Clifford Chance

Luxembourg legal update

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01

Asset Management and Investment Funds

ESMA Q&A update – SFDR Principal Adverse Impact disclosures

4 November 2025

ESMA has updated its Q&A on the Sustainable Finance Disclosure Regulation ("SFDR"), regarding the disclosure of principal adverse impacts ("PAI") by financial market participants ("FMP") under article 4 of the SFDR.

The new question 32 (under section IV (PAI disclosures)) states that, where FMPs consider PAI at entity level, in order to ensure the description of actions taken, planned or targets set to avoid and reduce PAI are fair, clear, and not misleading, for each identified PAI FMPs should include or refer to information on:

- how the FMP assesses the need to take action (e.g., relevant thresholds or criteria that trigger mitigation measures);
- the actions taken in the previous year; and
- actions planned or targets set for the coming year.

EU RTS and ESMA Guidelines on Liquidity Management Tools under AIFMD II

17 November 2025 (RTS) – 15 April 2026 (ESMA Guidelines/ CSSF Circular 26/910)

The EU regulatory technical standards ("RTS") regarding liquidity management tools ("LMTs") under AIFMD II have been published in the official journal. In parallel, the CSSF has issued Circular 26/910, confirming the application of the ESMA Guidelines on LMTs for open-ended AIFs in Luxembourg ("Guidelines").

AIFMD II sets out a series of updates to the existing EU Alternative Investment Fund Managers Directive, including (amongst others) a requirement for AIFMs of open-ended AIFs to select at least two LMTs from a prescribed list. The RTS set out the detailed features that the chosen LMTs must comply with to meet this new requirement. The Guidelines provide further detail on the selection, calibration, and activation of LMTs.

The RTS and the Guidelines apply from 16 April 2026, with a transitional period until 16 April 2027 for existing AIFs.

European Commission publishes legislative proposal for SFDR 2.0

20 November 2025

The European Commission ("EC") has published a legislative proposal to review the Sustainable Finance Disclosure Regulation ("SFDR 2.0"). It sets out fundamental changes to how certain financial products and financial market participants ("FMPs") in the European Union market, disclose and report sustainability-related matters to investors.

Key changes include:

- Three new sustainability-related product categories: transition, ESG-basics and sustainable
- The new product categories apply mandatory exclusions and a 70% investment threshold
- A new concept of impact investing, which may apply to the transition and sustainable categories
- Non-categorised products cannot generally include sustainability-related claims in their names or marketing materials. They may include limited information in pre-contractual disclosures and reporting
- FMP disclosures on the consideration of principal adverse impacts are removed

The details of SFDR 2.0 will be negotiated through the legislative process. The EC will have Level 2 powers to shape technical details after further consultation.

For a more detailed explanation, please refer to our client briefing and our insight call.

ESMA publishes updated Q&A on the ELTIF regulation

5 December 2025

The European Securities and Markets Authority (“ESMA”) has published updated Q&As on the European Long-Term Investment Funds Regulation (“ELTIF Regulation”).

The Q&A covers practical issues for managers and market participants, including:

- redemption policies and liquid asset requirements;
- minimum holding periods and redemption frequency;
- investment strategy, eligible assets and portfolio diversification;
- cross-border activities and operational requirements.

CSSF Circular 25/901 – Amending Luxembourg's alternative investment fund framework

19 December 2025

On 19 December 2025, the CSSF has published Circular 25/901 (the "Circular") (Link), accompanied by an additional document setting out key concepts and terms used in the area of investment funds, significantly amending the regulatory framework applicable to Luxembourg regulated alternative investment funds (Part II UCIs, SIFs and SICARs). The Circular will not apply to funds or sub-funds qualifying as ELTIFs, MMFs, EuVECAs or EuSEFs, or SIFs, SICARs, Part II UCIs or sub-funds closed to redemption and authorised before 19 December 2025.

The new Circular repeals and replaces different CSSF circulars, to combine different rules and interpretations into one single document and to clarify most common concepts in the area of alternative investment funds.

Key changes are:

- **Investment limits/risk spreading** – (i) For funds marketed to unsophisticated retail investors maximum 25% per single entity or person, subject to certain exceptions (50% for infrastructure investments); and (ii) for funds whose securities are reserved for well-informed and professional investors, maximum 50% (70% for infrastructure investments). Additional derogations may be granted by the CSSF on a case-by-case basis.
- **Ramp-up periods** – The duration of the ramp-up period during which investment limits do not apply is set at (i) up to twelve months for funds investing in assets eligible under the UCITS directive, and (ii) four years for funds making private investments. Noting that for the latter, the Circular provides that the ramp-up period may be longer and/or may be extended.
- **Borrowing limit** – For Part II UCIs, the borrowing limit is increased to 70%. No borrowing limit applies to funds reserved to well-informed or professional investors.
- **Transparency** – The circular includes a detailed section on the CSSF's expectations on different disclosures in sales documents.

The new circular entered into force with immediate effective. Funds authorised by the CSSF before 19 December 2025 may continue to apply the rules in place at the time of their authorisation.

Luxembourg Parliament adopted bill No. 8628 transposing AIFMD II

3 March 2026

The Luxembourg Parliament has adopted Bill No. 8628 transposing AIFMD II into Luxembourg law. The AIFMD II sets out a series of updates to the existing EU Alternative Investment Fund Manager Directive, including (amongst others):

- **Loan origination:** a new definition of loan origination AIF is introduced, with corresponding requirements, including relating to leverage caps, risk retention requirements and concentration limits.
- **Liquidity management tools:** AIFMs of open-ended AIFs will be required to select at least two liquidity management tools from a prescribed list.
- **Expansion of AIFM functions and ancillary services:** the functions and ancillary services that can be performed by an AIFM are expanded.
- **Reporting:** pre-contractual and periodic reporting requirements are expanded.

AIFMD II requires changes to AIFM's policies and procedures as well as fund documents. The extent to which an existing AIF is impacted by AIFMD II will depend on the fund structure, strategy and terms.

The law entered into force following its publication, with most provisions taking effect from 16 April 2026.

CSSF launches eDesk procedure for Liquidity Management Tools (“LMTs”) notification

18 March 2026

In relation to the application of AIFMD II from 16 April 2026, the CSSF launched a new eDesk procedure for UCITS and open-ended AIFs to notify the selection and activation of liquidity management tools (“LMTs”)

- **LMT selection:** UCITS and AIFMs of open-ended AIFs must notify the CSSF of their LMT selections and related policies and procedures by 16 April 2026 (the LMT selection module has been available on eDesk since 23 March 2026).
- **LMT activation:** certain LMT activations or deactivations that occur as from 16 April 2026 should be notified through the new LMT activation module. This procedure also applies to certain Luxembourg-domiciled funds that are not UCITS or AIFs, or which are not managed by a Luxembourg-domiciled authorised AIFM.

For now, existing CSSF procedures relating to certain LMTs remain in place alongside the new eDesk LMT activation module.

02

Tax

DAC 9 - Luxembourg transposes new directive on administrative cooperation in the field of taxation

19 December 2025

In our Legal Update Q2 2025, we reported that the Council of the European Union had adopted the eighth amendment to the Directive on administrative cooperation in the field of taxation (Directive 2025/872 – “DAC 9”) and that the EU Member States were required to transpose DAC 9 by 31 December 2025.

By way of reminder, DAC 9 extends cooperation and information exchange between tax authorities in the area of global minimum taxation. The latter results from Council Directive (EU) 2022/2523 of 15 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups (“Pillar 2 Directive”).

On 19 December 2025, the Luxembourg Parliament adopted bill n°8591 transposing DAC 9 into national law.

The new law introduces measures aimed at simplifying administrative procedures, notably through the creation of a standardised reporting format known as the “top-up tax information return” (“TTIR”) for the purposes of the Pillar 2 Directive. In line with the objectives of DAC 9, the law also establishes a framework enabling the automatic exchange of the TTIR between competent tax authorities. This approach is intended to streamline compliance by allowing for a single, centralised filing for the whole multinational enterprise (“MNE”) group, rather than requiring separate filings by each constituent entity within the MNE group. It also aligns the reporting mechanism with the G20/OECD’s Inclusive Framework standards for the collection and exchange of tax-related information for MNEs and large-scale domestic groups.

The detailed model and content of the TTIR will be determined by way of Grand-Ducal regulation.

Luxembourg introduces a start-up investment tax credit

19 December 2025

On 19 December 2025, the Luxembourg Parliament adopted bill n°8526 (the "Law"), introducing a new non-refundable tax credit for individual investors in innovative start-ups. The Law amends the Luxembourg income tax law of 4 December 1967, as amended ("LITL") and applies as from tax year 2026.

In essence, it provides for a tax credit equal to 20% of the eligible investment.

To benefit from this incentive, the following conditions must be met:

1. **Conditions relating to the start-up**

   - **Legal form and tax status:** the start-up must be either a capital company or a cooperative. It must be (i) tax resident in Luxembourg and fully subject to Luxembourg corporate income tax or (ii) resident in the EEA, operating through a Luxembourg permanent establishment and subject in its state of residence to a comparable tax.
   - **SME thresholds:** the company must be less than five years old at the end of the relevant tax year, have fewer than 50 employees and an annual turnover or balance sheet total not exceeding EUR 10 million.
   - **Substance and innovative character:** the company must employ at least two full-time equivalents and have incurred research and development (R&D) expenses amounting to at least 15% of its total operating costs in at least one of the three preceding financial years.
   - **Excluded sectors and situations:** regulated professions (law, audit, accounting), real estate entities, SICARs, listed entities, merger/demerger entities, dividend-distributing entities, and undertakings in difficulty under Regulation (EU) 651/2014.

2. **Conditions relating to the investor**

    - **Status:** the investor must be an individual, either Luxembourg tax resident or non-resident assimilated to a resident under article 157ter LITL for the year of the investment.
    - **Absence of links with the start-up:** the investor may not be a founder of the start-up nor have any other subordinate relationship with it.

3. **Conditions relating to the investment**

    - **Instrument and timing:** the investment must consist of a subscription, either at the time of incorporation or during a capital increase, of new, fully paid-up and nominative shares or units.
    - **Holding mode and minimum duration:** the investment must be held either directly, or indirectly through a tax-transparent vehicle, for an uninterrupted period of at least three years commencing at the end of the tax year for which the start-up tax credit is claimed.
    - **Quantitative thresholds:** the minimum investment required is EUR 10,000 per start-up per tax year. The total amount of investments eligible for the tax credit at the level of a given start-up is capped at EUR 1.5 million, aggregated across all investors.

If these conditions are met, the investor is eligible for a non-refundable tax credit capped at EUR 100,000 per investor per tax year. Any amount exceeding the annual cap is lost (no carry-forward). Conversely, where the tax credit exceeds the investor's income tax liability for the year, the excess may be carried forward and offset against future income tax liabilities under the same conditions.

Pillar Two: OECD Inclusive Framework agrees side-by-side package

5 January 2026

On 5 January 2026, the OECD/G20 Inclusive Framework on BEPS approved and declassified the side-by-side package (the "Package"). This significant body of administrative guidance, which will be incorporated into the Commentary to the GloBE Model Rules, aims to enhance stability, simplicity and certainty in the application of the global minimum tax ("GMT"). The Package is structured around four principal pillars: (i) the introduction of a permanent Simplified ETR Safe Harbour; (ii) a one-year extension of the Transitional CbCR Safe Harbour; (iii) a dedicated safe harbour for substance-based tax incentives; and (iv) the side-by-side system, which permits certain pre-existing minimum tax regimes to operate concurrently with the GloBE Model Rules. A summary of these four components is provided below.

Simplified ETR safe harbour

The cornerstone of the Package is the introduction of a permanent Simplified ETR Safe Harbour, which is intended to replace the Transitional CbCR Safe Harbour. Under this safe harbour, the top-up tax in a jurisdiction is deemed to be zero if the MNE group can demonstrate a simplified ETR at or above the minimum rate of 15%. This determination is based on a simplified calculation that primarily relies on the financial accounting data used to prepare the group's consolidated financial statements, with only minimal adjustments required. Income adjustments are restricted to the exclusion of dividends, equity gains or losses, and illegal payments. The safe harbour also significantly streamlines the treatment of deferred tax liabilities by excluding those that do not qualify as Recapture Exception Accruals. MNE groups may make optional adjustments, such as GloBE elections, to ensure that the Simplified ETR is more closely aligned with the full GloBE computation. The safe harbour applies to fiscal years commencing on or after 31 December 2026, with the possibility of early adoption from 31 December 2025 in certain circumstances.

Extension of the transitional CbCR safe harbour

To facilitate a smooth transition to the Simplified ETR Safe Harbour, the Transitional CbCR Safe Harbour has been extended by one year. It now applies to all fiscal years commencing on or before 31 December 2027 (previously 31 December 2026), provided these fiscal years do not end after 30 June 2029. The transition rate of 17% that was applicable to fiscal years in 2026 is also extended to cover fiscal years in 2027. Where both regimes are available, MNE groups may apply either the Transitional CbCR Safe Harbour or the Simplified ETR Safe Harbour during this transitional overlap period.

Substance-based tax incentive safe harbour

The Package introduces a safe harbour for substance-based tax incentives ("SBTI Safe Harbour"), which allows MNE groups to treat Qualified Tax Incentives ("QTIs") as an increase to the Adjusted Covered Taxes in the jurisdiction. QTIs encompass generally available, expenditure-based tax incentives (e.g. R&D credits, super deductions) and certain production-based incentives calculated on the volume of tangible property produced in the jurisdiction. However, the incentive cannot exceed the expenditure incurred and is subject to a Substance Cap equal to the greater of 5.5% of eligible payroll costs or depreciation of eligible tangible assets in the jurisdiction (or, on an elective basis, 1% of the carrying value of eligible tangible assets). This safe harbour applies from 1 January 2026.

Side-by-side system

While reaffirming that the co ordinated implementation of the global minimum tax through the GloBE rules should remain the primary route to minimum taxation, the Inclusive Framework recognises that certain jurisdictions have already implemented domestic and worldwide minimum tax regimes with comparable policy objectives. The side by side system therefore provides for two targeted safe harbours.

The Side by Side (SbS) Safe Harbour deems the top up tax to be zero for the purposes of both the IIR and the UTPR where the Ultimate Parent Entity ("UPE") is located in a jurisdiction that has been recognised by the Inclusive Framework as having a Qualified SbS Regime, i.e. an eligible domestic minimum taxation system and an eligible worldwide minimum taxation system, such that there is no material risk of effective taxation below 15% on domestic or foreign income.

The UPE Safe Harbour is available where only the domestic eligibility criteria are met. It deems the top up tax to be zero for UTPR purposes only with respect to Constituent Entities located in the UPE jurisdiction and effectively replaces the Transitional UTPR Safe Harbour that expired at the end of 2025.

Importantly, neither safe harbour affects the application of Qualified Domestic Minimum Top up Taxes ("QDMTT"), which continue to apply in all QDMTT jurisdictions without any pushdown of controlled foreign company or other owner level taxes. The agreement is underpinned by an evidence based stocktake to be concluded by 2029, aimed at identifying and addressing any material BEPS or level playing field risks.

Next steps

The SbS and UPE Safe Harbours apply from fiscal years commencing on or after 1 January 2026. The Inclusive Framework will assess jurisdictions' eligibility by the end of H1 2026 upon request. Implementing jurisdictions, including Luxembourg, are expected to integrate the Package into their domestic GloBE legislation. Further work is also ongoing on a de minimis test and a routine profits test, targeted for H1 2026, as well as on the adaptation of the GloBE Information Return (GIR) reporting obligations.

Introduction of a single tax class – Bill n°8676

6 January 2026

On 6 January 2026, the Luxembourg Government submitted bill n°8676 (the "Bill") to Parliament, setting out a comprehensive reform of the Luxembourg personal income tax regime. The Bill proposes to replace the current tax classes 1, 1a and 2 with a single tax class (classe d'impôt unique).

Key features of the bill:

- Introduction of a unified progressive tax scale, largely based on the current tax class 1a.
- Equal treatment of single individuals, married couples and registered partners.
- Increased neutrality by removing tax advantages or disadvantages linked to marital status.

The Bill amends, among other provisions, the Luxembourg income tax law of 4 December 1967, as amended ("LITL"), and introduces several key measures:

- **Introduction of a single tax schedule – "Tarif U" (new article 118 LITL):**
All taxpayers, including spouses and partners entering into marriage or partnership on or after 1 January 2028, will be taxed individually under the new Tarif U. This schedule broadly mirrors the current tax class 1a, with a 0% rate up to EUR 26,650 and a top marginal rate of 42% for income exceeding EUR 234,800.
- **Transitional regime – "Tarif T" (new article 118bis LITL):**
Married couples and partners in a registered partnership before 1 January 2028, who are Luxembourg tax residents from the start of the 2028 tax year, will by default remain jointly taxable under Tarif T for a transitional period of 25 years, ending at the close of the 2052 tax year. Tarif T features a more granular bracket structure (0% up to EUR 26,460; 42% top marginal rate above EUR 469,740).
- **Irrevocable option for individual taxation:**
Eligible spouses or partners under Tarif T may jointly opt for individual taxation under Tarif U. This option must be exercised by submitting a joint request no later than 30 November of the relevant tax year (requests submitted between 1 and 31 December of year N take effect from year N+1). Once exercised, the option is irrevocable and applies from the 2028 tax year onwards; a return to joint taxation is not permitted.

- **New early childhood allowance (*abattement petite enfance*):**
A new allowance of EUR 5,400 per child under the age of three (new article 129h LITL) will be available exclusively to taxpayers taxed individually under Tarif U. Where one spouse or partner has no personal resources exceeding EUR 15,000, a reallocation mechanism applies.
The Bill also provides for targeted adjustments to the single-parent tax credit, [the] child tax reduction, extraordinary expenses and solidarity surcharge regimes.

The Bill is expected to be adopted before the end of the year 2026, with an entry into force from the 2028 tax year. The opinions of the Council of State and of the professional chambers are still pending.

Luxembourg introduces new carried interest tax regime

22 January 2026

On 22 January 2026, the Luxembourg Parliament adopted bill n°8590, introducing a significant and welcome reform of the existing carried interest tax regime (the “Carried Interest Law”). This reform aims to strengthen Luxembourg’s position as a leading hub for alternative investment funds (“AIFs”) and to enhance its attractiveness for front-office professionals.

The Carried Interest Law defines carried interest broadly as performance-based remuneration derived from the outperformance of an AIF, granted through explicit rights over the fund’s net assets or income.
This remuneration is inherently speculative, as it is contingent upon the returns achieved by underlying investments, subject to a ‘hurdle rate’.

Overall the Carried Interest Law clarifies, simplifies, consolidates carry-related tax provisions in the tax code and creates a permanent regime instead of the temporary and outdated carry-regime.

Highlights of the New Regime

1. **Larger scope of eligible beneficiaries**
   The Carried Interest Law broadens the scope of eligible Luxembourg tax-resident individuals beyond direct employees of AIFMs and AIF management companies to include individuals acting at their service, such as employees of related service providers and independent directors.

   Following the comments of the State Council, the Carried Interest Law clarifies that the regime applies only to individuals who effectively contribute to the management of the AIF, whether as employees, partners, managers, or directors of an AIFM, management company of an AIF or under a services agreement. In practice, the regime is limited to individuals involved in portfolio and risk management functions, and excludes those performing purely administrative activities.

2. **Larger scope of eligible AIFs**
   The Carried Interest Law expands the range of eligible AIFs to include tax-transparent vehicles, such as limited partnerships (société en commandite simple), special limited partnerships (société en commandite spéciale) and FCPs (fonds communs de placement). As a result, the favourable tax treatment may now be implemented in both tax-opaque and tax-transparent structures under Luxembourg tax law.

3. **Categories of carried interest regimes**
   Under the previous regime, carried interest holders were required to recover their entire investment in the fund or its underlying assets before qualifying for the favourable tax treatment. The Carried Interest Law removes this prerequisite and provides instead that carried interest income is, as such, treated as a speculative gain. This shift is particularly significant for "deal-by-deal" carried interest structures, where managers participate in returns as and when assets are realised, rather than only after the overall performance of the fund has been determined under a "whole-of-the-fund" model.

The new Carried Interest Law distinguishes between two forms of carried interest. It retains the existing investment-linked carried interest, under which carry holders hold a direct or indirect participation in the AIF, and introduces a new category referred to as "contractual carried interest". Where the relevant conditions are met, income derived from investment-linked carried interest benefits from a full tax exemption, while contractual carried interest is subject to taxation at one quarter of the global income tax rate, resulting in a maximum effective rate of 11.45%.

Update of the EU list of non-cooperative tax jurisdictions

17 February 2026

On 17 February 2026, the Council of the European Union (the "Council") released its conclusions on the revised European list of non-cooperative jurisdictions for tax purposes (the "EU list of non-cooperative tax jurisdictions").

Since December 2017, the Council has provided a list of jurisdictions which do not comply with international tax standards and as from 2019, the Council has encouraged EU Member States to take defensive measures and apply administrative and legislative measures towards such jurisdictions.

In terms of defensive measures, Luxembourg opted for a derogation to the operating expenses deductibility principles regarding interest and royalties paid or due by a Luxembourg taxpayer to an entity located in a country or territory mentioned in the EU list of non-cooperative tax jurisdictions.

The Luxembourg law of 10 February 2021 provides that interest or royalties paid or owed would not be deductible for corporate income tax purposes when the following conditions are simultaneously met:

1. the entity to which the interest or royalties are paid or due is established in a country or territory included in the latest applicable version of the EU list of non-cooperative tax jurisdictions;
2. the entity to which the interest or royalties are paid or due is an affiliated undertaking within the meaning of article 56 of Luxembourg income tax law (the "LITL");
3. the entity to which the interest or royalties are paid or due is a corporation within the meaning of article 159 LITL (i.e. partnerships are excluded from the scope).

The EU list of non-cooperative tax jurisdictions was updated on 17 February 2026 and now comprises American Samoa, Anguilla, Guam, Palau, Panama, Russia, the Turks and Caicos Islands, the US Virgin Islands, Vanuatu and Vietnam.

The Turks and Caicos Islands were included in the EU list of non-cooperative tax jurisdictions following concerns regarding the enforcement of economic substance requirements, while Vietnam does not meet the required standards for exchange of information on request.

As a reminder, the non-deductibility rule applies as from 1 January of each subsequent year to the jurisdictions included in the latest version of EU list of non-cooperative tax jurisdictions as at that date.

In this respect, as at 1 January 2026, the relevant version of the EU list of non-cooperative tax jurisdictions is that published on 10 October 2025, which includes American Samoa, Anguilla, Fiji, Guam, Palau, Panama, Russia, Samoa, Trinidad and Tobago, the US Virgin Islands and Vanuatu.

Accordingly, the deductibility of interest and royalty payments to entities established in these jurisdictions may be denied, subject to the conditions described above, as from 1 January 2026.

Denial of Permanent Establishment by the Luxembourg Administrative Court

12 March 2026

In decisions n°53207C and n°53208C dated 12 March 2026, the Luxembourg Administrative Court held that a US branch of a Luxembourg company did not constitute a permanent establishment, on the basis that it lacked substantive economic functions and decision-making autonomy.

In both cases, the factual pattern was broadly similar, involving a Luxembourg company ("LuxCo"), itself incorporated by a US company (the "US Parent"), which established a US branch to which it allocated certain asset management and administrative functions. In this respect, the US Parent provided an employee and made office premises available to support the branch's activities.

As a preliminary matter, the Court recalled the primacy of international law, emphasising that the Luxembourg–US tax treaty took precedence over Luxembourg domestic law. On that basis, the Court set out the definition of a permanent establishment, namely a fixed place of business through which the business of an enterprise is wholly or partly carried on.

In both cases, the branch operated from premises belonging to the US Parent. The Court nevertheless noted, in line with the OECD Commentary, that a fixed place of business may be situated within the premises of another enterprise.

The Court further noted that the human and material resources made available must be commensurate with the activities carried out by the branch. However, even in the context of asset management activities, this does not dispense with the need to meet the conditions for the existence of a permanent establishment.

Having regard to the nature of the branch's activities, the Court considered that the human and material resources made available to the branch were commensurate with its functions and sufficient to constitute a fixed place of business with a sufficient degree of permanence. Accordingly, and contrary to the position of the Administrative Tribunal, the Court held that a fixed place of business did exist.

However, the condition relating to the carrying on of a business activity was not met. The Court reminded that the enterprise must carry on its business, wholly or partly, through the fixed place of business, a requirement which is not satisfied where activities are merely occasional or limited and lack any meaningful deployment of human and technical resources.

The Court concurred with the first instance judges and found that, under the various contractual arrangements in place – including the services agreement with the US Parent and the internal management arrangement between LuxCo and its US branch - a significant portion of the functions ostensibly attributed to the branch had in fact been delegated back to the Luxembourg head office and, in part, to the US Parent. As a result, the activities allocated to the branch were not effectively performed in the United States but, in substance, carried out at the level of the Luxembourg head office.

Additionally, the Court emphasised that day-to-day asset 'management' would entail active involvement in enhancing the performance or value of the assets.

In this respect, the mere appointment of a manager and the temporary allocation of a limited number of assets, which were subsequently largely reallocated to the US Parent, were not sufficient to constitute a genuine asset management activity requiring regular on-site involvement.

Accordingly, notwithstanding the existence of a fixed place of business, no permanent establishment could be recognised in the absence of any substantive business activity carried on through the US branch.

Luxembourg Administrative Tribunal redefines tax treatment of share premium reimbursements

25 March 2026

In decision n°45846a dated 25 March 2026, the Luxembourg Administrative Tribunal held that a repayment of share premium to shareholders, absent a concomitant reduction of the share capital, does not constitute an allocation made in consideration for a reduction of share capital funded by shareholders' contributions and should instead be treated as income from movable capital subject to a 15% withholding tax.

In this case, a Luxembourg public limited liability company (the "Company") established a share premium reserve in connection with (i) its initial public offering and (ii) a subsequent capital increase. This reserve was later used to offset accounting losses. Following a series of restructurings, the Company reallocated part of its profits to the share premium account, ensuring that the amount did not exceed the sum originally contributed by shareholders and previously used to offset earlier losses. The Company subsequently distributed funds to its shareholders, representing a portion of the reconstituted share premium account, which it treated as a repayment of contributions.

Under the Luxembourg income tax law of 4 December 1967, as amended (the "LITL"), allocations made in consideration for a reduction of share capital constituted by shareholders' contributions – provided that such reduction is supported by valid economic reasons – do not qualify as income from movable capital and are therefore not subject to Luxembourg withholding tax.

However, the Luxembourg tax authorities rejected this treatment and applied withholding tax, treating the distribution as income from movable capital, as the conditions for the exemption applicable to capital reductions were not satisfied.

In the absence of a statutory definition under either the LITL or the law of 10 August 1915 on commercial companies (the "Law of 1915"), the Administrative Tribunal, referring to established doctrine, held that share premium – defined as the excess of the issue price over the nominal value of the shares – does not affect the nominal value or number of the shares and therefore does not form part of share capital. This distinction is further supported by the Luxembourg standard chart of accounts, which separates share capital from share premium within equity. Although share premium may be considered as a contribution from an economic perspective, this alone is not sufficient to bring it within the scope of share capital.

The Administrative Tribunal further held that a repayment of capital does not constitute a taxable benefit for shareholders only where it is made in consideration for a formal reduction of share capital within the meaning of the laws governing companies with share capital (including the Law of 1915). Accordingly, a standalone repayment of share premium – without any corresponding reduction of share capital – cannot be regarded as a capital reduction.

Additionally, as such repayments do not fall within the exhaustive list of exceptions to the qualification as income from movable capital, the Administrative Tribunal held that they must be treated as such and, more specifically, as "other income allocated by reason of the participation" in the Company.

The Administrative Tribunal further acknowledged that, while share premium forms part of the acquisition cost of the shares, its repayment – absent a capital reduction – constitutes a distribution of income rather than a return of capital. As such, it does not reduce the tax basis of the participation, any resulting decrease in value being treated as a mere fluctuation in value during the holding period.

Against this background, and in the absence of any demonstration that the share premium in question could be assimilated to share capital, its repayment cannot be characterised as a reduction of share capital.

As of today, and subject to any further developments (including a potential appeal), this ruling has immediate practical implications for Luxembourg companies and their shareholders intending to make distributions from share premium reserves without a formal share capital reduction. Overall, the decision reflects a strict, form-driven interpretation of the LITL, with the practical consequence that standalone repayments of share premium are treated as income from movable capital and may trigger a 15% withholding tax.

Luxembourg implements DAC 8

27 March 2026

On 27 March 2026, the Luxembourg Parliament enacted legislation transposing Council Directive (EU) 2023/2226 of 17 October 2023, which amends Directive 2011/16/EU concerning administrative cooperation in the field of taxation ("DAC 8"), into Luxembourg law (the "Law").

DAC 8 broadens the scope of automatic exchange of tax information to include transactions involving crypto-assets, introducing new registration, due diligence, and reporting obligations for crypto-asset service providers.

Scope – Reporting crypto-asset service providers

The Law applies to reporting crypto-asset service providers ("CASPs"), defined as either (i) crypto-asset service providers authorised under Regulation (EU) 2023/1114 ("MiCA") to provide crypto-asset services or (ii) crypto-asset operators providing such services outside the MiCA framework.

A CASP is subject to the Law if it has a connection to Luxembourg. Such a nexus exists where (i) the CASP has been authorised by the Commission de Surveillance du Secteur Financier (the "CSSF") under the Markets in Crypto-Assets Regulation ("MiCA") or (ii) in the absence of such authorisation, the CASP is tax resident in Luxembourg, is incorporated or otherwise governed by Luxembourg law, is managed from Luxembourg, maintains its habitual place of business in Luxembourg or carries out reportable transactions through a branch established in Luxembourg.

To prevent duplicative reporting, a CASP with connections to multiple Member States is exempt from reporting in Luxembourg if it has already satisfied its reporting obligations in another Member State on a comparable basis, such as tax residence, place of incorporation, place of management or branch location. As other Member States offer corresponding exemptions, a CASP linked to several Member States may generally choose the State in which it fulfils its reporting obligations.

Registration obligation

Non-MiCA authorised CASPs with a nexus to Luxembourg are required to register with the Luxembourg tax authorities (Administration des Contributions Directes – the "ACD") by 30 June of the year following the year in which reportable information arises. Upon registration, they are assigned an individual identification number.

MiCA authorised CASPs are exempt from this registration requirement, as they are already registered with the CSSF.

CASPs that are registered in another Member State, or that are exempt from reporting in Luxembourg, are likewise exempt from registration.

Due diligence obligation

CASPs are required to identify their crypto-asset users, whether individuals or entities, as well as the natural persons who exercise control over such user entities. This identification must be carried out through a self-certification process that enables the determination of the tax residence of each user and, where relevant, of their controlling persons. Self-certifications must be obtained when the relationship is established and, for pre-existing users, no later than 1 January 2027. If there is any change in circumstances that affects the reliability of the initial self-certification, a new self-certification must be obtained.

If a user fails to provide the required self-certification, the CASP must prevent the user from conducting reportable transactions within 60 days of the initial request.

Reporting obligation

CASPs are required to report annually to the ACD by 30 June of the year following the year to which the information relates. The report must include: (i) identification details of the CASP itself (such as name, address, TIN, LEI, and individual identification number where available); (ii) identification details of each reportable crypto-asset user and, where applicable, their controlling persons (including name, address, country of residence, TIN and, for individuals, date and place of birth); and (iii) financial information concerning reportable transactions.

Reportable transactions include exchanges between reportable crypto-assets and fiat currencies, exchanges between different reportable crypto-assets, and transfers of reportable crypto-assets. This encompasses retail payment transactions as well as transfers to distributed ledger addresses that are not linked to a virtual asset service provider or a financial institution.

GDPR obligations

CASPs must inform each natural person concerned that their personal data is being collected and transmitted for the purposes of DAC 8 and must provide each data subject with all information necessary to enable them to exercise their rights under the General Data Protection Regulation (GDPR).

Verification and sanctions

Reportable information must be retained for 10 years, in line with the ACD's investigation period. The Law expressly states that information collected for DAC 8 purposes may be used to determine a taxpayer's tax liability.

Breaches are subject to the following sanctions: a fine of EUR 5,000 for failure to register or to notify a change in registration information; a fine of EUR 5,000 for late reporting, with the possibility of registration being revoked if the CASP fails to comply after at least two reminders issued at least 30 days apart and no later than 90 days from the first reminder; and a fine of up to EUR 250,000 for failure to comply with reporting or due diligence obligations.

Entry into force

The Law applies as from 1 January 2026, with the first reporting due by 30 June 2027.

03

ESG

ESMA Q&A update – SFDR Principal Adverse Impact disclosures

4 November 2025

ESMA has updated its Q&A on the Sustainable Finance Disclosure Regulation (SFDR), regarding the disclosure of principal adverse impacts (PAI) by financial market participants (FMP) under article 4 of the SFDR (Link).

The new question 32 (under section IV (PAI disclosures)) states that, where FMPs consider PAI at entity level, in order to ensure the description of actions taken, planned or targets set to avoid and reduce PAI are fair, clear, and not misleading, for each identified PAI FMPs and should include or refer to information on:

- how the FMP assesses the need to take action (e.g., relevant thresholds or criteria that trigger mitigation measures);
- the actions taken in the previous year; and
- actions planned or targets set for the coming year.

04 Fintech

CSSF launches eDesk procedure for Liquidity Management Tools ("LMTs") notification

18 March 2026

In relation to the application of AIFMD II from 16 April 2026, the CSSF launched a new eDesk procedure for UCITS and open-ended AIFs to notify the selection and activation of liquidity management tools ("LMTs").

- **LMT selection:** UCITS and AIFMs of open-ended AIFs must notify the CSSF of their LMT selections and related policies and procedures by 16 April 2026 (the LMT selection module has been available on eDesk since 23 March 2026).
- **LMT activation:** certain LMT activations or deactivations that occur as from 16 April 2026 should be notified through the new LMT activation module. This procedure also applies to certain Luxembourg-domiciled funds that are not UCITS or AIFs, or which are not managed by a Luxembourg-domiciled authorised AIFM.

For now, existing CSSF procedures relating to certain LMTs remain in place alongside the new eDesk LMT activation module.

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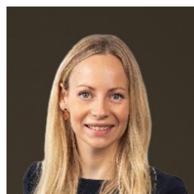

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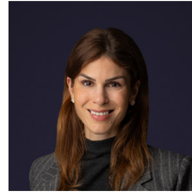

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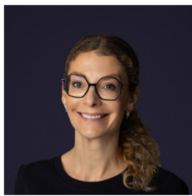

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