

## Financial Center

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### ➤ Law/Bill of Law

- Bill of Law n° 6660 transposing directive 2013/36/UE of the European parliament and of the Council dated 26 June 2013; transposition of Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011 ; amendments of the amended law of 5 April 1993 on the financial sector; of the Law of 23 December 1998 as amended, establishing a Financial Supervisory Commission; of the Law of 12 July 2013 on alternative investment fund managers.

The Bill relates to the prudential supervision of credit institutions and investment firms and has been tabled at the House of deputies on 28 February 2014 and at the Finances and Budget Commission on 6 March 2014.

Amendments were adopted by the Finances and Budget Commission on 23 March 2015 upon recommendation of the Council of State.

- Bill of Law 6543 relating to electronic archiving and amending :
  1. article 1334 of the Civil Code ;
  2. article 16 of the Commercial Code ;
  3. the Law of 5 April 1993 on the financial sector as amended.

New amendments have been adopted by the Economic Commission on 3 April 2015 following the recommendations made by the Council of State on 10 March 2015.

- Bill of law 6752 implementing Regulation 650/2012 of the European Parliament and of the Council of 4 July 2012 on **the jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession** and amending a) the law of 25 September 1905, as amended, on transcription of real estate rights and b) the New Code of Civil Procedure.

Introduced on 3 December 2014 and transferred for recommendation to the Legal Commission on 11 December 2014, the bill of law was the object of recommendation of the Council of State on 11 March 2015.

- Law implementing Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on the **jurisdiction and the recognition and enforcement of judgments in civil and commercial matters**

This revised regulation aims to further facilitate and accelerate the movement of judgments in civil and commercial matters within the European Union, under the principle of mutual recognition and the guidelines of the Stockholm Programme. The main innovation of the law is the abolition of exequatur (intermediate step) and the establishment of a new procedure for the debtor's decision to challenge the execution.

The Law has been voted on 24 March 2015.

### ➤ **Circulars CSSF/ Commissariat aux assurances**

- Circular CSSF 15/607 of 05 March 2015: FATF declarations concerning 1) jurisdictions whose regime against money laundering and terrorism financing has substantial and strategic deficiencies; 2) the courts whose progress was deemed insufficient; 3) jurisdictions whose regime against money laundering and terrorism financing is not satisfactory.

- Circular CSSF 15/608 of 23 March 2015: Change of deadline for compliance with Circular CSSF 14/587 and subsequent amendments to this circular. Circular CSSF 14/587 : Provisions applicable to credit institutions acting as UCITS depository subject to Part I of the law of the 17 December 2010 relating to undertakings for collective investment and to all UCITS, where appropriate, represented by their management company.

- Circular CSSF 15/609 of 27 March 2015: developments in automatic exchange of tax information and anti-money laundering in tax matters.

- Circular letter of the Commissariat aux Assurances of 15 January 2015 relating to *notifications in case of referral by a foreign authority*.

➤ FAQ ESMA

- On 26 March 2015, ESMA ( European Securities and Market Authorities) published an updated version of its questions and answers paper on reporting, notification of AIFMs and additional own funds.

## Corporate laws

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➤ Law/Bill of law

- Bill of law 6777 introducing a new type of private limited liability company, the “société à responsabilité limitée simplifiée” or simplified private limited liability company (“SARL-S”) amending :

1° the law of 10 August 1915 as amended on commercial companies; and

2° the law of 19 December 2002 as amended relating to the register of commerce and companies and companies accounting and annual accounts

This bill of law, introduced on 2 February 2015, received a positive advice from the Luxembourg Institute of Registered Auditors on 12 February 2015, but a rather more severe one from the Chamber of employees on March 31,2015 and of the Luxembourg association of accounting and tax advisers on April 4, 2015.

## Tax

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➤ Law/Bill of law

- Bill of law n°6713 amending the Law of 12 February 1979 on the **value added tax** (the “VAT Law”) and the Law of 17 December 2010 on excise duties applicable to certain categories of goods.

Introduced on 28 August 2014, the bill was transferred to the Finances and Budget Commission on recommendation of the Council of State on 10 December 2014..

The Bill aims at promoting the new VAT-free zone regime at Luxembourg's Findel airport implemented by the Law of 28 July 2011 (the Luxembourg Freeport).

### ➤ Circulars

- Circular of the Head of Direct Tax Authorities L.G Conv. D.I. n° 59 of 31 March 2015 dealing with the **taxation of employees crossborder remunerations** between Luxembourg and Belgium. This Circular follows on the signature of the mutual agreement on 16 March 2015 and of a "vade-mecum" regarding evidences to prove presence in Luxembourg or in Belgium.

- Circular of the head of Direct Tax Authorities L.I.R. n° 104/1 of 10 March 2015: This circular supersedes with immediate effect Circular LIR No 104/1 of 20 November 2014 **on the assessment of certain benefits in kind awarded by employers to their employees.**

This Circular provides details on how employees can deduct the purchase price of the vehicle under the so-called 100% cap method.

- Circular of the head of Direct Tax Authorities L.G.-A. n°61 of 12 February 2015: This circular clarify and provide new rules concerning the issuance of certificates of residence for Luxembourg Undertakings for Collective Investment (UCIs). The new administrative clarifications are expected to have a positive effect on the Luxembourg UCI market, strengthening Luxembourg's position as a leading UCI platform.

### ➤ Regulations

- Grand-Ducal regulation of 27 February 2015 amending the Grand-Ducal regulation of 14 October 1978 relating to the notification of tax bulletins.

Published in Mémorial A 36 of 5 March 2015, page 362.

In article 1, first sentence of the Grand-Ducal Regulation of 24 October 1978, the words "that remain in the Grand Duchy" have been deleted in order to put on an equal footing residents and non-residents with regards to the length of the time limitation for introducing contestations, and thereby to speed up investigation procedures and taxation of non-residents by the renunciation to the election of domicile.

## ➤ Treaties

- Treaty with respect to administrative assistance in tax matters, signed in Paris on 29 May 2013. Ratification by **Indonesia**. Published in memorial A n° 23 of 11 February 2015, p 286.
- A Treaty with respect to administrative assistance in tax matters, signed in Paris on 29 May 2013. Ratification by **Cyprus**. Published in memorial A n° 21 of 10 February 2015, p 239.
- Treaty with respect to administrative assistance in tax matters, signed in Paris on 29 May 2013. Ratification by the **Kingdom of Denmark**. Published in memorial A n° 266 of 30 December 2014, p 5630.

## *Intellectual Property*

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The Minister of Finance confirmed discussions on the current status and expected developments in relation to the Luxembourg tax treatment of certain intellectual property rights in order to adapt the actual tax regime to the OCDE standards. Abolition of the existing regime as from 30/06/2016 with a Grand Fathering period until 30/06/2021

## *European Law*

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### ➤ Regulations-Directives

- Delegated Regulation (EU) 2015/488 of 4 September 2014 amending Delegated Regulation (EU) No 241/2014 as regards own funds requirements for firms based on fixed overheads.
- Regulation (EU) 2015/534 of the European Central bank of 17 March 2015 on reporting of supervisory financial information (ECB/2015/13).

- Decision (EU) 2015/530 of the European Central Bank of 11 February 2015 regarding the methodology and procedures for the determination and collection of data on fee factors to calculate the annual fees for the supervision (ECB / 2015 / 7).

- Decision (EU) 2015/433 of the European Central Bank of 17 December 2014 concerning the establishment of an Ethics Committee and its Rules of Procedure (ECB/2014/59).

- Proposal for a Council Directive amending Directive 2011/16/EU as regards mandatory automatic exchange of information in matter of taxation.

- Proposal for a Council Directive amending Directive 2003/148/EC, “Saving Directive”.

### ➤ Jurisprudence

- Judgment of the European Union Court of Justice of 11 March 2015 : Insider trading

“affaire (2ème chambre) C-628/13 Jean-Bernard Lafonta/Autorité des Marchés financiers du 11 mars 2015 : Renvoi préjudiciel – Rapprochement des législations – Directive 2003/6/CE – Article 1er, point 1 – Directive 2003/124/CE – Article 1er, paragraphe 1 – Information privilégiée – Notion d’information à caractère précis’ – Influence potentielle dans un sens déterminé sur les cours des instruments financiers»

EU Directives 2003/6/CE and 2003/124/CE prohibit insider dealing and requires issuers of financial instruments to inform the public of inside information which directly concerns them, that is to say, of any information of a precise nature which is likely to have a significant effect on the prices of the financial instruments concerned.

By the judgment, the Court states that it is not apparent from the wording of the directives 2003/6/CE and 2003/124/CE that ‘precise’ information covers only information which makes it possible to determine the likely direction of a change in the prices of the financial instruments concerned. The only information that may be regarded as imprecise is information that is vague or general, from which it is impossible to draw a conclusion as regards its possible effect on the prices of the financial instruments concerned.

The Court points out in that regard that a reasonable investor may well base his decision to invest on information which does not necessarily make it possible to determine the movement in a given direction of the prices of the financial instruments concerned. Furthermore, the increased complexity of the financial markets makes it particularly difficult to identify accurately the direction of a potential change in the prices of financial

instruments. If it were accepted that information is to be regarded as precise only if it makes it possible to anticipate the direction of a change in the prices of the instruments concerned, the holder of that information could use any uncertainty in that regard as a pretext for refraining from making certain information public and thus profit from that information to the detriment of the other actors on the market.

- Judgment of the European Union Court of Justice of 5 March 2015: Electronic books: no reduced VAT rate: « Arrêt CJUE (quatrième chambre) du 5 mars 2015 : Manquement d'État – Fiscalité – TVA – Application d'un taux réduit – Fourniture de livres numériques ou électroniques », affaire C-479/13. Livres numériques : Pas de TVA à taux réduit »

In two judgments of 5 March 2015, the European Union Court of Justice upholds the Commission's action against France and Luxembourg for failure to fulfil obligations regarding VAT rates.

In France and in Luxembourg, the supply of electronic books is subject to a reduced rate of VAT. Accordingly, since 1 January 2012, France has applied a VAT rate of 5.5% and Luxembourg a rate of 3% to the supply of electronic books.

The Court finds that the VAT Directive excludes any possibility of a reduced VAT rate being applied to 'electronically supplied services'. The Court holds that the supply of electronic books is such a service. The Court rejects the argument that the supply of electronic books constitutes a supply of goods (and not a supply of services). Only the physical support enabling an electronic book to be read could qualify as 'tangible property' but such support is not part of the supply of electronic books.

**Note :**

*This legal watch provides an overview of the recent amendments to Luxembourg Laws and Regulations. The complete wording of most of the documentation is available on request (see contact details here below).*