luxembourg protocol

A protocol amending the San Marino-Luxembourg DTT was signed on 14 May 2025 but is not ratified by either parties. The protocol removes the three-year time limit previously imposed on the MAP.

Vietnam-Luxembourg protocol

The protocol amending the Vietnam-Luxembourg DTT was signed on 4 May 2023. Luxembourg has however not yet ratified the protocol. The protocol amends the exchange of information provision to reflect the OECD 2017 Model Tax Convention, allowing for the exchange of foreseeably relevant information between the competent authorities of the two contracting states.

Do you have any questions?

SAMANTHA HAUW
Partner
samantha.hauw@atoz.lu

MARIE BENTLEY
Chief Knowledge Officer
marie.bentley@atoz.lu

What's up at EU tax level?

OUR INSIGHTS AT A GLANCE

- On 20 June 2025, the ECOFIN Council approved its biannual report on tax matters, marking the conclusion of the Polish Presidency and setting the stage for Denmark's Presidency of the Council of the EU, which has prioritised competitiveness and direct taxation reform under its programme.
- This article provides an overview of the main tax initiatives currently under discussion at EU level, including the revision of the Directive on Administrative Cooperation, the decision not to proceed with the Unshell Directive, the stalled Transfer Pricing and BEFIT proposals, and ongoing work on Pillar Two implementation.
- It also examines broader themes such as tax simplification, the bizarre proposed Corporate Resource for Europe, and new measures for start-ups and scale-ups, highlighting their potential impact on businesses and the EU tax framework.

On 20 June 2025, EU Finance Ministers (ECOFIN Council) approved the biannual report on tax issues, providing an overview of the progress achieved in the Council under the Polish Presidency, as well as an overview of the state of play of the most important files currently under negotiation in the area of taxation. The Council also reaffirmed its priorities, focusing on enhancing the EU competitiveness.

Denmark has held the Presidency of the Council of the European Union since 1 July (and until 31 December 2025). The Danish Presidency published a programme setting out the priorities and directions during the term of its rotating presidency. Under the guiding theme "A Strong Europe in a Changing World," the Presidency has prioritised direct taxation reform as a cornerstone of its competitiveness agenda.

The programme focuses on:

- Combatting tax evasion and avoidance.
- Updating the EU list of non-cooperative jurisdictions.
- Revising the Directive on Administrative Cooperation (DAC).
- Supporting tax simplification and regulatory efficiency.
- Advancing broader tax files including the Energy Taxation Directive, Tobacco Taxation Directive, CBAM.
- EU Customs Reform, and own resources.

It does not mention specific current initiatives such as the transfer pricing proposal, the Unshell proposal, or BEFIT for example.

In this article, we explain the progress of the various tax initiatives at EU level during the past few months.

Administrative cooperation and the DAC framework

What's up?

- A public consultation was held by the EU Commission on Directive 2011/16/EU on Administrative Cooperation in the field of taxation ("**DAC**")'s impact; DAC7 on digital platforms and DAC8 on cryptos were excluded.
- Stakeholders see DAC6 as complex and costly.
- DAC9 has been adopted to simplify Pillar Two filing for large enterprise groups.

Our insights

The final evaluation report from the Commission has not yet been published. However, the DAC Evaluation – Factual Summary Report released on 18 December 2024, outlines that while DAC has improved tax transparency, its successive amendments may have expanded reporting requirements significantly, increasing the administrative

compliance burden for businesses. In particular, the screening and reporting obligations under DAC6 are widely viewed as complex and costly, especially for companies with international operations and professional service providers. It also outlines the variations in how DAC6 is implemented across EU Member States and unclear hallmark definitions suggesting a need for clarity and consistency.

We understand that a DAC10 proposal is expected to be tabled in the first half of 2026 to incorporate the EU Commission's final conclusions on the DAC evaluation into law, with the goal of simplifying the DAC framework.

In the meantime, on 14 April 2025, the "DAC9 proposal", amending the DAC for the ninth time with the aim of making it easier for companies to fulfil their filing obligations under the 2022 Pillar Two Directive was adopted. For more information on DAC9, please read our ATOZ Alert: Council adopts DAC9 to extend cooperation and information exchange between tax authorities to Pillar Two

Unshell Directive Proposal

What's up?

- Concerns were raised about double reporting and timing under the Unshell Directive proposal.
- Member States supported integrating elements of the Unshell Directive Proposal into DAC6 rather than adopting it as a standalone directive.
- The ECOFIN Council decided not to pursue the proposal further.

Our insights

The decision of the Council to not pursue the Unshell proposal further is a positive step, aligning with the EU's broader goals of enhancing regulatory efficiency and competitiveness. It signals a strategic shift toward streamlining existing frameworks. However, while the ECOFIN Council chose not to advance the Unshell Directive proposal further, key concerns—such as overlapping reporting requirements and the need for more tailored approaches—remain unresolved.

The ongoing revision of the Directive on Administrative Cooperation (DAC), particularly the potential integration of the Unshell initiative into DAC6, is expected to address these issues. As a result, businesses should prepare for further changes under DAC10, anticipated in early 2026, which may introduce new disclosure obligations and redefine substance criteria for entities.

Transfer Pricing Directive Proposal

What's up?

- The proposal to codify OECD transfer pricing principles into EU law lacks support.
- A non-binding platform is being considered to address practical issues and reduce complexity.

Our insights

The failure of the Transfer Pricing Directive proposal to gain traction underscores the tension between harmonisation and Member State sovereignty. While a binding EU framework remains unlikely, the proposed non-binding platform could still influence administrative practices.

Multinational enterprises should monitor developments closely, as consensus-based guidelines may affect audit risk and documentation standards, even in the absence of formal legislation

BEFIT Proposal and the Prospect of a Unified Corporate Tax Base

What's up?

- The BEFIT proposal aims at creating a common corporate tax framework for large multinationals.
- Currently deprioritised in favour of other initiatives.

Our insights

The BEFIT initiative, aimed at establishing a common corporate tax framework for large multinationals, remains in a technical phase. Given the nature of the concerns raised, with some Member States also calling for a political discussion, it seems that at this stage, discussions relate more to the policy choices that would need to be made with regard to this Commission proposal rather than on the technical analysis of the proposal. Against this background, it is clear that, firstly further work is necessary, in order to determine the next steps in these negotiations and that

secondly, the BEFIT proposal is far from ready to be approved by the Council. Although not imminent, its adoption would represent a seismic shift in EU tax law.

Pillar Two and the Global Minimum Tax Debate

What's up?

- G7 agreement exempts US-parented groups from IIR and UTPR under OECD's Pillar Two.
- The EU Commission stated no changes to the EU Directive are needed due to existing Safe Harbour provisions.
- Some OECD members, including Germany, expressed concerns; Germany declared Pillar Two "no longer has a future."
- OECD continues work on simplified effective tax rate calculations and QDMTTs.

Our insights

The G7's "side-by-side" agreement exempting US-parented groups from the Income Inclusion Rule (**IIR**) and Undertaxed Profits Rule (**UTPR**) under Pillar Two has sparked divergent reactions within the EU. While the European Commission maintains that no changes to the EU Directive are necessary, Member States such as Germany have expressed concerns about competitive disadvantages and legal coherence. Recent discussions at EU level suggest that a Safe Harbour approach is seen as a pragmatic way to accommodate the US model without requiring amendments to the Pillar Two Directive. Businesses should be aware that Qualified Domestic Minimum Top-up Taxes (**QDMTTs**) remain applicable and that future Safe Harbour mechanisms may alter effective tax rate calculations.

A new EU level corporate tax contribution mechanism : CORE

What's up?

The EU Commission proposed as a new EU own resource, called Corporate Resource for Europe ("**CORE**") targeting companies with turnover >EUR 100 million.

- Structured as a progressive lump-sum contribution.
- Criticised by several Member States over legality and economic impact.
- Germany, Malta, Cyprus, and Italy opposed it; France supported alternative mechanisms like CBAM.

Our insights

The 2028-2034 budget proposal envisages the introduction of new own resources of the European Union, deemed to be "essential to support a more ambitious long-term budget". The proposed five new own resources include a CORE. The proposed CORE rests on the premise that companies operating in the European Union, and benefitting from the world's largest single market, should contribute directly to the financing of the EU budget.

The main features of the proposed CORE are:

- it would apply to (i) companies resident for tax purposes in an EU Member State with an annual net turnover exceeding EUR 100 million, and (ii) third-country resident companies having a permanent establishment in an EU Member State, if the annual net turnover generated through that permanent establishment exceeds EUR 100 million (and irrespective of the net turnover of the third-country company that is not generated through the EU permanent establishment);
- it would be an annual lump-sum contribution differentiated according to companies' net turnover, with higher net turnovers resulting in larger contributions;
- governmental entities (with the exception of state-owned enterprises), international organizations and non-profit organizations would be outside the scope of the CORE; and
- it is envisaged that the EU Member States would collect the CORE on behalf of the EU and in accordance with its requirements.

While the European Commission says the new package could raise EUR 58.5 billion annually, many Member States pushed back, questioning the legality and economic impact of CORE.

- Germany firmly rejected it, calling it dead on arrival, warning it could harm competitiveness and trigger business relocations. Malta, Cyprus, and Italy echoed concerns, while others like Greece, Ireland, Finland, and Sweden emphasised caution and a preference for Gross National Income (GNI)-based contributions.
- Some countries, including Lithuania and Estonia, questioned the need for new resources if the budget size remains unchanged.

Poland and Belgium raised specific objections to Emissions Trading System (ETS) revenue use and customs collection adjustments while other countries, such as France, supported expanding non-tax burdens like the CBAM instead.

This initiative from the European Commission is unexpected given the current economic climate and appears to contradict its stated commitments to simplification and competitiveness. It is frankly a bizarre and unprecedented proposal, and it is hard to believe it made it out of the Commission. It raises concerns about whether lessons from past policy missteps have been fully absorbed and whether the voices of European businesses and entrepreneurs are being adequately considered. The lack of direct electoral accountability of the Commission may contribute to this disconnect.

Despite its ambition, the legal foundation and economic justification of the proposal remain contentious. Several Member States, including Germany, have expressed strong opposition. Companies within the scope of CORE should anticipate potential budgetary implications and reassess their EU presence in light of possible relocation risks.

Start-ups and scale-ups: Tax incentives and legal reform

What's up?

- Launched by the European Commission to support tech-driven companies.
- Key actions:
  - Introducing a "European 28th regime" for simplified legal and tax frameworks.
  - Promoting favorable tax treatment for investment and employee stock options.
  - Addressing cross-border employment tax complexity.
  - Proposing definitions for start-ups and scale-ups in 2026.

Our insights

The EU's Start-up and Scaleup Strategy proposes a "European 28th regime" to harmonise corporate legal frameworks, including tax laws. For emerging companies, this could mean access to immediate expensing, accelerated depreciation, and streamlined treatment of employee stock options. However, the success of these measures depends on Member State cooperation and the resolution of cross-border tax complexities. Start-ups should monitor the Commission's forthcoming recommendations and prepare to leverage new incentives while navigating divergent national rules

Tax simplification agenda and regulatory efficiency

What's up?

- The EESC and ECON Committee support simplification to enhance competitiveness.
- Recommendations include:
  - Competitiveness checks for new legislation.
  - Harmonisation of definitions.
  - EU-level advance rulings.
  - Review of CFC rules.
  - Addressing cross-border tax complexity.
  - Establishing an EU tax court and a Joint Transfer Pricing Forum.

Our insights

The European Economic and Social Committee (EESC) and the European Parliament's ECON Committee have both endorsed simplification measures that could materially affect business operations. Recommendations such as EU-level advance rulings, harmonised definitions, and a dedicated tax court aim to reduce legal uncertainty and compliance costs. However, they also signal a move toward greater centralisation of tax interpretation, which may limit Member State discretion and require businesses to adapt to more uniform standards.

Conclusion

The EU's current tax initiatives reflect a complex interplay between harmonisation, simplification, and sovereignty. For businesses, the legal implications are profound: increased compliance obligations, evolving reporting standards, and potential shifts in tax liabilities. Legal counsel and tax advisors should proactively assess these developments, engage with regulatory consultations, and prepare for a more integrated—yet contested—European tax landscape.

Do you have any questions?

KEITH O'DONNELL
Managing Partner
keith.odonnell@atoz.lu

MARIE BENTLEY
Chief Knowledge Officer
marie.bentley@atoz.lu

Navigating international tax disputes: UAE's mutual agreement procedure guidance and its implications for business

OUR INSIGHTS AT A GLANCE

- The UAE Ministry of Finance has issued detailed guidance on the Mutual Agreement Procedure, providing a structured framework for resolving cross-border tax disputes under the UAE's extensive double tax treaties network.
- MAP enables taxpayers to seek relief from double taxation and treaty misapplications, particularly in cases involving transfer pricing adjustments, or inconsistent treaty interpretation.
- By leveraging the MAP framework, businesses can mitigate the risks of double taxation and foster smoother cross-border operations.
- In this article, we explore the key elements of the UAE's MAP guidance and outline its practical implications for businesses.

In an increasingly globalised economy, cross-border transactions and multinational operations are commonplace. However, these activities often give rise to complex tax issues, particularly the risk of double taxation. To address this, the United Arab Emirates ("**UAE**") has entered into over 100 Double Tax Treaties ("**DTTs**") with other jurisdictions. These DTTs aim to allocate taxing rights in relation to income or profits between states to reduce instances of double taxation and prevent fiscal evasion. Despite these treaties, disputes can still arise over interpretation and application.

To resolve such disputes, the UAE Ministry of Finance has published comprehensive guidance on the Mutual Agreement Procedure ("**MAP**"), a mechanism embedded in DTTs that allows competent authorities of contracting states to negotiate and resolve tax conflicts.

In this article, we explore the key elements of the UAE's MAP guidance and outline its practical implications for businesses.

What is MAP?

MAP is a dispute resolution process that enables the UAE and its DTT partners to seek to resolve international tax disputes, which result, or will result in taxation, that is not in accordance with the DTT. A MAP may also be sought in cases of double taxation not explicitly covered by the relevant DTT.

It is particularly relevant in situations involving:

- Double taxation due to transfer pricing adjustments.
- Disagreements over the interpretation or application of a DTT.
- Taxation of the same income in two jurisdictions.

The legal foundation for MAP is typically Article 25 of the OECD Model Tax Convention ("**MTC**"), which has been adopted in the UAE's DTTs either through bilateral negotiations or via the OECD's Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting" ("**MLI**").

MAP eligibility

When is MAP applicable?

MAP can be initiated when a taxpayer believes that the actions of one or both Contracting States result in taxation not in accordance with the DTT. This includes:

- Economic double taxation (e.g., same income taxed in two jurisdictions).

- Example: Transfer pricing adjustments imposed by the FTA on a cross-border transaction. If no corresponding deduction is allowed in the foreign jurisdiction, the taxpayer suffers economic double taxation. In such cases, the taxpayer may request:
  - Withdrawal/Reduction of the adjustment imposed by the FTA in the UAE; and/or
  - A corresponding deduction by the foreign tax authority.

- Jurisdictional disputes over residency or permanent establishment.
  - Example: If a taxpayer is deemed a resident under the domestic tax laws of more than one state, this may lead to double taxation. The taxpayer can seek assistance from one or both Competent Authorities to determine its tax residence status.
  - Example: If a taxpayer has a permanent establishment in another state and is subject to a profit adjustment, they may request relief through increased foreign tax credit or assistance from the other Competent Authority.

- Inconsistent application of treaty provisions.

- Application of the anti-abuse provision in the applicable DTT or conflict of this provision with the UAE's general anti-abuse rule under the UAE Corporate Tax law.

In cases involving multilateral tax disputes—particularly those arising from global transfer pricing models like profit split methods—the resulting allocation may lead to double taxation across several jurisdictions. In such situations, the UAE Competent Authority ("**UAE CA**") can initiate a multilateral MAP involving two or more countries, provided that each bilateral DTT between the UAE and the involved states permits such coordination.

In some jurisdictions, taxpayers may be required to waive their right to MAP as part of a tax audit settlement. However, the UAE CA does not consider such waivers valid grounds for denying access to MAP in the UAE.

Importantly, MAP is available even if domestic remedies have been exhausted or are still ongoing.

How to initiate a MAP?

To initiate a MAP, the taxpayer must submit a formal application to the competent authority, as defined under each DTT.

In the UAE, the term "Competent Authority" is generally defined as the Minister of Finance, their authorised representative, or the Ministry of Finance itself. For the purposes of the MAP, the UAE CA operates independently from the Federal Tax Authority ("**FTA**"). This separation aligns with international best practices and ensures that the UAE CA can effectively fulfil its mandate under the applicable DTT.

Nevertheless, dedicated members of the FTA, who are independent of the tax audit function, collaborate with the UAE CA on MAP cases. The FTA will also be responsible for implementing any MAP agreement reached and assisting the UAE CA to obtain relevant documents.

The UAE CA's role is to seek the elimination of double taxation through negotiation and cooperation with the competent authority of the treaty partner. It does not act as a reassessment or audit body. Therefore, taxpayers should approach the MAP process as a diplomatic resolution mechanism rather than a continuation of domestic tax audits.

Time limits

MAP requests must be submitted within the time limits specified in the relevant DTT, typically within three years from the first notification of the action causing the dispute.

While the UAE CA enforces these timelines, it applies a reasonable approach in cases where deadlines are close or recently missed. Taxpayers should still aim to submit MAP requests promptly.

Additionally, if a DTT allows MAP where taxation is likely (not yet imposed), taxpayers may initiate a claim during a transfer pricing audit if an adjustment appears probable—even before formal notification.

Interaction with domestic remedies

MAP is a treaty-based process and operates independently of domestic legal proceedings. Taxpayers may pursue MAP alongside or instead of domestic remedies. However, acceptance of a MAP resolution typically requires withdrawal from domestic appeals.

If a final decision is issued by a UAE court or the Tax Dispute Resolution Committee, the UAE CA is legally bound by that ruling. While MAP remains accessible, relief may then only be available from the other jurisdiction's Competent Authority. Similarly, domestic remedies pursued in the other jurisdiction may restrict that foreign authority's ability to grant relief. Therefore, taxpayers should carefully evaluate the interaction between domestic legal remedies and MAP access in all relevant jurisdictions before choosing a course of action.

The MAP request

Information to be provided

The guidance outlines the required information in a MAP request, including:

- Identification of the taxpayer and relevant entities.
- Description of the facts and circumstances of the case.
- Explanation of why the taxpayer believes the taxation is not in accordance with the DTT.
- Details of any domestic remedies pursued.

Taxpayers should provide as much relevant information as possible to enable the UAE CA to provide effective assistance. While comprehensive documentation supports a smoother evaluation, each case is assessed individually. Accordingly, the UAE CA will determine the adequacy of the provided information on a case-by-case basis. Documents submitted to the UAE CA should be in English or Arabic.

Bona-fide self-initiated adjustments

Under UAE Corporate Tax law, taxpayers may make self-assessed transfer pricing adjustments. As per the Commentary to the MTC, the UAE CA considers such adjustments permissible under MAP if they result in double taxation—provided they are made in good faith and supported by robust transfer pricing documentation and economic analysis.

Where to file the MAP request

Recent UAE DTTs allow taxpayers to submit MAP requests to the Competent Authority of either contracting state, whereas older DTTs—unless amended by the MLI—typically require submission to the authority in the taxpayer's country of residence.

When permitted, especially in transfer pricing cases, taxpayers are encouraged to submit identical MAP requests to both Competent Authorities to expedite eligibility assessment.

Assessment of a MAP request

Once a request is accepted, the UAE CA will first assess whether it can provide relief unilaterally. If not, the UAE CA will then engage with the other jurisdiction's competent authority to resolve the issue. The process involves:

- Evaluation of the facts and legal arguments.
- Negotiation between competent authorities.
- Possible agreement on a resolution that eliminates double taxation.

If an agreement is reached and accepted by the taxpayer, it is implemented regardless of domestic time limits. If no agreement is reached, or the taxpayer rejects its outcome, domestic remedies may continue, and penalties may still apply.

MAP outcomes

As a result of a MAP, various outcomes are possible:

- **A Competent Authority Agreement is reached**: the taxpayer is notified via email within two months and must respond within one month to accept or reject its outcome.
    - **Acceptance of MAP agreement**: Upon acceptance, the taxpayer must withdraw domestic remedies related to the same issue and period and should submit a voluntary disclosure to the FTA. The UAE CA will coordinate with the FTA to implement the agreement.
        - Each MAP agreement is case-specific and does not set a precedent for future claims.

- **Rejection of MAP agreement**: If the taxpayer rejects the agreement, the MAP case is closed, and the taxpayer may pursue or resume domestic remedies in either jurisdiction.

- **No agreement is reached**:
  If negotiations fail, the UAE CA will close the case and notify the taxpayer, explaining why resolution was not possible.
  - **Arbitration**: Some UAE DTTs allow unresolved MAP issues to be referred to arbitration, provided certain conditions are met—such as the absence of a court decision and failure to resolve the issue within the DTTs time limits. Arbitration may be mandatory or voluntary, depending on the treaty.

- **Withdrawal of MAP claim**:
  Taxpayers may withdraw their MAP request at any time by notifying the UAE CA, especially if a domestic resolution is found.

The UAE CA aims to resolve MAP cases promptly and in line with OECD best practices, depending on timely taxpayer submissions and cooperation from the other jurisdiction. During the MAP process, any tax assessed by the FTA is not suspended and remains payable. As a result, if the taxpayer accepts a MAP agreement that reduces or cancels the liability, any tax already paid may be refunded or credited through an application to the FTA. However, if no agreement is reached and no alternative domestic relief is obtained, the tax liability continues to accrue, including any applicable penalties.

Conclusion: Key takeaways for UAE businesses

The UAE's MAP guidance offers a structured and transparent framework for resolving international tax disputes. UAE businesses should consider the following:

- **Proactive compliance**: Ensure transactions are well-documented and aligned with DTT provisions to minimise disputes.
  - Taxpayers should carefully gather and document all relevant facts and supporting records related to their tax dispute before submitting a MAP request. Doing so strengthens the credibility and completeness of the claim, which in turn helps the UAE CA better understand the case and provide more effective assistance in resolving the issue. Thorough preparation increases the likelihood of a favorable and timely outcome.
- **Timely action**: Be aware of the time limits for initiating MAP and act promptly when disputes arise.
- **Strategic use of MAP**: Evaluate whether MAP offers a more favorable resolution than domestic litigation.
- **Coordination with Advisors**: Engage tax professionals familiar with international treaties and MAP procedures.

By leveraging the MAP framework, businesses can mitigate the risks of double taxation and foster smoother cross-border operations. The UAE's commitment to international standards, as reflected in its adoption of the OECD's MLI and publication of this guidance, reinforces its position as a globally integrated and business-friendly jurisdiction.

Do you have any questions?

OLIVIER REMACLE
Partner
Mobile +971 58 624 4378
olivier.remacle@atoz-me.ae

BARBARA SCHWARTZ
Principal
Mobile +971 54 291 6992
barbara.schwartz@atoz-me.ae

Contact us

ATOZ TAX ADVISERS

NORBERT BECKER
Chairman
Phone +352 26 940 400
Mobile +352 661 830 400
norbert.becker@atoz.lu

FATAH BOUDJELIDA
Managing Partner - Operations
Phone +352 26 940 283
Mobile +352 661 830 283
fatah.boudjelida@atoz.lu

KEITH O'DONNELL
Managing Partner
Phone +352 26 940 257
Mobile +352 661 830 203
keith.odonnell@atoz.lu

JAMAL AFAKIR
Partner, Head of International & Corporate Tax
Phone +352 26 940 640
Mobile +352 661 830 640
jamal.afakir@atoz.lu

OLIVER R. HOOR
Partner, Head of Transfer Pricing & the German Desk
Phone +352 26 940 646
Mobile +352 661 830 600
oliver.hoor@atoz.lu

THIBAUT BOULANGE
Partner, Head of Indirect Tax
Phone +352 26 940 270
Mobile +352 661 830 182
thibaut.boulange@atoz.lu

FANNY BUEB
Partner
Phone +352 26 940 206
Mobile +352 661 830 007
fanny.bueb@atoz.lu

PETYA DIMITROVA
Partner
Phone +352 26 940 224
Mobile +352 661 830 224
petya.dimitrova@atoz.lu

ANTOINE DUPUIS
Partner
Phone +352 26 940 207
Mobile +352 661 830 601
antoine.dupuis@atoz.lu

SAMANTHA HAUW
Partner
Phone +352 26 940 213
Mobile +352 661 830 018
samantha.hauw@atoz.lu

HUGUES HENAFF
Partner
Phone +352 26 940 516
Mobile +352 661 830 516
hugues.henaff@atoz.lu

CHRISTINA LEOMY-VOIGT
Partner
Phone +352 26 940 203
Mobile +352 661 830 104
christina.leomy-voigt@atoz.lu

Contact us

ATOZ TAX ADVISERS

ANDREAS MEDLER
Partner
Phone +352 26 940 237
Mobile +352 661 830 038
andreas.medler@atoz.lu

OLIVIER REMACLE
Partner
Phone +352 26 940 239
Mobile +352 661 830 230
olivier.remacle@atoz.lu

ROMAIN TIFFON
Partner
Phone +352 26 940 245
Mobile +352 661 830 245
romain.tiffon@atoz.lu

MARIE BENTLEY
Chief Knowledge Officer
Phone +352 26 940 903
Mobile +352 661 830 048
marie.bentley@atoz.lu

MIKE VAN KAUVENBERGH
Director & Head of Consulting - ESG
Phone +352 26 940 518
Mobile +352 621 532 195
mvk@deveco.lu

HOLLY WHATLING
Marketing Director
Phone +352 26 940 916
Mobile +352 661 830 131
holly.whatling@atoz.lu

ATOZ SERVICES

JEAN-MICHEL CHAMONARD
Managing Partner
Phone +352 26 9467 772
Mobile +352 661 830 233
jean-michel.chamonard@atoz-services.lu

EMILIE BRUGUIERE
Partner, Head of Direct Tax Compliance
Phone +352 26 9467 305
Mobile +352 661 830 305
emilie.bruguiere@atoz-services.lu

MIREILLE RODIUS
Partner, Head of VAT Compliance
Phone +352 26 9467 305
Mobile +352 661 830 305
mireille.rodius@atoz-services.lu

CHAFAI BAIHAT
Partner
Phone +352 26 9467 305
Mobile +352 661 830 305
chafai.baihat@atoz-services.lu

Contact us

ATOZ SERVICES

CHRISTOPHE DARCHE
Partner
Phone +352 26 9467 588
Mobile +352 661 830 588
christophe.darche@atoz-services.lu

GAELLE BERNARD
Partner
Phone +352 26 9467 703
Mobile +352 661 830 134
gaelle.bernard@atoz-services.lu

GILLES STURBOIS
Partner
Phone +352 26 9467 209
Mobile +352 661 830 067
gilles.sturbois@atoz-services.lu

GAEL TOUTAIN
Partner
Phone +352 26 9467 306
Mobile +352 661 830 306
gael.toutain@atoz-services.lu

ATOZ FUND SERVICES

JEREMIE SCHAEFFER
Authorised Manager
Phone +352 26 9467 517
Mobile +352 661 830 517
jeremie.schaeffer@atoz-fundservices.lu

NICOLAS CUISSET
Authorised Manager
Phone +352 26 9467 305
Mobile +352 661 830 305
nicolas.cuisset@atoz-fundservices.lu

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ATOZ

TAX ADVISERS

Aerogolf Center 1B, Heienhaff I L-1736 Senningerberg
Phone (+352) 26 940-1

www.atoz.lu

TAXAND